The Ontario Securities Commission

OSC Bulletin

April 4, 2013

Volume 36, Issue 14

(2013), 36 OSCB

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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Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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Subscriptions are available from Carswell at the price of $649 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	$175
Outside North America	$400

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ISSN 0226-9325

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April 4, 2013

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- - - - - - - - - - - - - - - - - - - -

Unless otherwise indicated in the date column, all hearings will take place at the following location:

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Toronto, Ontario
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Alan J. Lenczner	—	AJL
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
AnneMarie Ryan	—	AMR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

April 8, 2013 9:00 a.m.	**Ground Wealth Inc., Armadillo Energy Inc., Paul Schuett, Doug DeBoer, James Linde, Susan Lawson, Michelle Dunk, Adrion Smith, Bianca Soto and Terry Reichert** s. 127 J. Feasby in attendance for Staff Panel: MGC
April 8, 2013 9:00 a.m.	**Ground Wealth Inc., Michelle Dunk, Adrion Smith, Joel Webster, Douglas DeBoer, Armadillo Energy Inc., Armadillo Energy, Inc., and Armadillo Energy LLC** s. 127 J. Feasby in attendance for Staff Panel: MGC
April 8, 2013 1:00 p.m. April 10-16, April 22, April 24, April 29-30, May 6 and May 8, 2013 10:00 a.m.	**Energy Syndications Inc. Green Syndications Inc. , Syndications Canada Inc., Daniel Strumos, Michael Baum and Douglas William Chaddock** s. 127 C. Johnson in attendance for Staff Panel: AJL
April 9, 2013 3:00 p.m.	**New Hudson Television LLC & Dmitry James Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC

April 10, 2013
10:00 a.m.

Blackwood & Rose Inc., Steven Zetchus and Justin Kreller (also known as Justin Kay)

s. 37, 127 and 127.1

C. Rossi in attendance for Staff

Panel: JEAT

April 10, 2013
2:00 p.m.

Ronald James Ovenden, New Solutions Capital Inc., New Solutions Financial Corporation and New Solutions Financial (II) Corporation

s. 127

Y. Chisholm in attendance for Staff

Panel: EPK

April 12, 2013
10:00 a.m.

Myron Sullivan II formerly known as Fred Myron George Sullivan, Global Response Group (GRG) Corp., and IMC – International Marketing Of Canada Corp.

s. 127

Panel: TBA

April 12, 2013
11:00 a.m.

Michael Robert Shantz and Canada Pacific Consulting Inc.

s. 127

Panel: TBA

April 15, 2013
9:00 a.m.

JV Raleigh Superior Holdings Inc., Maisie Smith (also known as Maizie Smith) and Ingram Jeffrey Eshun

s. 127

Panel: AJL

April 17, 2013
10:00 a.m.

Portfolio Capital Inc., David Rogerson and Amy Hanna-Rogerso

s. 127

S. Horgan in attendance for Staff

Panel: AJL

April 17, 2013
11:00 a.m.

Heritage Management Group and Anna Hrynisak

s. 127

C. Rossi in attendance for Staff

Panel: AJL

April 17, 2013
11:30 a.m.

Global Consulting and Financial Services, Global Capital Group, Crown Capital Management Corp., Michael Chomica, Jan Chomica and Lorne Banks

s. 127

C. Rossi in attendance for Staff

Panel: AJL

April 18, 2013
10:00 a.m.

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

C. Price in attendance for Staff

Panel: CP

April 25, 2013
10:00 a.m.

Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (also known as Peter Kuti), Jan Chomica, and Lorne Banks

s. 127

C. Rossi in attendance for Staff

Panel: CP

April 26, 2013 11:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 C. Watson in attendance for Staff Panel: EPK
April 29, 2013 9:00 a.m. April 30, May 2-May 6 and May 8-10, 2013 10:00 a.m. May 1, 2013 2:00 p.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: JDC
May 1, 2013 10:00 a.m.	**Ronald James Ovenden, New Solutions Capital Inc., New Solutions Financial Corporation and New Solutions Financial (II) Corporation** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
May 8, 2013 10:00 a.m. May 9-13, 2013 11:00 a.m.	**Matthew Robert White and White Capital Corporation** s. 8 S. Horgan/C. Weiler in attendance for Staff Panel: JEAT/MGC
May 9, 2013 10:00 a.m.	**New Solutions Capital Inc., New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and Ron Ovenden** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
May 10, 2013 10:00 a.m.	**Children's Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
May 14, 2013 10:00 a.m.	**York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale** s. 127 H. Craig/C. Watson in attendance for Staff Panel: VK/EPK
May 15, 2013 10:00 a.m.	**Quadrexx Asset Management Inc., Quadrexx Secured Assets Inc., Offshore Oil Vessel Supply Services LP, Quibik Income Fund and Quibik Opportunities Fund** s. 127 D. Ferris in attendance for Staff Panel: JEAT
May 22-31, 2013 10:00 a.m.	**2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov** s. 127 D. Campbell in attendance for Staff Panel: EPK

May 27, 2013 10:00 a.m.	**AMTE Services Inc., Osler Energy Corporation, Ranjit Grewal, Phillip Colbert and Edward Ozga** s. 127 C. Rossi in attendance for Staff Panel: JEAT
June 3, June 5-17 and June 19-25, 2013 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: JDC
June 3, 5-6, 10-12, 14-17, 19-20 and July 22-26, 2013 10:00 AM	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: CP/SBK/PLK
June 6, 2013 10:00 a.m.	**New Hudson Television Corporation,** **New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC
June 19, 2013 11:00 a.m.	**Knowledge First Financial Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
July 31, 2013 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 H. Craig in attendance for Staff Panel: MGC
September 16-23, September 25 – October 7, October 9-21, October 23 – November 4, November 6-18, November 20 – December 2, December 4-16 and December 18-20, 2013 10:00 a.m.	**Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo,** **Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gornitzki and Pollen Services Limited** s. 127 U. Sheikh in attendance for Staff Panel: JDC
October 15-21, October 23-29, 2013 10:00 a.m.	**Normand Gauthier, Gentree Asset Management Inc., R.E.A.L. Group Fund III (Canada) LP, and CanPro Income Fund I, LP** s. 127 B. Shulman in attendance for Staff Panel: TBA
November 4 and November 6-18, 2013 10:00 a.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 D. Ferris in attendance for Staff Panel: TBA
January 13, January 15-27, January 29 – February 10, February 12-14 and February 18-21, 2014 10:00 a.m.	**International Strategic Investments, International Strategic Investments Inc., Somin Holdings Inc., Nazim Gillani and Ryan J. Driscoll.** s. 127 C. Watson in attendance for Staff Panel: TBA
May 5-16 and May 20 – June 20, 2014 10:00 a.m.	**Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)** s. 127 T. Center/D. Campbell in attendance for Staff Panel: TBA

In writing	**Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths** s. 127 J. Feasby in attendance for Staff Panel: EPK
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 Panel: TBA
TBA	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: TBA
TBA	**Gold-Quest International and Sandra Gale** s. 127 C. Johnson in attendance for Staff Panel: TBA
TBA	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan** s. 127 H. Craig/C.Rossi in attendance for Staff Panel: TBA
TBA	**Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
TBA	**David M. O'Brien** s. 37, 127 and 127.1 B. Shulman in attendance for Staff Panel: TBA
TBA	**Bunting & Waddington Inc., Arvind Sanmugam, Julie Winget and Jenifer Brekelmans** s. 127 Panel: TBA

TBA **Colby Cooper Capital Inc. Colby Cooper Inc., Pac West Minerals Limited John Douglas Lee Mason**

s. 127

B. Shulman in attendance for Staff

Panel: TBA

TBA **Beryl Henderson**

s. 127

Panel: TBA

TBA **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA **Crown Hill Capital Corporation and Wayne Lawrence Pushka**

s. 127

A. Perschy/A. Pelletier in attendance for Staff

Panel: TBA

TBA **Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg**

s. 127

H Craig in attendance for Staff

Panel: TBA

TBA **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjaiants Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**

s. 127 and 127.1

D. Campbell in attendance for Staff

Panel: TBA

TBA **Ernst & Young LLP**

s. 127 and 127.1

A. Clark in attendance for Staff

Panel: TBA

TBA **Newer Technologies Limited, Ryan Pickering and Rodger Frey**

s. 127 and 127.1

B. Shulman in attendance for staff

Panel: TBA

TBA **Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk**

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: TBA

TBA	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Fawad Ul Haq Khan and Khan Trading Associates Inc. carrying on business as Money Plus** s. 60 and 60.1 of the *Commodity Futures Act* T. Center in attendance for Staff Panel: TBA
TBA	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: TBA
TBA	**Issam El-Bouji, Global RESP Corporation, Global Growth Assets Inc., Global Educational Trust Foundation and Margaret Singh** s. 127 and 127.1 M. Vaillancourt in attendance for Staff Panel: TBA
TBA	**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith** s. 127(1) and (5) A. Heydon/Y. Chisholm in attendance for Staff Panel : TBA
TBA.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: EPK
TBA	**Garth H. Drabinsky, Myron I. Gottlieb and Gordon Eckstein** s. 127 A. Clark/J. Friedman in attendance for Staff Panel: TBA
TBA	**Heritage Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: TBA
TBA	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA

TBA

Onix International Inc. and Tyrone Constantine Phipps

s. 127

C. Rossi in attendance for Staff

Panel: TBA

TBA

New Futures Trading International Corporation and Fernando Honorate Fagundes also known as Henry Roche

s. 127

Panel: TBA

TBA

Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA

Sandy Winick, Andrea Lee Mccarthy, Kolt Curry, Laura Mateyak, Gregory J. Curry, American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Liquid Gold International Corp., (aka Liquid Gold International Inc.) and Nanotech Industries Inc.

s. 127

J. Feasby in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

LandBankers International MX, S.A. De C.V.; Sierra Madre Holdings MX, S.A. De C.V.; L&B LandBanking Trust S.A. De C.V.; Brian J. Wolf Zacarias; Roger Fernando Ayuso Loyo, Alan Hemingway, Kelly Friesen, Sonja A. McAdam, Ed Moore, Kim Moore, Jason Rogers and Dave Urrutia

Hollinger Inc., Conrad M. Black, F. David Radler, John A. Boultbee and Peter Y. Atkinson

1.1.2 OSC Notice 11-768 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2014

ONTARIO SECURITIES COMMISSION
NOTICE 11-768 – STATEMENT OF PRIORITIES

REQUEST FOR COMMENTS
REGARDING STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2014

The *Securities Act* requires the Commission to deliver to the Minister and publish in its Bulletin each year a statement of the Chairman setting out the proposed priorities of the Commission for its current fiscal year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

The OSC regulates in the context of rapid changes in market structure, technology, investment products and the global regulatory regime. In this environment, the OSC faces a growing array of challenges and must use its finite resources as efficiently as possible. The OSC is mindful that it has more work to do as it builds on the momentum created in recent years from many initiatives, including:

- Bringing more enforcement cases before the provincial court, resulting in more jail sentences, especially against defendants facing fraud allegations, recidivists and respondents who do not comply with Commission orders
- Completing an extensive review of the Maple Group acquisition of TMX Group and finalizing recognition orders with terms and conditions to protect the public interest
- Finalizing a framework for electronic trading to ensure that marketplaces and market participants are managing the risks of electronic trading, including requirements for dealers to have pre-trade controls
- Working with other regulators and gatekeepers to identify and address significant concerns relating to the governance, auditing and listing practices of issuers from emerging markets
- Co-operating with the Bank of Canada, federal Department of Finance, Office of the Superintendent of Financial Institutions and the Canadian Securities Administrators (CSA) to meet Canada's G20 commitments, including work with the CSA to establish a harmonised framework for OTC derivatives
- Collaborating with the CSA and Investment Industry Regulatory Organization of Canada (IIROC) to publish a new regulatory framework for dark liquidity to improve price discovery

This *Statement of Priorities* describes the actions that the OSC will take in 2013-2014 to address each of its priorities and related goals. While the proposed priorities will potentially impact more than one organizational goal, each priority is identified only under the specific goal where the greatest impact is expected. In certain cases, the process required to properly assess the issues, including consultations with market participants, and then to develop and implement appropriate regulatory solutions, may take more than one year to complete.

In an effort to obtain feedback and specific advice on our proposed objectives and initiatives, the Commission is publishing a draft Statement of Priorities which follows this Request for Comments. The Commission will consider the feedback, and make any necessary revisions prior to finalizing and publishing its 2013–2014 Statement of Priorities. The Statement of Priorities, once approved by the Minister, will serve as the guide for the Commission's operations. Shortly after the conclusion of our 2012–2013 fiscal year we will publish on our website a report on our progress against our 2012–2013 priorities.

Comments

Interested parties are invited to make written submissions by June 3, 2013 to:

Robert Day
Senior Specialist, Business Planning and Performance Reporting
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
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(416) 593-8179
rday@osc.gov.on.ca

April 4, 2013

[Editor's Note: OSC Notice 11-768 – *Statement of Priorities* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the OSC Notice.]

Ontario Securities Commission

2013-2014 – Statement of Priorities

Draft for Comment

April 4, 2013

Introduction

The *Securities Act* (Ontario) requires the Ontario Securities Commission (OSC) to publish in its Bulletin, and to deliver to the Minister by June 30 of each year, a statement by the Chair setting out the proposed priorities for the Commission for the current financial year.

This Statement of Priorities sets out the OSC's strategic goals and the specific initiatives that will be pursued in support of each of these goals in the fiscal year commencing April 1, 2013. It also discusses the environmental factors that the OSC considered in setting these goals.

The OSC is accountable for delivering its regulatory services economically, effectively and efficiently.

OSC Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

OSC Mandate

To provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. The mandate is established by statute.

OSC Organizational Goals

1. Deliver strong investor protection
2. Deliver responsive regulation
3. Deliver effective enforcement and compliance
4. Support and promote financial stability
5. Run a modern, accountable and efficient organization

Key Regulatory Priorities for 2013–2014

This document describes the actions that the OSC will take in 2013-2014 to address each of the priorities and its related goals. While the proposed priorities will potentially impact more than one organizational goal, each priority is identified only under the specific goal where the greatest impact is expected. In certain cases, the process required to properly assess the issues, including consultations with market participants, and then to develop and implement appropriate regulatory solutions, may take more than one year to complete.

The OSC regulates in a context of rapid changes in market structure, technology, investment products and the global regulatory regime. In this environment, the OSC faces a growing array of challenges and must use its finite resources as efficiently as possible. This *Statement of Priorities* identifies the most important areas where the OSC intends to focus those resources.

1. The OSC is expanding its outreach to investors and community leaders across Ontario to hear their concerns and issues. Staff will meet with investors and other stakeholders at events in their communities to gather feedback that will help inform the development of effective regulatory policy in support of the OSC mandate.

2. The OSC recognizes that cost-effective access to capital is critical to companies of all sizes to grow and develop. To address growing interest in alternative capital raising techniques, such as crowdfunding, the OSC will consider the regulatory issues posed by these new capital-raising strategies. If appropriate, the OSC will propose changes to its current offering rules to facilitate capital formation for small businesses while maintaining important investor protections provided under securities law.

3. In its compliance oversight, the OSC will use outreach to registrants and reporting issuers to foster compliance with relevant regulatory requirements, especially suitability obligations for registrants. Staff will continue the OSC's preventative approach to compliance oversight. Staff will also proactively expand the use of communications strategies to warn investors about potential harm.

4. The OSC is intensifying its enforcement program and will target the most serious harm, including fraudulent activity and the failure to provide investors with full and complete information. The OSC will continue to pursue more cases, especially those involving fraud, before the courts, where it can seek jail sentences for violations of the *Securities Act* (Ontario) and breaches of Commission orders.

5. Keeping pace with the rapid evolution of market structures will remain a key area of focus in 2013-2014. The OSC will examine the issues associated with the evolution of the markets, including the impact of the order protection rule, algorithmic and other electronic trading and market data fees, to determine what regulatory responses may be required.

The OSC always faces pressure to move faster and to coordinate its actions more efficiently as it responds to a range of complex issues. It strives to be as responsive and innovative as possible in its contributions to collaborative policy responses with securities and other regulators. The OSC is committed to enhanced co-operation and information-sharing with the CSA, the International Organization of Securities Commissions (IOSCO) and other international agencies and consulting, when appropriate, with the provincial government.

Summary of 2013-2014 OSC Priorities

Deliver strong investor protection	
Issue/Priority	**Proposed Actions**
1. Investor Outreach and Focus	• Engage investors and investor advocacy groups, including the Investor Advisory Panel, through community meetings and outreach, such as the "OSC in the Community", and focus groups to better understand investors' key concerns • Publish a list of key findings from consultations
2. Adviser Responsibilities to Investors	• Work with investors and SROs to examine and better understand the impact of imposing a best interest duty on dealers and advisers a) Conduct a "mystery shop" research sweep of advisers to gauge the suitability of advice currently being provided and identify areas of concern and assist in targeting future OSC suitability sweeps b) Publish an initial assessment of the application of a best interest standard for advisers and dealers (including a regulatory impact analysis)
3. Disclosure to Investors	• Provide investors with more effective and meaningful disclosure: a) Publish a rule requiring advisers and dealers to provide cost disclosure and performance reporting in client statements to investors and communicate progress on implementation b) Publish final proposals for delivery of Fund Facts instead of a mutual fund prospectus c) Develop a summary document for ETFs and consider mechanisms for delivery
4. Mutual Fund Fees	• Advance the discussion of mutual fund fees and fees for other investment products: a) Consider comments on the discussion paper published by the OSC on the regulatory options available to address embedded commissions and existing inequities in the way mutual fund fees are charged b) Host a stakeholder roundtable and develop recommendations for next steps c) Identify options to move forward and publish a progress update
Deliver responsive regulation	
Issue/Priority	**Proposed Actions**
5. Capital markets accessibility	• Complete stakeholder consultations and assessment of feedback on exempt market consultation paper published in December 2012 • Engage businesses and business associations on access to capital, through outreach such as OSC in the Community • Determine options to move forward on expanding ways to access capital for issuers in Ontario and publish progress update
6. Market Structure Evolution	• Examine the evolution of the Canadian capital market structure and the impact of the order protection rule, algorithmic and other electronic trading, and market data fees • Solicit stakeholder feedback on these issues and, where appropriate, develop options for possible regulatory changes and an articulation of market principles
7. Regulation of Fixed Income Securities	• Review the OSC's regulation of the fixed income market and obtain feedback from key stakeholders • Develop an action plan to address specific key gaps or risks
Deliver effective enforcement and compliance	
Issue/Priority	**Proposed Actions**
8. Serious Securities-related Misconduct	• Identify the cases that should be investigated as quasi-criminal or *Criminal Code* offences, and use the appropriate tools available (e.g. temporary cease trade orders and freeze orders) in order to reduce financial crime • Align staff in specialized teams to build core expertise in criminal and quasi-criminal offences and make better use of technology to detect and halt unlawful activity • Reinforce key strategic alliances with appropriate policing agencies to strengthen and improve investigative tools applied to these cases

9. Compliance Focus on Suitability	• Complete focused compliance reviews on high risk areas/registrants a) Complete next steps in 2012-2013 compliance suitability sweep and publish results b) Publish guidance for registrants c) Make efficient and timely referrals of serious cases of unsuitable advice to Enforcement
Support and promote financial stability	
Issue/Priority	**Proposed Actions**
10. Systemic Risk to Financial Markets	• Develop rules for an OTC derivatives regulatory framework, including for clearing and trade reporting • Work with CSA colleagues to begin implementation of OTC derivatives regime
Run a modern, accountable and efficient organization	
Issue/Priority	**Proposed Actions**
11. Reliance on Data and Analysis	• Demonstrate the OSC's effective use of research, data and analysis through: a) Improved cost-benefit analysis in OSC rule proposals b) Clear examples of use of data and analytical approaches c) Identified market trends and risks d) Evidence of greater use of investor research in OSC policy development and decision-making
12. OSC Transparency and Accountability	• Commit to better reporting on performance: a) Publish a renewed service and accountability document b) Develop and implement clear performance measures for OSC activities c) Publish year end performance report using new measures
13. Update CSA National Systems	• Transition the operation of the core CSA national systems to the new service provider • Issue an RFP to design and build a new technology solution(s) to replace the core CSA national systems

The Environment – Risks and Challenges

Over the past year global economic conditions have improved in many countries. While the number of positive economic signals continues to grow, important challenges and risks remain, and economic growth in many regions remains slower than previously forecast. The recession continues in Europe but growth in Asia is expected to improve. In the United States economic conditions continue to demonstrate improvement, even in the face of fiscal constraints.

These global conditions have had and will continue to have an impact in Canada. While economic growth in Canada slowed in the second half of 2012, the Canadian economy is expected to expand at a faster rate later in 2013, in line with a recovery in the U.S. economy. Weaker global demand for commodities has impacted Canada's equity markets and the S&P/TSX Composite index is underperforming as a result of weaker performance in the materials and energy sectors.

The TSX and TSXV ranked third in the world for equity capital raised in 2012 but IPO activity remains lower than 2011 levels. Corporate bond issuances remain strong given investor appetite for yield. Despite remaining economic uncertainty, the asset management sector continues to show strength, with mutual fund assets and sales now exceeding their pre-crisis peaks.

Capital markets exist for issuers to raise capital and for those with savings to invest. The capital markets are complex and interconnected and the rate of

innovation has increased over the last five years. The complexity of the investment products available has increased and the distinctions between securities, insurance and banking products has blurred as these products become more interchangeable.

This trend has challenged retail investors' ability to determine product suitability. The disclosure documents for investment product offerings are comprehensive but they are not necessarily always comprehensible to all investors. In an environment where it is challenging to achieve attractive returns, these developments may increase the reliance of investors on quality financial advice. The evolution of the wealth management industry away from transaction based fees towards more asset based revenue models may raise new issues with adviser behaviour at a time when there is greater investor need for objective financial advice. Within this context, global regulators are increasingly focused on ensuring investors have access to sound and appropriate advice.

Given continued uncertainty in global equity markets and the historically low interest rate environment, investors – both institutional and retail – have cast a wider net in search of return. More investors have broadened their investments beyond equities and saving and now include fixed income, real estate, private equity and other strategies as they search for better returns. This demand for yield may increase the potential for mis-selling, as investors may be drawn to securities that have a risk profile that may not be consistent with their investment goals, investment horizon or tolerance for risk and may prove to be unsuitable in a changing economic climate. The flow of assets into fixed income securities, either directly or into mutual funds, also raises questions about whether investors understand the impact of interest rate changes on their investments.

Market structure has also seen significant change and innovation over the last five years. The increased use of technologies such as high frequency and algorithmic trading and greater integration of markets across provincial and national boundaries have resulted in substantial changes in how markets operate. Market participants face an array of issues, including lower levels of retail activity, new trading strategies, multiple trading platforms, differentiated fee structures, and rising data costs. These factors affect the financial viability of market participants, challenge existing business models, and may lead to greater consolidation or require additional innovation in how business is conducted.

All of these changes have added to the risks that must be addressed by regulators here in Ontario and globally. In addition to its core activities of registration, review of disclosure, compliance monitoring, enforcement activities and policy development, the OSC must identify, assess, and determine the appropriate regulatory responses to issues in a world where a failure in one area of the marketplace can have significant systemic consequences. New issues continue to emerge, such as integrated market oversight and financial benchmarks, that raise concerns about transparency and accountability and require new regulatory responses and oversight in areas not previously subject to such scrutiny. To ensure the ongoing competitiveness and attractiveness of Ontario's capital markets, the OSC will remain actively engaged internationally, with organizations such as the International Organization of Securities Commissions (IOSCO). The OSC will be

involved in the development of international regulatory standards with a view to aligning these standards to the unique features of Ontario's capital markets.

Enforcement continues to play a central role in maintaining and enhancing trust in Ontario's capital markets. New challenges include international investigations that underscore the need for comparable regulatory regimes globally and the importance of international regulatory co-operation. Consultation both domestically and abroad is becoming a more integral element of OSC operations as many of its enforcement investigations and actions involve activity beyond Ontario's borders.

The OSC is working to address feedback from stakeholders about improving accountability by increasing transparency of its regulatory performance. Throughout this document, when success measures refer to stakeholder feedback, that is meant to include a broad range of stakeholders including investors, registrants and issuers and OSC advisory committees.

As the OSC's work continues to expand, new tools and resources with specialized skills will be required to meet the evolving demands that it faces. The OSC has the additional challenge of trying to address these issues while adhering to the Ontario government's fiscal constraints. As the OSC moves to meet its challenges, it will continue to aggressively pursue process efficiencies, do more with its existing resources and report on its progress.

1. What the OSC is doing to deliver strong investor protection

Investor Outreach and Focus

The OSC is strengthening its efforts for the protection of investors in everything it does. The OSC's Office of the Investor (OI) was created to strengthen the OSC's investor engagement and co-ordinate all investor-related initiatives, including working with the Investor Education Fund and supporting the OSC Investor Advisory Panel. The OI is leading the effort to elevate investor engagement in order to better identify and address relevant issues and concerns. It will coordinate initiatives with investors, advocacy groups, other regulators and OSC staff. In addition, more resources are being devoted to identifying, understanding and addressing emerging risks, capital market trends and new product developments that may affect investors, particularly retail investors.

Investor confidence in the capital markets can be affected by many factors including the stability of the financial system, the degree investors feel protected and their perception of the effectiveness of market supervision and enforcement activities. A key challenge for the OSC is to demonstrate effective market oversight to foster fair and efficient capital markets.

Priority 1 Issue	**Investor confidence has been shaken resulting in reduced market participation. The OSC must reach out to investors to determine the steps needed to protect their interests**
Action Plan	1. Engage investors and investor advocacy groups, including the Investor Advisory Panel, through community meetings and outreach, such as the "OSC in the Community", and focus groups to better understand investors' key concerns 2. Publish a list of key findings from consultations
Success Measures	1. Surveys and direct stakeholder feedback will confirm: a) The OSC is focused on the right issues to protect investor interests b) Support for the consultation approach 2. OSC policy and regulatory proposals will reflect a better understanding of investor issues

Adviser Responsibilities to Investors

Issuers, product manufacturers and intermediaries must meet high standards of conduct and disclosure in order to earn the trust and confidence of investors. While disclosure is important, the provision of fair advice by qualified advisers is a key element that affects investor confidence. There are concerns that the current standard of conduct may not adequately address the information and financial literacy imbalances that exist between advisers and dealers and their retail clients.

The CSA published a consultation paper in 2012 that examined whether there is a need for an explicit statutory best interest duty (or other standard) to apply to advisers and dealers who advise retail investors. The OSC received a significant number of comments through this process. At issue is whether or not the current standard of suitability applicable to advisers and dealers when dealing with their clients offers sufficient investor protection. This is a complex issue that requires careful consideration in order to protect investors while recognizing challenges to

the current business models of market participants. This initiative will remain a priority in 2013-2014.

Priority 2 Issue	**An expectation gap exists if investors incorrectly assume that their adviser/dealer must always give advice that is in their best interests. As a result the current standard of conduct applicable to advisers and dealers may not adequately protect retail investors**
Action Plan	1. Work with investors and SROs to examine and better understand the impact of imposing a best interest duty on dealers and advisers a) Conduct a "mystery shop" research sweep of advisers to gauge the suitability of advice currently being provided, identify areas of concern and assist in targeting future OSC suitability sweeps b) Publish an initial assessment of the application of a best interest standard for advisers and dealers (including a regulatory impact analysis)
Success Measures	1. Positive stakeholder feedback on engagement in the consultation process and the quality and balance of the OSC's policy and impact analysis 2. Research sweeps completed and summary report presented to the Commission

Disclosure to Investors

Research indicates that many investors have trouble finding and understanding the information that is set out in a prospectus. Many investors also lack an adequate understanding of investment and performance terms, and the risks and costs (explicit or embedded) of financial products and services. Detailed testing and research on investor preferences for mutual fund information has also confirmed that investors prefer to receive a concise summary of key information, including a simple explanation of expenses and fees, dealer compensation and investor rights.

Financial literacy research reinforces the need for clear and simple disclosure to not only help investors make investment decisions, but to facilitate investor protection. The Fund Facts document for mutual funds is now available to investors, and the CSA is working on further enhancements, particularly around risk disclosure. Increasingly complex investment products, such as leveraged, exchange-traded funds, are another area where investor protection could be significantly improved by providing investors with a clear, short summary document. This document could be used to assist investors in their decision-making processes and discussions with their dealer representatives.

Performance reporting is essential for investors if they are to be able to assess their progress towards meeting their financial goals and to determine the value of the professional advice they receive. Research shows that a significant proportion of investors are not receiving this information, and that where information is provided it is not in a form they can use. The OSC will continue to work with the CSA to complete a rule to introduce mandatory cost disclosure and performance reporting in client statements. The rule will provide investors with significantly more information about the cost and performance of their investments and will introduce a common baseline of requirements applicable to all dealers and advisers. This is a multi-year initiative that will better position retail investors to determine whether they have an effective investment plan, realistic expectations for their investment returns and whether they are getting good value from their dealer/adviser.

Priority 3 Issue	**Investors are at risk and may not make informed decisions because they often do not understand or use the information provided to them, in particular because the information may be unclear, complex or not consistent across different product types**
Action Plan	1. Provide investors with more effective and meaningful disclosure: a) Publish a rule requiring advisers and dealers to provide cost disclosure and performance reporting in client statements to investors and communicate progress on implementation b) Publish final proposals for delivery of Fund Facts instead of a mutual fund prospectus c) Develop a summary document for ETFs and consider mechanisms for delivery
Success Measures	1. Disclosure improvements (Fund Facts, ETF summary disclosure) are advanced 2. Feedback received on approaches assists in moving these improvements forward 3. Cost disclosure and performance reporting rule will be in effect and implementation will begin

Mutual Fund Fees

Mutual funds make up the largest share of investable assets for the typical Canadian household. Most mutual funds are purchased through an adviser. Research indicates that many investors do not understand the costs of mutual funds before investing, and many have a limited understanding of the different types of costs associated with mutual funds, including embedded trailing commissions.

To date, the OSC has focused its efforts on enhancing the transparency of fund fees for investors. A number of comparative studies on fund fees indicate that Canadian mutual fund fees are among the highest in the world. In light of this and other key issues, including concerns of cross-subsidization and conflicts of interest associated with the fee structure of Canadian mutual funds, the OSC will continue to examine whether regulatory reforms are needed to address investor protection and fairness issues.

Priority 4 Issue	**Many investors do not understand the actual costs of investing in mutual funds and other investment products. The fee structure used by mutual funds in Canada may raise investor protection and fairness issues**
Action Plan	1. Advance the discussion of mutual fund fees and fees for other investment products: a) Consider comments on the discussion paper published by the OSC on the regulatory options available to address embedded commissions and existing inequities in the way mutual fund fees are charged b) Host a stakeholder roundtable and develop recommendations for next steps c) Identify options to move forward and publish a progress update
Success Measures	1. Positive feedback from stakeholders on engagement in the consultation process (e.g. roundtables, IAP) and the quality of OSC's policy and impact analysis process 2. Analysis of comments will be completed and options for next steps identified

2. What the OSC is doing to deliver responsive regulation

Capital markets accessibility

The OSC is working to identify gaps and opportunities in the areas of capital market accessibility and capital formation through extensive engagement with investors and industry. This engagement includes outreach through targeted meetings with investors and market participants and consultations with OSC advisory committees.

Policy initiatives are underway to improve shareholder democracy and protection, including final rules for a new, clear and fair regime for the use of shareholder rights plans. In addition, the OSC is committed to using a more evidence-based policy making approach as a key to delivering effective financial market regulation. This approach includes greater use of market data to assist the OSC's analysis of developments, risks and opportunities in the markets. In the private market, the OSC will review the capital-raising exemptions to determine if there are opportunities to improve access to capital for issuers while maintaining an appropriate level of investor protection.

Priority 5 Issue	**Businesses and investors may not have adequate access to capital or investment opportunities in the exempt market**
Action Plan	1. Complete stakeholder consultations and assessment of feedback on exempt market consultation paper published in December 2012 2. Engage businesses and business associations on access to capital, through outreach such as OSC in the Community 3. Determine options to move forward on expanding ways to access capital for issuers in Ontario and publish progress update
Success Measures	1. The OSC will better understand the risks and opportunities associated with expanding access to capital in the exempt market 2. Analysis of feedback will be completed 3. Proposals will clearly reflect the balance between promoting access to capital and efficient capital formation with investor protection

Market Structure Evolution

The OSC will continue its work on initiatives that aim to foster fair and efficient markets and trading. Markets have experienced significant change and innovation in their structures over the past five years, largely due to advancements in technology and increased competition. It is an enduring objective of the OSC's work in this area that markets remain fair and participants have confidence in market quality and integrity, including order-entry, execution and settlement processes.

The OSC needs to review its existing oversight programs and, where necessary, design and implement enhanced, risk-based oversight programs that are focused on areas of greatest risk and harm and meet the needs of changing markets. During 2013-2014, the OSC will conduct oversight reviews of regulated entities (Investment Industry Regulatory Organization of Canada and CDS Inc.) to assess current compliance and whether the terms and conditions of their recognition orders continue to be appropriate.

The use of technology has increased the speed, capacity and complexity of trading securities. Many questions have been raised about the impact of high frequency trading (HFT) on the efficiency and quality of markets and about the risks posed by the technologies that support HFT and other forms of electronic trading. The OSC has introduced requirements for controls and testing of algorithms, and for mechanisms to terminate a participant's access. These requirements are intended to manage the risks associated with electronic trading generally and would apply to HFT and other algorithmic trading. To keep pace with current and future developments, the OSC will need to design controls to mitigate the risks of

technological changes and review whether existing rules are appropriate in this environment.

Priority 6 Issue	**The continued rapid evolution of market structures and trading strategies is a potential source of risk**
Action Plan	1. Examine the evolution of the Canadian capital market structure and the impact of the order protection rule, algorithmic and other electronic trading, and market data fees 2. Solicit stakeholder feedback on these issues and, where appropriate, develop options for possible regulatory changes and an articulation of market principles
Success Measures	1. Results of the issues examined will be published 2. Positive external feedback on the consultation process and quality of OSC's policy and impact analysis

Regulation of Fixed Income Securities

Fixed income securities have a broad scope and a pervasive impact on the economy. Fixed income markets, and in particular interest rates, are affected by international economic issues. Issues such as transparency and investor search for yield in a low interest rate environment are a potential source of risk. The OSC needs to better understand the significant issues affecting fixed income securities and those who invest in them, and to review its current approach to regulation to determine if any changes are required.

Priority 7 Issue	**The OSC needs to review its oversight of fixed income markets to determine if changes in regulatory approach are required**
Action Plan	1. Review the OSC's regulation of the fixed income market and obtain feedback from key stakeholders 2. Develop an action plan to address specific key gaps or risks
Success Measures	1. Review completed, results published and recommendations provided to the Commission 2. Positive external feedback on the consultation process and quality of OSC's policy and impact analysis

3. What the OSC is doing to deliver effective compliance and enforcement

The OSC will continue to focus on the need to promote improved, proactive compliance and credible deterrence, and to take effective enforcement action where warranted. The OSC will protect the interests of investors by taking action against firms and individuals who do not comply with Ontario securities law and/or act in a manner contrary to the public interest.

The OSC is committed to improving the efficiency and effectiveness of its enforcement processes, and will take the following steps towards this outcome:

- Optimize resource allocation by adopting a more risk-based approach to case triage

- Maximize the use of market intelligence/surveillance and data analysis capabilities, including increased use of technology
- Coordinate information-gathering processes and protocols that leverage staff expertise and facilitate proactive supervision
- Utilize the entire spectrum of compliance/enforcement tools
- Increase focus on addressing criminal behaviour by seeking additional enforcement tools

The OSC will seek to improve the efficiency and timelines of its enforcement work through targeted case selection, the use of co-ordinated multi-Branch work plans and various strategies to increase early detection of illegal securities-related activity.

Serious Securities-related Misconduct

The OSC will specifically increase its focus on seeking criminal or quasi-criminal sanctions when appropriate.

Priority 8 Issue	**The OSC will vigorously pursue serious securities-related misconduct by bringing an increased number of criminal and quasi-criminal proceedings**
Action Plan	1. Identify the cases that should be investigated as quasi-criminal or *Criminal Code* offences, and use the appropriate tools available (e.g. temporary cease trade orders and freeze orders) in order to reduce financial crime 2. Align staff in specialized teams to build core expertise in criminal and quasi-criminal offences and make better use of technology to detect and halt unlawful activity 3. Reinforce key strategic alliances with appropriate policing agencies to strengthen and improve investigative tools applied to these cases
Success Measures	1. More proceedings being commenced in provincial court 2. Feedback confirms public support for this approach

Compliance Focus on Suitability

Growth in the range and complexity of investment products is challenging the ability of retail investors to understand investment products and leading to increased investor reliance on financial advice. This has increased the need for the OSC to:

- Better educate investors about the dangers they may face from unregistered entities and advisers
- Clearly communicate expectations and guidance to registrants, including the need to have effective compliance systems and controls in place
- Confirm that the advice being provided to investors is suitable and unbiased through "mystery shopping" and other compliance reviews
- Work with standard setters to advance registrant proficiency through changes to professional standards and industry examinations

Priority 9 Issue	**Investors are at risk if advisers fail to provide suitable investment advice**
Action Plan	1. Complete focused compliance reviews on high risk areas/registrants a) Complete next steps in 2012-2013 compliance suitability sweep and publish results b) Publish guidance for registrants c) Make efficient and timely referrals of serious cases of unsuitable advice to Enforcement
Success Measures	1. Reviews identify issues and result in improved compliance by registrants; highest risk areas with greatest harms are addressed 2. Positive feedback from stakeholders on the effectiveness of the compliance review program

4. What the OSC is doing to promote financial stability

The OSC is actively involved in efforts by international organizations, such as IOSCO, to develop, implement and promote adherence to internationally-recognised and consistent standards of regulation, oversight and enforcement. Increasingly interconnected global capital markets create systemic risk both in Ontario's capital markets and markets internationally, and ultimately transmit risk among the world's economies.

Recent issues related to the setting of LIBOR have generated increased focus on the integrity and accuracy of financial benchmarks. The OSC will continue to work with other regulatory authorities to develop a clear framework that addresses these concerns globally. This work will also provide guidance for the development of a proposed regulatory framework for the oversight of key financial benchmarks in Canada.

In accordance with Canada's G20 commitments, the OSC is committed to the development of a regulatory system for OTC derivatives that promotes financial stability and which can be supported by strong systemic risk oversight. The key goals of this regulatory system include reducing systemic counterparty risk, enabling greater transparency of OTC markets, and harmonising standards for clearing houses.

Priority 10 Issue	**Increasingly interconnected global financial markets present systemic risk to financial market stability**
Action Plan	1. Develop rules for an OTC derivatives regulatory framework, including for clearing and trade reporting 2. Work with CSA colleagues to begin implementation of OTC derivatives regime
Success Measures	1. Rules establishing an appropriate regulatory regime are published and progress on regime implementation is underway

5. What the OSC is doing to be a modern, efficient and accountable organization

A number of the priorities below address the key strategies set out in the OSC 2012-2015 Strategic Plan to make the OSC a more proactive, agile and effective securities regulator.

The OSC strives to be efficient, effective and accountable in delivering its mandate. The ongoing demands of regulating the capital markets mean that the OSC work environment must be progressive and resources, processes and systems must continually evolve to meet new market developments and challenges. To meet this challenge the OSC will:

- Improve its regulatory capacity through the development of people and expertise (e.g., training, secondments), and the creation of resource room to focus on priorities
- Improve the timeliness, effectiveness and efficiency of Commission adjudicative processes, including design and implementation of a new tribunal e-hearing and filing system
- Invest in IT infrastructure to provide better tools to gather and use data and information to support a fact-based approach to investor issues, market developments and rule-making

Reliance on Data and Analysis

The OSC is committed to increasing its reliance on data and analysis in undertaking its work.

Priority 11 Issue	**Continued growth in the complexity of products, trading approaches and the interconnectedness of markets requires greater reliance on data and analysis to support OSC work**
Action Plan	1. Demonstrate the OSC's effective use of research, data and analysis through: a) Improved cost-benefit analysis in OSC rule proposals b) Clear examples of use of data and analytical approaches c) Identified market trends and risks d) Evidence of greater use of investor research in OSC policy development and decision-making
Success Measures	1. Improved impact analysis content in consultation documents and notices of rules 2. Visible use of data to support regulatory changes to the exempt market 3. Positive stakeholder feedback on the approach and quality of OSC's policy and impact analysis

OSC Transparency and Accountability

The OSC will take steps to be a more transparent and accountable regulator. The OSC will provide continuous and transparent stakeholder communications so that stakeholders know what the OSC is doing, how it is doing it and why it is doing it. The OSC will also demonstrate improved accountability through more detailed financial disclosure and performance reporting against its priorities.

Priority 12 Issue	**The OSC needs to better demonstrate accountability for its operational performance**
Action Plan	1. Commit to better reporting on performance: a) Publish a renewed service and accountability document b) Develop and implement clear performance measures for OSC activities c) Publish year end performance report using new measures
Success Measures	1. Positive feedback from stakeholders on the impact and effectiveness of these initiatives 2. Improved performance measures reflected in 2014/2015 Statement of Priorities

Update CSA National Systems

Compliance costs have been identified as an issue for market participants. Market participants interface with the OSC either directly or indirectly through CSA national systems. The OSC is committed to easing this burden by improving its electronic filing, data collection and payment processes. The OSC will improve market participant access and increase the efficiency and effectiveness of its operations by substantially reducing manually-filed information in 2013/2014.

The core CSA national systems (e.g., SEDAR, SEDI and NRD) have been in place for over a decade. The contracts with the service provider that currently operates the core CSA national systems on behalf of the CSA are scheduled to expire this fiscal year, and a new service provider will take over these operations. In addition, plans are underway to replace the core CSA national systems with updated systems which will improve functionality and usability. The OSC will work closely with the CSA in order to reflect the needs of its market participants in these initiatives.

Priority 13 Issue	**The core CSA national systems need to be updated and a new service provider needs to be established**
Action Plan	1. Transition the operation of the core CSA national systems to the new service provider 2. Issue an RFP to design and build a new technology solution(s) to replace the core CSA national systems
Success Measures	1. Operation of current systems - seamless transition of the operation of the core CSA national systems to the new service provider with minimal disruption to stakeholders 2. Update systems - a vendor has been retained and the design of the replacement system is underway. At completion (post 2013-2014), improved functionality and user access at lower cost to market participants will be confirmed through positive stakeholder feedback

2013 – 2014 Financial Outlook

OSC Budget Summary

($000's)	2012-13 Budget	2012-13 Actual	2013-14 Budget	2013-14 Budget to 2012-13 Budget $$$ Change	2013-14 Budget to 2012-13 Budget % Change	2013-14 Budget to 2012-13 Actual $$$ Change	2013-14 Budget to 2012-13 Actual % Change
Revenues	93,525	87,800	101,160	7,635	**8.2**	13,360	**15.2**
Expenses	99,985	97,125	103,550	3,565	**3.6**	6,425	**6.6**
Deficiency of Revenue compared with Expenses	(6,460)	(9,325)	(2,390)	4,070		6,935	
Capital Expenditures	8,060	9,060	5,660	(2,400)		(3,400)	

Revenues and Surplus

The OSC is forecasting 2013–2014 revenues to increase by 15.2% from 2012–2013 revenues. The forecast reflects the new fees and rates set out in the OSC's fee rules (13-502 and 13-503), which became effective April 1, 2013.

The fee increases were necessary for two reasons. First, the majority of the fee increases are required to address the current operating deficit and return the OSC to cost recovery. Second, additional revenues are needed to fund new resources to meet evolving regulatory responsibilities, many of which are driven by IOSCO and the Financial Stability Board (FSB) at the international level. To maintain competitive capital markets in Canada, the OSC must align its regulatory framework to be consistent with important global reforms and standards including G20 commitments (OTC derivatives and systemic risk), increasingly complex international enforcement matters, changing oversight responsibilities related to market infrastructure entities and new complex products.

As planned, the OSC expects to continue to operate at a deficit in 2013–2014 and the OSC accumulated surplus is projected to decrease to $1.8 million as at March 31, 2014.

OSC Expenses - Budget Approach

The OSC must continue to improve its capacity to keep up with market developments, innovation and investor concerns. The OSC needs to continue to strengthen its institutional capacity in key areas, including:

- building its derivatives capacity
- expanding the new Office of the Investor
- building capacity and expertise in important areas such as complex products and infrastructure oversight
- expanding its research and data analysis capabilities to support a more data-based approach to issues and policy development

The 2013–2014 OSC Budget is focused on investment in the key strategies identified in the three-year OSC Strategic Plan. Activities of strategic focus were allocated budget increases; however, budgets for the majority of OSC programs were held at last year levels or decreased.

The budget reflects an increase of $6.4 million or 6.6% over 2012–2013 spending and 3.6% above the 2012–2013 budget. Salaries and benefits, which comprise $76.6 million or 74.0% of the budget, reflect an increase of $4.0 million or 5.4% over 2012–2013 spending. This increase mainly reflects costs for:

- the full-year costs for staff hired throughout 2012–2013 to fill existing vacancies
- the new positions approved to achieve the OSC's strategic plan including:
  a) support for the establishment of an enforcement team to focus on criminal activity
  b) to address new market structure issues and oversight responsibilities
  c) to undertake the analytical and research work so the OSC can take a more fact based approach to its operational and policy work

1.1.3 CSA Staff Notice 13-318 – Changes to www.SEDAR.com

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 13-318
Changes to www.SEDAR.com

March 28, 2013

Introduction and Purpose

Staff of the Canadian Securities Administrators (CSA, Staff or we) are publishing this Staff Notice (the Notice) to highlight changes to the SEDAR website (the Website or SEDAR.com) to be implemented on April 6, 2013. As a result of the changes, public filings and updates to the reporting issuer profiles made on the System for Electronic Document Analysis and Retrieval (SEDAR) will now be accessible on the website within 15 minutes of the original submission instead of the following day.

Background

SEDAR is the electronic system used for the transmission, receipt, review, acceptance and dissemination of most securities-related information filed with Canadian securities regulatory authorities. Filing on SEDAR is mandatory for most reporting issuers – both public companies and investment funds in Canada. SEDAR enables industry to file securities offering and continuous disclosure documents and remit filing fees electronically between 7 a,m, and 11 p,m, Eastern Time and SEDAR.com provides free access to these public filings.

The Website was originally built to support access to public documents on a daily basis, so that documents made public on SEDAR would appear on the website the following day.

Changes to Timing of Document Accessibility on SEDAR.com

As part of its ongoing efforts to enhance investor awareness and in response to feedback from market participants, the CSA has recently implemented enhancements to the architecture of the SEDAR.com website, which have made it possible to support more timely replication of public filings from SEDAR to SEDAR.com.

As of April 6, 2013, replication of publicly available filings to SEDAR.com will occur every 15 minutes during SEDAR business hours. As a result, documents made public on SEDAR will now be accessible on the Website within 15 minutes of the original submission. New reporting issuer profiles that are made public, as well as updates to existing profiles, will also appear on SEDAR.com within 15 minutes.

We remind filers that they should ensure that documents filed on SEDAR are complete and accurate and comply with applicable privacy and securities laws before they are filed.

Additional Changes to SEDAR.com

In order to support the above noted enhancements to the website, we will also implement the following changes on SEDAR.com:

- ***Announcement*** **-** Include an announcement informing SEDAR.com users of the changes to the replication process on the following pages: Homepage, New Filings, Search Database, Company Profiles, Web Links, About SEDAR, Site Help, Site Map and Search Help. We will also add additional information regarding the changes to SEDAR.com to the Homepage.

- ***New Filings Page*** **–** Include a time stamp with text advising users of when a filing was last updated on the New Filings page.

- ***Public Company and Investment Funds Filings Pages*** **-** Add a new column to indicate the time of filing as well as the date of filing to the list appearing on these pages.

- ***Frequently Asked Questions (FAQ)*** **–** Update the answers to the frequently asked questions to reflect the changes to the replication process.

- ***Terms of Use*** **–** Update the Terms of Use for SEDAR.com to reflect the changes to the replication process.

Questions

Please refer your questions to any of the following people:

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1.2 Notice of Hearing

1.2.1 Stephen Campbell – 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
STEPHEN CAMPBELL

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the temporary offices of the Commission at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, ON commencing on March 28, 2013 at 10:30 a.m., or as soon thereafter as the hearing can be held:

AND TAKE NOTICE THAT the purpose of the hearing is to consider whether it is in the public interest for the Commission to:

(a) approve the Settlement Agreement dated March 25, 2013 between Staff of the Commission and Stephen Campbell; and

(b) such other order as the Commission may consider appropriate.

BY REASON OF the allegations set out in the Statement of Allegations dated March 26, 2013 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 26th day of March, 2013.

"Daisy G. Aranha"
Per: John Stevenson
Secretary to the Commission

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

AND

IN THE MATTER OF
STEPHEN CAMPBELL

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

STAFF OF THE ONTARIO SECURITIES COMMISSION MAKE THE FOLLOWING ALLEGATIONS:

1. Between January 1, 2010 and December 31, 2011 (the "Material Time"), Stephen Campbell (the "Respondent") knowingly executed trades in the class A common shares and 8.75% convertible debentures of Discovery Air Inc. (the "Subject Securities") where:

    a. he had knowledge of and/or control over another order on the opposite side of the market with substantially the same terms and conditions (price, size and time of entry) and used that knowledge and/or control to match orders ("Match Trades"); and at other times

    b. he knew or reasonably ought to have known that his order entry would result in trades involving no change in beneficial or economic ownership ("Wash Trades").

2. Also during the Material Time, the Respondent sometimes executed trades with third parties at better prices in the marketplace in order to enable Match Trades and/or Wash Trades ("Facilitation Trades").

3. The Respondent was aware throughout the Material Time that Match Trades and Wash Trades are prohibited by Ontario securities law. During the Material Time the Respondent executed Facilitation Trades without regard to whether such trades are prohibited by Ontario securities law.

4. The Respondent was aware throughout the Material Time that the volume from all of his trading, including his Match Trades, Wash Trades and Facilitation Trades, would be and was included in and reported as part of the daily volume for the Subject Securities.

5. The Respondent's activities regarding Wash Trades, Match Trades and Facilitation Trades were contrary to subsection 126.1(a) of the Securities Act in that they created a misleading appearance of trading activity in the Subject Securities.

DATED at Toronto this 26th day of March, 2013

1.2.2 Aurelio Baglione 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
AURELIO BAGLIONE, WINCHESTER FINANCIAL CORPORATION,
RALEIGH MANAGEMENT AND LEASING CORPORATION, RUNDLE PROPERTIES CORPORATION,
DUNDAS & WELLINGTON INVESTMENT CORPORATION, PARRY SOUND MALL INVESTMENT CORPORATION,
KIRKLAND LAKE MALL INVESTMENT CORPORATION, CHAMBERLAND STREET INVESTMENT CORPORATION,
GATEWAY RETAIL CENTER LIMITED PARTNERSHIP, GATEWAY CENTER GENERAL PARTNER INC.,
18TH-PAULINA LIMITED PARTNERSHIP, 18TH-PAULINA GENERAL PARTNER INC., MHG HOLDINGS LIMITED,
CHELMSFORD/DUNNVILLE INVESTMENT CORPORATION, ESPANOLA MALL INC., 1096966 ONTARIO LTD.,
56-62 POND STREET INC., 169 DUFFERIN STREET INC., 1426430 ONTARIO INC., 274 DUNDAS STREET INC.,
833 UPPER JAMES STREET INC., 1855 LASALLE BOULEVARD INC., PARRY SOUND MALL INC.,
KIRKLAND LAKE MALL INC., 2620 CHAMBERLAND STREET INC., 1732577 ONTARIO INC.,
HURON AND SUNCOAST PLAZA INC., 80 COURTHOUSE SQUARE INC., 1729319 ONTARIO LTD.,
CHESTNUT MANOR INC., THE WINCHESTER LEASING TRUST, THE WINCHESTER LEASING GROUP INC.,
THE WINCHESTER CAPITAL TRUST, WINCHESTER CAPITAL CORPORATION,
WINCHESTER SECURITIES CORPORATION AND THE WINCHESTER REAL ESTATE INVESTMENT TRUST LTD.

NOTICE OF HEARING
(Subsections 127(1) and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O., 1990 c. S.5, as amended (the "Act"), at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on March 28, 2013 at 11:30 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 dated March 27, 2013, between Staff of the Commission and the above-noted parties;

BY REASON OF the allegations set out in the Statement of Allegations dated March 27, 2013 and such additional allegations as counsel may advise and the Commission may permit;

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

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 proceeding.

DATED at Toronto this 27th day of March, 2013.

"Daisy G. Aranha"
Per: John Stevenson
Secretary to the Commission

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

AND

IN THE MATTER OF
AURELIO BAGLIONE, WINCHESTER FINANCIAL CORPORATION,
RALEIGH MANAGEMENT AND LEASING CORPORATION, RUNDLE PROPERTIES CORPORATION,
DUNDAS & WELLINGTON INVESTMENT CORPORATION, PARRY SOUND MALL INVESTMENT CORPORATION,
KIRKLAND LAKE MALL INVESTMENT CORPORATION, CHAMBERLAND STREET INVESTMENT CORPORATION,
GATEWAY RETAIL CENTER LIMITED PARTNERSHIP, GATEWAY CENTER GENERAL PARTNER INC.,
18TH-PAULINA LIMITED PARTNERSHIP, 18TH-PAULINA GENERAL PARTNER INC., MHG HOLDINGS LIMITED,
CHELMSFORD/DUNNVILLE INVESTMENT CORPORATION, ESPANOLA MALL INC., 1096966 ONTARIO LTD.,
56-62 POND STREET INC., 169 DUFFERIN STREET INC., 1426430 ONTARIO INC., 274 DUNDAS STREET INC.,
833 UPPER JAMES STREET INC., 1855 LASALLE BOULEVARD INC., PARRY SOUND MALL INC.,
KIRKLAND LAKE MALL INC., 2620 CHAMBERLAND STREET INC., 1732577 ONTARIO INC.,
HURON AND SUNCOAST PLAZA INC., 80 COURTHOUSE SQUARE INC., 1729319 ONTARIO LTD.,
CHESTNUT MANOR INC., THE WINCHESTER LEASING TRUST, THE WINCHESTER LEASING GROUP INC.,
THE WINCHESTER CAPITAL TRUST, WINCHESTER CAPITAL CORPORATION,
WINCHESTER SECURITIES CORPORATION AND THE WINCHESTER REAL ESTATE INVESTMENT TRUST LTD.

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION
(Subsections 127(1) and 127.1)

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

1. Between January 1999 and June 22, 2011 (the "Material Time"), the above-noted parties (the "Respondents") engaged in unregistered trading and illegal distributions of securities in breach of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") and in a manner that was contrary to the public interest.

2. During the Material Time, none of the Respondents were registered in any capacity with the Ontario Securities Commission (the "Commission").

3. During the Material Time, the Respondents offered units and bonds in a series of property investments in circumstances where the accredited investor exemption, private issuer exemption or minimum amount exemption were improperly relied upon; where there was insufficient information for the Respondents to determine if the investors qualified for such exemptions; or where the requirements for other exemptions from the prospectus and registration requirements contained in Ontario securities law, including National Instrument 45-106, were not met.

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

Dated at Toronto this 27th day of March, 2013.

1.2.3 Rejean Desrosiers – 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
REJEAN DESROSIERS

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the temporary offices of the Commission at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, ON commencing on March 28, 2013 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 to consider whether it is in the public interest for the Commission to:

(a) approve the Settlement Agreement dated March 26, 2013 between Staff of the Commission and Rejean DesRosiers; and

(b) such other order as the Commission may consider appropriate.

BY REASON OF the allegations set out in the Statement of Allegations dated March 27, 2013 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 27th day of March, 2013.

"John Stevenson"
Secretary to the Commission

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

AND
IN THE MATTER OF
REJEAN DESROSIERS

STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION

(Subsections 127(1) and 127.1)

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

1. In late 2007, Rejean DesRosiers ("DesRosiers") and another person incorporated ZipZoom Canada Inc. ("ZipZoom Canada").

2. Starting in approximately February 2009, a total of 213 investors (the "Founding Members") invested in ZipZoom Canada by way of entering into an agreement which entitled the investors to receive, on a *pro rata* basis, a portion of the revenues that were to be generated by ZipZoom Canada (the "ZipZoom Canada Securities").

3. Due to a dispute with the other director of ZipZoom Canada, in October 2009 DesRosiers incorporated ZipZoom Horizons Inc. ("ZipZoom Horizons").

4. Founding Members were offered the opportunity to convert their interests in ZipZoom Canada into a beneficial interest in preferred shares of ZipZoom Horizons to be held in trust pursuant to the ZipZoom Capital Trust Agreement (the "ZipZoom Horizons Securities").

5. Between approximately October 2009 and March 2010, a total of 297 investors, including 206 Founding Members, acquired ZipZoom Horizons Securities for total proceeds of $803,400.

6. By engaging in the conduct described above, DesRosiers contravened Ontario securities law by:

    a. trading in ZipZoom Canada Securities and ZipZoom Horizons Securities without being registered under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to trade in securities, contrary to subsection 25(1)(a) of the Act as it existed prior to September 28, 2009 and subsection 25(1) in force as of September 28, 2009; and

    b. distributing ZipZoom Canada Securities and ZipZoom Horizons Securities where no preliminary prospectus and prospectus in respect of such securities had been filed and receipts issued by the Director, contrary to subsection 53(1) of the Act.

7. DesRosiers acted contrary to the public interest and his actions as described above were harmful to the integrity of the capital markets.

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

DATED at Toronto this 27th day of March, 2013.

1.2.4 Global Consulting and Financial Services – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES,
GLOBAL CAPITAL GROUP, CROWN CAPITAL MANAGEMENT CORP.,
MICHAEL CHOMICA, JAN CHOMICA and LORNE BANKS

NOTICE OF HEARING
(Sections 37, 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on April 17, 2013 at 11:30 a.m. or as soon thereafter as the hearing can be held, to consider:

(i) whether, in the opinion of the Commission, it is in the public interest, pursuant to sections 127 and 127.1 of the Act to order that:

(a) trading in any securities by Global Consulting and Financial Services (“Global Consulting”), Global Capital Group (“Global Capital”), Crown Capital Management (“Crown Capital”), Michael Chomica, Jan Chomica and Lorne Banks (“Banks”) (collectively, the “Respondents”) cease permanently or for such period as is specified by the Commission;

(b) the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission;

(c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(d) each of the Respondents disgorge to the Commission any amounts obtained as a result of their or its non-compliance with Ontario securities law;

(e) Michael Chomica, Jan Chomica and Banks (the “Individual Respondents”) be reprimanded;

(f) each of the Individual Respondents resign one or more positions that they hold as a director or officer of any issuer, registrant, or investment fund manager;

(g) each of the Individual Respondents be prohibited from becoming or acting as a director or officer of any issuer, registrant, and investment fund manager;

(h) each of the Individual Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager and as a promoter;

(i) each of the Respondents pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law; and

(j) each of the Respondents be ordered to pay the costs of the Commission investigation and the hearing.

(ii) whether, in the opinion of the Commission, an order should be made pursuant to section 37 of the Act that the Individual Respondents cease permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities; and

(iii) whether to make such further orders as the Commission considers appropriate.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated March 27, 2013 and such further additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 27th day of March, 2013

"John Stevenson"
Secretary to the Commission

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES,
GLOBAL CAPITAL GROUP, CROWN CAPITAL MANAGEMENT CORP.,
MICHAEL CHOMICA, JAN CHOMICA and LORNE BANKS

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

Overview

1. This proceeding involves three fraudulent advance-fee schemes perpetrated from locations in Ontario that targeted members of the public in Ontario and various jurisdictions outside Canada including the United Kingdom, Europe, Asia and Africa.

2. In an advance-fee fraud, investors are persuaded, on the basis of deceit, to make up-front payments in order to take advantage of an offer promising significantly more in return.

3. Approximately $550,000 was raised from approximately 68 members of the public pursuant to these fraudulent advance-fee schemes from October 2009 to November 2010 (the "Material Time").

The Corporate Respondents

4. Global Consulting and Financial Services ("Global Consulting") is a sole proprietorship registered in Ontario to Jan Chomica.

5. Global Capital Group ("Global Capital") is a sole proprietorship registered in Ontario to "Jalil Khan".

6. Crown Capital Management Corp. ("Crown Capital") is an Ontario corporation. Michael Chomica was a director and officer of Crown Capital from June 11, 1992 until April 30, 2010 when "Peter Kuti" became the sole officer and director of Crown Capital.

7. None of Global Consulting, Global Capital or Crown Capital has ever been registered in any capacity with the Commission.

The Individual Respondents

8. Jan Chomica is a resident of Ontario.

9. Jan Chomica opened banks accounts in the name of Global Consulting at bank branches located in Ontario (the "Global Consulting Bank Accounts") and was the sole signatory on those accounts during the Material Time.

10. Michael Chomica is a resident of Ontario.

11. Lorne Banks ("Banks") is a resident of Ontario. Banks was last registered with the Commission as a salesperson from November 22, 1988 to February 28, 1991. Banks was not registered with the Commission in any capacity during the Material Time.

12. Neither Michael Chomica nor Jan Chomica has ever been registered in any capacity with the Commission.

The Global Consulting Scheme

13. From approximately January 2008 to October 2010, persons falsely purporting to be representatives of various organizations solicited shareholders primarily residing in the United Kingdom (the "Global Consulting Investors") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "Global Consulting Scheme").

14. The Global Consulting Scheme involved an artificial offer to purchase shares owned by the Global Consulting Investors at inflated pricts. The offer to purchase the Global Consulting Investors' shares and the subsequent communications were part of an artifice designed solely to extract money from the Global Consulting Investors.

15. As part of the Global Consulting Scheme, the Global Consulting Investors were contacted by persons purporting to act for various governmental agencies, including the U.S. Securities and Exchange Commission and the Commission, as well as certain fictitious organizations purportedly involved in the transactions, and directed to make certain payments in order to complete the transactions. The payments were purportedly necessary to cover taxes and various other costs.

16. The persons carrying out the solicitations did not work for the governmental agencies they purported to represent, they used aliases when communicating with the Global Consulting Investors and they presented the Global Consulting Investors with false and forged documents.

17. In and around October 2009, Michael Chomica made the Global Consulting Bank Accounts available to the perpetrators of the Global Consulting Scheme.

18. From approximately October 2009 to October 2010 (the "Global Consulting Material Time"), pursuant to the solicitations outlined above, the Global Consulting Investors were instructed to send their advance fees to the Global Consulting Bank Accounts.

19. At least 4 Global Consulting Investors paid advance-fees totalling USD $109,685 and CAD $23,478 to the Global Consulting Bank Accounts as a result of the solicitations outlined above.

20. The majority of the funds deposited into the Global Consulting Bank Accounts by the Global Consulting Investors were withdrawn as cash. During the Global Consulting Material Time, Jan Chomica carried out transactions in the Global Consulting Bank Accounts at Michael Chomica's direction.

21. The purported purchases of the Global Consulting Investors' shares never occurred and the Global Consulting Investors suffered a complete loss of the amounts they paid as advance fees.

The Global Capital Scheme

22. From approximately March 2010 to September 2010 (the "Global Capital Material Time"), Michael Chomica and Banks, using aliases and purporting to act on behalf of Global Capital Group ("Global Capital"), solicited shareholders residing in Europe, the United Kingdom, Asia and Africa (the "Global Capital Investors") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "Global Capital Scheme").

23. The Global Capital Scheme was operated from Michael Chomica's residential apartment located on Bloor Street East in Toronto (the "Bloor Street Address"). Michael Chomica and Banks made the solicitations to the Global Capital Investors in connection with the Global Capital Scheme from the Bloor Street Address.

24. The Global Capital Scheme involved an artificial offer to exchange shares in Dixon, Perot & Champion Inc. (the "DP&C Shares") owned by the Global Capital Investors for shares in Microsoft Inc. (the "Microsoft Shares"). The DP&C Shares were virtually worthless and illiquid at the time of the solicitations, however, the Global Capital Investors were told that Global Capital valued them at prices ranging from USD $6 to $14. Whereas the Microsoft Shares were valued at prices ranging from USD $24 to $27.

25. The offer to exchange the Global Capital Investors' shares and the subsequent communications were part of an artifice designed solely to extract money from the Global Capital Investors.

26. As part of the Global Capital Scheme, the Global Capital Investors were informed by Michael Chomica and Banks that they had to make certain payments in order to complete the transactions. The payments were purportedly necessary in order to cover the difference in value between the DP&C Shares and the Microsoft Shares. However, once this initial payment was made, the Global Capital Investors were solicited by Michael Chomica and Banks for additional payments to cover taxes and various other costs.

27. The Global Capital Investors were instructed by Michael Chomica and Banks to send the funds representing the advance fees to the account of Commonwealth Capital Corp. ("Commonwealth"), an Isle of Man corporation, at the Bank of Nevis in St. Kitts and Nevis (the "Commonwealth Bank Account").

28. At least five Global Capital Investors paid advance-fees totalling US$160,470 to the Commonwealth Bank Account as a result of the solicitations noted above.

29. The majority of the funds transferred to the Commonwealth Bank Account by the Global Capital Investors were transferred to the Global Consulting Bank Accounts referred to above.

30. The majority of the funds deposited into the Global Consulting Bank Accounts were withdrawn as cash. During the Global Capital Material Time, Jan Chomica carried out transactions in the Global Consulting Bank Accounts at Michael Chomica's direction.

31. The purported exchange of the Global Capital Investors' shares never occurred, the Global Capital Investors never received any Microsoft Shares and the Global Capital Investors suffered a complete loss of the amounts paid towards the advance fees.

The Crown Capital Scheme

32. From approximately March 2010 to November 2010 (the "Crown Material Time"), Michael Chomica and other persons (the "Chomica Associates"), using aliases and purporting to act on behalf of Crown Capital and Kuti Consulting, solicited shareholders residing primarily in Ontario (the "Crown Investors") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "Crown Scheme").

33. The Crown Scheme was operated from the Bloor Street Address. Michael Chomica and the Chomica Associates made the solicitations to the Crown Investors in connection with the Crown Scheme from the Bloor Street Address.

34. The Crown Scheme involved an artificial offer to purchase shares owned by the Crown Investors at inflated prices. The offer to purchase the Crown Investors' shares and the subsequent communications were part of an artifice designed solely to extract money from the Crown Investors.

35. As part of the Crown Scheme, the Crown Investors were informed by Michael Chomica and the Chomica Associates that they had to make certain payments in order to complete the transactions. The initial payments were purportedly to cover commissions. However, once the Crown Victim made these payments, Michael Chomica and the Chomica Associates advised the Crown Investors that the intended purchaser of their shares had encountered financial difficulties and instead wished to exchange Microsoft Shares for the shares held by the Crown Investors.

36. The Crown Investors were then directed to make additional payments that were purportedly necessary to cover the difference in value between the Crown Investors' shares and the Microsoft Shares.

37. The shares held by the Crown Investors were virtually worthless and illiquid at the time of the solicitations; however, Michael Chomica and the Chomica Associates told the Crown Investors that Crown Capital had valued them at prices ranging from USD $5 to $7.50. Whereas the Microsoft Shares were valued at or around USD $23.

38. The Crown Investors were instructed by Michael Chomica and the Chomica Associates to send the funds representing the advance fees to bank accounts in Toronto in the name of Crown Capital and Kuti Consulting (the "Crown Bank Accounts").

39. The Crown Bank Accounts were opened by an individual using an Ontario driver's license bearing the name "Peter Kuti" (the "Kuti License"). The Kuti License was obtained using false identification. "Peter Kuti" was the sole signatory on the Crown Bank Accounts.

40. Fifty-nine Crown Investors paid advance fees totalling USD $145,347 and CAD $109,427 (net of deposits that were rejected and returned to the complainants) as a result of the solicitations outlined above.

41. The majority of the funds deposited into the Crown Bank Accounts by the Crown Investors were withdrawn as cash and/or used to purchase gold.

42. The purported purchase and/or exchange of the Crown Investors' shares never occurred, the Crown Investors never received any Microsoft Shares and the Crown Investors suffered a complete loss of the amounts paid towards the advance fees.

Michael Chomica's Convictions for Fraud Contrary to Section 126.1 of the Act

43. On February 14, 2013, Michael Chomica pleaded guilty in the Ontario Court of Justice to 3 counts of fraud contrary to section 126.1(b) of the Act in connection with the Global Consulting Scheme, the Global Capital Scheme and the Crown Capital Scheme. Michael Chomica's guilty plea was accepted by the Court and he was convicted and sentenced to 3 years in the penitentiary.

44. As part of his plea of guilt, Michael Chomica admitted the truth of a Statement of Facts for Guilty Plea (the “Statement of Facts”) that was filed as an exhibit in that proceeding.

45. Staff pleads and relies upon all the facts admitted in the Statement of Facts.

46. Michael Chomica’s conviction for fraud arose from transactions, business and/or a course of conduct relating to securities.

47. Pursuant to subsection 127(10)1 of the Act, Michael Chomica’s convictions for fraud contrary to section 126.1(b) of the Act may form the basis for an order in the public interest under subsection127(1) of the Act.

Breaches of the *Securities Act* and Conduct Contrary to the Public Interest

48. The specific allegations advanced by Staff are as follows:

a) Global Consulting, Global Capital, Crown Capital, Michael Chomica, Jan Chomica and Banks (the “Respondents”) engaged in and held themselves out as engaging in the business of trading in securities without registration in circumstances where no exemption was available, contrary to section 25 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act");

b) the Respondents directly or indirectly engaged in or participated in an act, practice or course of conduct relating to securities which they or it knew, or reasonably ought to have known, perpetrated a fraud on investors, contrary to section 126.1(b) of the Act;

c) Jan Chomica authorized, permitted or acquiesced in Global Consulting’s non-compliance with Ontario securities law contrary to section 129.2 of the Act; and

d) the Respondents’ conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

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

DATED at Toronto this 27th day of March, 2013.

1.2.5 Heritage Management Group and Anna Hrynisak – ss. 37, 127, 127.1

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

AND

IN THE MATTER OF
HERITAGE MANAGEMENT GROUP AND ANNA HRYNISAK

NOTICE OF HEARING
(Sections 37, 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on April 17, 2013 at 11:00 a.m. or as soon thereafter as the hearing can be held, to consider:

(i) whether, in the opinion of the Commission, it is in the public interest, pursuant to sections 127 and 127.1 of the Act to order that:

(a) trading in any securities by Heritage Management Group and Anna Hrynisak ("Hrynisak") (collectively, the "Respondents") cease permanently or for such period as is specified by the Commission;

(b) the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission;

(c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(d) each of the Respondents disgorge to the Commission any amounts obtained as a result of their or its non-compliance with Ontario securities law;

(e) Hrynisak be reprimanded;

(f) Hrynisak resign one or more positions that she holds as a director or officer of any issuer, registrant, or investment fund manager;

(g) Hrynisak be prohibited from becoming or acting as a director or officer of any issuer, registrant, and investment fund manager;

(h) Hrynisak be prohibited from becoming or acting as a registrant, as an investment fund manager and as a promoter;

(i) each of the Respondents pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law; and

(j) each of the Respondents be ordered to pay the costs of the Commission investigation and the hearing.

(ii) whether, in the opinion of the Commission, an order should be made pursuant to section 37 of the Act that Hrynisak cease permanently from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities; and

(iii) whether to make such further orders as the Commission considers appropriate.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated March 27, 2013 and such further additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 27th day of March, 2013

"John Stevenson"
Secretary to the Commission

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

AND

IN THE MATTER OF
HERITAGE MANAGEMENT GROUP AND ANNA HRYNISAK

STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

Overview

1. This proceeding involves a fraudulent advance-fee scheme (the "Heritage Scheme") that targeted shareholders residing in the United Kingdom, Europe and Africa (the "Shareholders").

2. Pursuant to the Heritage Scheme, the Shareholders were solicited to send advance-fees to accounts held at bank branches in Ontario in the name of Heritage Management Group ("Heritage" and the "Heritage Accounts") purportedly to facilitate the sale of shares held by the Shareholders.

3. Twelve shareholders sent approximately $650,000 to the Heritage Accounts as part of the Heritage Scheme between August 2009 and February 2010 (the "Material Time").

4. The Shareholders received no consideration for their payments and suffered a complete loss of all amounts paid to the Heritage Accounts.

5. During the Material Time, Anna Hrynisak ("Hrynisak") was the directing mind of Heritage and controlled the Heritage Accounts.

The Respondents

6. Heritage is a sole proprietorship registered in Ontario to Hrynisak.

7. Hrynisak is a resident of Ontario. Hrynisak opened the Heritage Accounts and was the sole signatory on those accounts during the Material Time.

8. Neither Heritage nor Hrynisak has ever been registered in any capacity with the Commission.

The Heritage Scheme

9. During the Material Time, persons, using aliases and purporting to act on behalf of "Corporate Solutions Mergers and Acquisitions" and "Malay Finance", solicited the Shareholders for the purpose of inducing them to make various payments as part of the Heritage Scheme.

10. The Heritage Scheme involved an artificial offer to purchase shares owned by the Shareholders at inflated prices. As part of the Heritage Scheme, the Shareholders were instructed that certain payments were necessary to complete the sale of their shares and ensure that they received the promised payouts.

11. The Shareholders were instructed to send the funds representing these payments to the Heritage Accounts.

12. Twelve Shareholders paid advance-fees totalling USD $412,836 and CAD $226,851 (net of deposits that were rejected and returned to the complainants) to the Heritage Accounts as a result of the solicitations outlined above.

13. The solicitations were part of an artifice designed to defraud the Shareholders. The purported purchases of the Shareholders' shares never occurred and the Shareholders suffered a complete loss of the amounts paid as a result of the Heritage Scheme.

Breaches of the *Securities Act* and Conduct Contrary to the Public Interest

14. The specific allegations advanced by Staff are as follows:

a) Heritage and Hrynisak (the “Respondents”) engaged in and held themselves out as engaging in the business of trading in securities without registration in circumstances where no exemption was available, contrary to section 25 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

b) the Respondents directly or indirectly engaged in or participated in an act, practice or course of conduct relating to securities which they or it knew, or reasonably ought to have known, perpetrated a fraud on investors, contrary to section 126.1(b) of the Act;

c) Hrynisak authorized, permitted or acquiesced in Heritage’s non-compliance with Ontario securities law contrary to section 129.2 of the Act; and

d) the Respondents’ conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

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

DATED at Toronto this 27th day of March, 2013.

1.3 News Releases

1.3.1 Canadian Securities Regulators Implement Disclosure Requirements for Investment Costs and Performance

For Immediate Release
March 28, 2013

Canadian Securities Regulators Implement Disclosure Requirements For Investment Costs And Performance

Toronto – The Canadian Securities Administrators (CSA) are implementing new requirements to ensure all investors receive essential information about the costs and performance of their investments. The new requirements apply to all firms registered to deal in securities or act as portfolio managers. The new requirements are set out in amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

The CSA are taking these important steps as research by the CSA, among others, shows that many investors currently do not receive this vital information. Providing investors with clear and meaningful information about the costs and performance of their investments will enable them to assess their progress toward their investing goals and the value of professional advice they receive.

“If Canadians have the right tools to better understand the costs and performance of their investments, they will be able to make more informed investment decisions,” said Bill Rice, Chair of the CSA and Chair and Chief Executive Officer of the Alberta Securities Commission. “Under the new requirements, all dealers and portfolio managers will provide the same essential information to investors, which presents an opportunity to enhance their relationship with their clients.”

Investors can expect new cost disclosure that includes:

- at account opening, what product and service costs they can expect to pay;
- at the time of a transaction, the transaction cost and any deferred cost; and,
- annually, a summary in dollar terms of what they were charged and any other fees paid to the firm, such as trailing commissions and commissions on bond trades.

Investors can expect a new annual investment performance report that includes:

- how much they have contributed and what it is worth as of the report date;
- deposits and withdrawals for the past year and since their account was opened; and,
- percentage returns for their account over one, three, five and 10 years and since it was opened.

The new requirements under NI 31-103 also include enhancements to account statements.

The amendments will take effect on July 15, 2013, to allow time for ministerial approvals that are required in some jurisdictions. They will then be phased-in over three years, so that firms can develop, test and implement the necessary systems, as well as compile the information they will need in order to generate the new reports to clients.

The Notice of Amendments is available on CSA members’ websites.

The CSA, the council of the securities regulators of Canada’s provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

For more information:

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Alberta Securities Commission
403-297-4481

Carolyn Shaw-Rimmington
Ontario Securities Commission
416-593-2361

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Ainsley Cunningham
The Manitoba Securities Commission
204-945-4733

Tanya Wiltshire
Nova Scotia Securities Commission
902-424-8586

Janice Callbeck
The Office of the Superintendent of
Securities, P.E.I.
902-368-6288

Rhonda Horte
Office of the Yukon Superintendent
of Securities
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Donn MacDougall
Northwest Territories Securities Office
867-920-8984

Richard Gilhooley
British Columbia Securities Commission
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Wendy Connors-Beckett
New Brunswick Securities Commission
506-643-7745

Daniela Machuca
Financial and Consumer Affairs
Authority of Saskatchewan
306-798-4160

Doug Connolly
Financial Services Regulation Division of
Newfoundland and Labrador
709-729-4189

Louis Arki
Nunavut Securities Office
867-975-6587

1.3.2 OSC Chair Howard Wetston Appointed Vice Chair of IOSCO

FOR IMMEDIATE RELEASE
April 2, 2013

OSC CHAIR HOWARD WETSTON
APPOINTED VICE CHAIR OF IOSCO

TORONTO – The Ontario Securities Commission (OSC) has announced that Chair Howard Wetston, Q.C. has been appointed a Vice Chair of the Board of the International Organization of Securities Commissions (IOSCO), effective immediately. He will carry out his role as IOSCO Vice Chair in addition to his responsibilities as OSC Chair.

As a Vice Chair of the IOSCO Board and a member of the IOSCO Management Team, Mr. Wetston will be working closely with IOSCO Chair Greg Medcraft and Secretary General David Wright to influence and advance IOSCO's standard-setting agenda, including key areas such as investor protection and education, systemic risk, financial benchmarks, cross-border regulation and deterrence.

Since he was appointed Chair of the OSC in 2010, Mr. Wetston has made a strong commitment to international regulatory cooperation, in particular with IOSCO, where he has served on its Board. The OSC regulates within the context of a global marketplace, and Mr. Wetston has emphasized the strategic importance of the OSC's participation in the global regulatory agenda.

IOSCO is the leading international policy forum for securities regulators and is recognized as the global standard setter for securities regulation. The organization's membership regulates more than 95% of the world's securities markets in more than 115 jurisdictions.

The OSC is the regulatory body responsible for overseeing Ontario's capital markets. Its mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

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Follow us on Twitter: OSC_News

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1-877-785-1555 (Toll Free)

1.4 Notices from the Office of the Secretary

1.4.1 York Rio Resources Inc. et al.

FOR IMMEDIATE RELEASE
March 26, 2013

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

AND

IN THE MATTER OF
YORK RIO RESOURCES INC.,
BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUNIC, GEORGE SCHWARTZ,
PETER ROBINSON, ADAM SHERMAN,
RYAN DEMCHUK,MATTHEW OLIVER,
GORDON VALDE AND SCOTT BASSINGDALE

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

The Commission also issued an Order which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, on May 14, 2013, 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 and the Order dated March 25, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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1.4.2 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

FOR IMMEDIATE RELEASE
March 27, 2013

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

AND

IN THE MATTER OF
VINCENT CICCONE and CABO CATOCHE CORP.
(a.k.a. MEDRA CORP. and MEDRA CORPORATION)

TORONTO – Take notice that the hearing in the above named matter scheduled to be heard on April 2, 2013 at 10:00 a.m., will be heard on April 2, 2013 at 11:00 a.m.

The hearing will take place at the offices of the Ontario Securities Commission, 20 Queen Street West, 17th Floor, Hearing Room B.

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1.4.3 Stephen Campbell

FOR IMMEDIATE RELEASE
March 27, 2013

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

AND

IN THE MATTER OF
STEPHEN CAMPBELL

TORONTO – The Office of the Secretary issued an Notice of Hearing in the above noted matter for a hearing to consider whether it is in the public interest to approve the settlement agreement entered into between Staff of the Commission and Stephen Campbell. The hearing will be held on March 28, 2013 at 10:30 a.m. at the temporary offices of the Commission at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, Ontario.

A copy of the Notice of Hearing dated March 26, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 26, 2013 are available at www.osc.gov.on.ca.

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1.4.4 Aurelio Baglione et al.

FOR IMMEDIATE RELEASE
March 27, 2013

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

AND

IN THE MATTER OF
AURELIO BAGLIONE, WINCHESTER FINANCIAL CORPORATION,
RALEIGH MANAGEMENT AND LEASING CORPORATION, RUNDLE PROPERTIES CORPORATION,
DUNDAS & WELLINGTON INVESTMENT CORPORATION, PARRY SOUND MALL INVESTMENT CORPORATION,
KIRKLAND LAKE MALL INVESTMENT CORPORATION, CHAMBERLAND STREET INVESTMENT CORPORATION,
GATEWAY RETAIL CENTER LIMITED PARTNERSHIP, GATEWAY CENTER GENERAL PARTNER INC.,
18TH-PAULINA LIMITED PARTNERSHIP, 18TH-PAULINA GENERAL PARTNER INC., MHG HOLDINGS LIMITED,
CHELMSFORD/DUNNVILLE INVESTMENT CORPORATION, ESPANOLA MALL INC., 1096966 ONTARIO LTD.,
56-62 POND STREET INC., 169 DUFFERIN STREET INC., 1426430 ONTARIO INC., 274 DUNDAS STREET INC.,
833 UPPER JAMES STREET INC., 1855 LASALLE BOULEVARD INC., PARRY SOUND MALL INC.,
KIRKLAND LAKE MALL INC., 2620 CHAMBERLAND STREET INC., 1732577 ONTARIO INC.,
HURON AND SUNCOAST PLAZA INC., 80 COURTHOUSE SQUARE INC., 1729319 ONTARIO LTD.,
CHESTNUT MANOR INC., THE WINCHESTER LEASING TRUST, THE WINCHESTER LEASING GROUP INC.,
THE WINCHESTER CAPITAL TRUST, WINCHESTER CAPITAL CORPORATION,
WINCHESTER SECURITIES CORPORATION AND THE WINCHESTER REAL ESTATE INVESTMENT TRUST LTD.

TORONTO – The Office of the Secretary issued a Notice of Hearing in the above noted matter for a hearing to consider whether it is in the public interest to approve the settlement agreement entered into between Staff of the Commission and the above-noted parties. The hearing will be held on March 28, 2013 at 11:30 a.m. at the temporary offices of the Commission at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, Ontario.

A copy of the Notice of Hearing dated March 27, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.5 Rejean Desrosiers

FOR IMMEDIATE RELEASE
March 27, 2013

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

AND

IN THE MATTER OF
REJEAN DESROSIERS

TORONTO – The Office of the Secretary issued a Notice of Hearing in the above noted matter for a hearing to consider whether it is in the public interest to approve the settlement agreement entered into between Staff of the Commission and Rejean Desrosiers. The hearing will be held on March 28, 2013 at 10:00 a.m. at the temporary offices of the Commission at ASAP Reporting Services Inc., Bay Adelaide Centre, 333 Bay Street, Suite 900, Toronto, Ontario.

A copy of the Notice of Hearing dated March 27, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.6 Frederick Johnathon Nielsen previously known as Frederick John Gilliland

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
FREDERICK JOHNATHON NIELSEN,
previously known as FREDERICK JOHN GILLILAND

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

A copy of the Reasons and Decision on Sanctions and the Order dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.7 Change of Location of Ontario Securities Commission Proceedings

FOR IMMEDIATE RELEASE
March 27, 2013

Change of Location of
Ontario Securities Commission Proceedings

Notice is hereby given to all parties appearing in Ontario Securities Commission ("OSC") proceedings that, all hearings scheduled to be heard as of **April 2, 2013** will be held at the offices of the Ontario Securities Commission at 20 Queen Street West, Toronto:

20 Queen Street West
17th Floor
Toronto, ON
M5H 3S8

All hearings will continue to be heard on the dates and at the times currently scheduled.

All filings required to be made pursuant to the Commission's *Rules of Procedure* should continue to be delivered, if in print form, to the attention of the Registrar at the OSC's office at:

20 Queen Street West, 19th Floor, Mail Room
Toronto, Ontario
M5H 3S8

or if filed electronically, to the Registrar at:

registrar@osc.gov.on.ca

John P. Stevenson
Secretary to the Commission

1.4.8 MI Capital Corporation and One Capital Corp. Limited

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
MI CAPITAL CORPORATION
and ONE CAPITAL CORP. LIMITED

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

A copy of the Reasons and Decision on Sanctions and the Order dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.9 Steven Vincent Weeres and Rebekah Donszelmann

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
STEVEN VINCENT WEERES AND
REBEKAH DONSZELMANN

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

A copy of the Reasons and Decision on Sanctions and the Order dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.10 Global Consulting and Financial Services et al.

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
GLOBAL CONSULTING AND FINANCIAL SERVICES,
GLOBAL CAPITAL GROUP,
CROWN CAPITAL MANAGEMENT CORP.,
MICHAEL CHOMICA, JAN CHOMICA and LORNE BANKS

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on April 17, 2013 at 11:30 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, Ontario, or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated March 27, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.11 Heritage Management Group and Anna Hrynisak

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
HERITAGE MANAGEMENT GROUP
AND ANNA HRYNISAK

TORONTO – The Office of the Secretary issued a Notice of Hearing setting the matter down to be heard on April 17, 2013 at 11:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, Ontario, or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated March 27, 2013 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 27, 2013 are available at www.osc.gov.on.ca.

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1.4.12 Bernard Boily

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
BERNARD BOILY

TORONTO – Following a hearing held on March 27, 2013, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Bernard Boily.

The Commission also issued an Order which provides that the dates of April 8, 10, 11, 12, 17 and 19, May 13, 14, 15, 16, 17 and 22, and June 24, 25, 26, 27 and 28, 2013 scheduled for the hearing on the merits of this matter shall be vacated.

A copy of the Order dated March 27, 2013 approving the Settlement Agreement, the Settlement Agreement dated March 22, 2013 and the Order dated March 27, 2013 vacating the dates for the hearing on the merits are available at www.osc.gov.on.ca.

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1.4.13 Stephen Campbell

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
STEPHEN CAMPBELL

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 Stephen Campbell.

A copy of the Order dated March 28, 2013 and Settlement Agreement dated March 25, 2013 are available at www.osc.gov.on.ca.

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1.4.14 Rejean Desrosiers

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
REJEAN DESROSIERS

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 Rejean DesRosiers.

A copy of the Order dated March 28, 2013 and Settlement Agreement dated March 26, 2013 are available at www.osc.gov.on.ca.

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1.4.15 Aurelio Baglione et al.

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
AURELIO BAGLIONE, WINCHESTER FINANCIAL CORPORATION,
RALEIGH MANAGEMENT AND LEASING CORPORATION, RUNDLE PROPERTIES CORPORATION,
DUNDAS & WELLINGTON INVESTMENT CORPORATION, PARRY SOUND MALL INVESTMENT CORPORATION,
KIRKLAND LAKE MALL INVESTMENT CORPORATION, CHAMBERLAND STREET INVESTMENT CORPORATION,
GATEWAY RETAIL CENTER LIMITED PARTNERSHIP, GATEWAY CENTER GENERAL PARTNER INC.,
18TH-PAULINA LIMITED PARTNERSHIP, 18TH-PAULINA GENERAL PARTNER INC., MHG HOLDINGS LIMITED,
CHELMSFORD/DUNNVILLE INVESTMENT CORPORATION, ESPANOLA MALL INC., 1096966 ONTARIO LTD.,
56-62 POND STREET INC., 169 DUFFERIN STREET INC., 1426430 ONTARIO INC., 274 DUNDAS STREET INC.,
833 UPPER JAMES STREET INC., 1855 LASALLE BOULEVARD INC., PARRY SOUND MALL INC.,
KIRKLAND LAKE MALL INC., 2620 CHAMBERLAND STREET INC., 1732577 ONTARIO INC.,
HURON AND SUNCOAST PLAZA INC., 80 COURTHOUSE SQUARE INC., 1729319 ONTARIO LTD.,
CHESTNUT MANOR INC., THE WINCHESTER LEASING TRUST, THE WINCHESTER LEASING GROUP INC.,
THE WINCHESTER CAPITAL TRUST, WINCHESTER CAPITAL CORPORATION,
WINCHESTER SECURITIES CORPORATION AND THE WINCHESTER REAL ESTATE INVESTMENT TRUST LTD.

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 the above-noted parties.

A copy of the Order dated March 28, 2013 and Settlement Agreement dated March 26, 2013 are available at www.osc.gov.on.ca.

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1.4.16 Quadrexx Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
QUADREXX ASSET MANAGEMENT INC.,
QUADREXX SECURED ASSETS INC.,
OFFSHORE OIL VESSEL SUPPLY SERVICES LP,
QUIBIK INCOME FUND
AND QUIBIK OPPORTUNITIES FUND

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

(1) pursuant to subsection 127(7) of the Act that the portion of the Temporary Order issued under paragraph 1 of subsection 127(1) attaching terms and conditions to the registration of Quadrexx as a PM and as an IFM is extended to May 16, 2013;

(2) pursuant to subsection 127(8) of the Act that the portion of the Temporary Order issued under paragraph 2 of subsection 127(1) that ordered all trading to cease in the securities of Quadrexx and Quadrexx Related Securities is extended to May 16, 2013;

(3) that the hearing to: (i) receive an update on the wind-ups of Quadrexx, OOVSS and QSA and the possible transfer of the Managed Accounts, QIF and QOF to Matco Financial Inc.; (ii) consider whether to suspend Quadrexx's registrations as a PM and/or as an IFM; and (iii) consider whether to vary any of the terms of the Temporary Order, will proceed on May 15, 2013 at 10:00 a.m.

A copy of the Order dated March 28, 2013 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.17 HEIR Home Equity Investment Rewards Inc. et al.

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO;
PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUITS INVESTMENTS INC.; WEALTH BUILDING MORTGAGES INC.;
AND ARCHIBALD ROBERTSON

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 HEIR Home Equity Investment Rewards Inc., FFI First Fruits Investments Inc., Wealth Building Mortgages Inc., and Archibald Robertson.

A copy of the Order dated March 28, 2013 and Settlement Agreement dated March 22, 2013 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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1.4.18 HEIR Home Equity Investment Rewards Inc. et al.

FOR IMMEDIATE RELEASE
March 28, 2013

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

AND

IN THE MATTER OF
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.; WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO;
PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.;
THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

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 Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC, Brent Borland, Wayne D. Robbins, Marco Caruso, the Placencia Estates Development LLC, Copal Resort Development Group, LLC, Rendezvous Island, Ltd., The Placencia Marina, Ltd., and The Placencia Hotel and Residences Ltd.

A copy of the Order dated March 28, 2013 and Settlement Agreement dated March 22, 2013 are available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Sunstone U.S. Opportunity (No. 2) Realty Trust and Sunstone U.S. (No. 2) L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – General – An issuer that is a wholly-owned subsidiary wants relief from filing specific continuous disclosure documents – The issuer is a limited partnership; the issuer's sole business is to hold interests in properties owned by a real estate investment trust; the issuer's only outstanding securities are voting units, all owned by the trust, and certain non-voting units issued to individual investors in the US for legal reasons; the trust's continuous disclosure contains all material information about the issuer and will be filed and delivered in place of the issuer's disclosure; the issuer will file material change reports for any change that is material to it but not the trust.

National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6 – An issuer wants relief from the requirements in Parts 4 and 5 of NI 52-109 to file annual and interim certificates – The issuer has applied for and received an exemption from filing interim and annual financial statements.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Findings, s. 8.6.

February 26, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
SUNSTONE U.S. OPPORTUNITY (NO. 2) REALTY TRUST
(the Trust)

AND

SUNSTONE U.S. (NO. 2) L.P.
(the LP, and together with the Trust, the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

(a) the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Continuous Disclosure Requirements) do not apply to the LP; and

(b) the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109) (the Certification Requirements) do not apply to the LP.

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

(a) the British Columbia Securities Commission is the principal regulator for this application;

(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 Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut, and the Northwest Territories; and

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

Interpretation

2 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

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

The Trust

1. the Trust is an unincorporated, open-ended investment trust formed under a Declaration of Trust (the Trust Declaration) dated August 9, 2009, and governed by the laws of British Columbia;

2. the Trust's head office is located at Suite 910 – 925 West Georgia Street, Vancouver, British Columbia;

3. the financial year end of the Trust is December 31;

4. the principal business of the Trust is to invest the proceeds from the issuance of units (Trust Units) of the Trust in the acquisition of Class A units (the LP Units) of the LP; the principal business of the LP is to issue LP Units and to invest in the units of Sunstone U.S. Opportunity (No.2) Limited Partnership (the Property LP);

5. the principal business of the Property LP is to issue limited partnership units of the Property LP and to invest the proceeds from the issuance of Property LP units in acquiring, owning, and operating a diversified portfolio of multi-family apartment properties in the United States;

6. the Trust Units are redeemable at any time on the demand of the holders of the Trust Units; the Trust Units may be redeemed for cash in a prescribed manner in accordance with certain provisions contained in the Trust Declaration; if any such conditions preclude the payment of the redemption amount in cash, the redemption price may be satisfied by a distribution in specie of, among other things, LP Units to the holders of Trust Units;

7. the Trust is a reporting issuer or the equivalent thereof in each of the Jurisdictions and an electronic filer within the meaning of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR) (NI 13-101);

8. the Trust complies with the Continuous Disclosure Requirements and the Certification Requirements and is not in default of securities legislation in any jurisdiction in which it is a reporting issuer;

9. the audited annual financial statements and interim financial statements filed by the Trust are prepared on a consolidated basis under International Financial Reporting Standards as issued by the International Accounting Standards Board;

10. the consolidated financial statements of the Trust comprise the financial statements of the Trust and its subsidiaries, over which the Trust has control; control exists when the Trust has the power to govern the financial and operating policies of an entity so as to obtain benefit from its activities; the consolidated financial statements of the Trust reflect the financial position, results of operations, and cash flows of the Trust and its interest in its subsidiaries (99.99% interest in the LP and the LP's 99.99% interest in the Property LP);

The LP

11. the LP is a limited partnership formed under and governed by the laws of Delaware and created by a Limited Partnership Agreement dated August 18, 2009;

12. the LP's head office is located at 6529 Preston Road, Unit 100 Plano, Texas;

13. the financial year end of the LP is December 31;

14. the authorized capital of the LP consists of an unlimited number of LP Units and 1,000 Class B units; the LP Units entitle the holder to vote at meetings of the LP, cash flow distributions, and the distribution of the assets of the LP upon liquidation, dissolution or wind-up of the LP; the Class B units entitle the holder to fixed distributions in priority to the holders of the LP Units and the distribution of the assets of the LP upon liquidation, dissolution or wind-up of the LP in priority to the holders of the LP Units, and are treated as a liability for accounting purposes in the financial statements of both the LP and the Trust;

15. Class B units do not entitle the holder to vote at any meetings of the LP or to receive any continuous disclosure; the Class B units were issued in private transactions to individual investors in the United States to satisfy the requirements for the LP to qualify as a real estate investment trust (REIT) under the United States Internal Revenue Code of 1986, as amended (the Code); as at September 30, 2012, there are 24,676 LP Units and 125 Class B units outstanding;

16. the principal business of the LP is to issue LP Units and to invest in the limited partnership units of the Property LP; the principal business of the Property LP is to issue limited property units of the Property LP and to invest the proceeds from the issuance of Property LP units in acquiring, owning, and operating a diversified portfolio of multi-family apartment properties in the United States;

17. the LP is a reporting issuer or the equivalent thereof in each of the Jurisdictions and an electronic filer within the meaning of NI 13-101;

18. the LP complies with the Continuous Disclosure Requirements and the Certification Requirements and is not in default of securities legislation in any jurisdiction in which it is a reporting issuer;

19. the audited annual financial statements and interim financial statements filed by the LP are prepared on a consolidated basis under International Financial Reporting Standards as issued by the International Accounting Standards Board;

20. the consolidated financial statements of the LP comprise the financial statements of the LP and its subsidiaries, over which the LP has control; control exists when the LP has the power to govern the financial and operating policies of an entity so as to obtain benefit from its activities; the consolidated financial statements of the LP reflect the financial position, results of operations, and cash flows of the LP and its interest in its subsidiaries (99.99% interest in the Property LP); and

21. the LP currently duplicates the filings made by the Trust with no material information being supplemented or added to the Trust's filings; further, the consolidated financial statements of the Trust reflect the financial position, results of operations, and cash flows of the Trust and its interest in its subsidiaries (99.99% interest in the LP and the LP's 99.99% interest in the Property LP); as the Trust's sole investment is in the LP, the financial information and disclosures reflected in the Trust's consolidated financial statements are substantively the same as that reflected in the LP's consolidated financial statements; the disclosure of the terms of the Class B units and the rights of the holders of the Class B units is virtually identical in the financial statements of both the LP and the Trust.

Decision

4 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

1. the Continuous Disclosure Requirements do not apply to the LP provided that:

   (a) the Trust remains a reporting issuer or the equivalent thereof in the Jurisdictions and an electronic filer within the meaning of NI 13-101;

(b) the Trust is the beneficial owner of all the issued and outstanding LP Units;

(c) the principal business of the Trust continues to be the investment of proceeds from the issuance of Trust Units in the acquisition of LP Units;

(d) the principal business of the LP is to issue LP Units and to invest in the limited partnership units of the Property LP, on behalf of the Trust;

(e) the Trust complies with the Continuous Disclosure Requirements and the Certification Requirements applicable to the Trust;

(f) the audited annual financial statements and interim financial statements filed by the Trust are prepared on a consolidated basis under International Financial Reporting Standards as issued by the International Accounting Standards Board or such other standards as may be permitted under the Legislation;

(g) if there is a material change in the affairs of the LP that is not a material change in the affairs of the Trust, the LP will comply with the requirement to issue and file a news release and file with the Decision Makers a report upon the occurrence of such material change;

(h) the documents required to be filed by the Trust under the Legislation are filed under the SEDAR profile for each of the Trust and the LP within the time limits and in accordance with applicable fees required for the filing of such documents;

(i) the LP does not issue any LP Units to the public; and

(j) the LP files a notice under its SEDAR profile stating that it has been granted relief from the Continuous Disclosure Requirements and the Certification Requirements and that investors should refer to the continuous disclosure documents filed by the Trust which are also available under the LP's SEDAR profile; and

2. the Certification Requirements do not apply to the LP provided that:

(a) the LP is not required to, and does not, file its own Annual Filings and Interim Filings (as those terms are defined in NI 52-109);

(b) the LP files in electronic form under its SEDAR profile either: (i) copies of the Trust's annual certificates and interim certificates at the same time as the Trust is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on the Trust's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and

(c) the LP is exempt from or otherwise not subject to the Continuous Disclosure Requirements and the LP and the Trust are in compliance with the conditions set out in paragraph 1 above.

"Peter J Brady"
Director, Corporate Finance
British Columbia Securities Commission

2.1.2 OceanRock Investments Inc. and the Funds Listed in Schedule A

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

National Instrument 81-102 Mutual Funds section 5.5(2), 5.7(1)(a) – A mutual fund manager seeks approval of a change of control of the mutual fund manager under the approval requirements in subsection 5.5(2) NI 81-102 – The filer established that the experience and integrity of the person acquiring control of the manager; there are no expected changes to the management, business, operations or affairs of the fund or the manager; securityholders were advised of the change of control.

National Instrument 81-102 section 5.8(1)(a), section 19.1(1) – A mutual fund manager seeks an abridgement from the requirement under subsection 5.8(1)(a) of NI 81-102 that securityholders of the Funds be given at least 60 days prior notice of the change of control of the Manager – A press release announcing the change of control transaction was issued; notice was sent to securityholders in advance of the closing of the transaction; securityholders had time before the closing of the transaction to decide if they wanted to continue to hold the fund; the manager will not change the management, administration or portfolio management of the funds for at least 60 days following the date of the notice.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(2), 5.7(1)(a), 5.8(1)(a), 19.1(1).

March 14, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
OCEANROCK INVESTMENTS INC.
(the Filer or Manager)

AND

THE FUNDS LISTED IN SCHEDULE A
(the Funds)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for:

(a) approval of an indirect change of control of the Manager (the Change of Control of Manager) of the Funds in accordance with section 5.5(2) of National Instrument 81-102 *Mutual Funds (*NI 81-102) (the Approval Sought); and

(b) an abridgment of the 60 day notice period prescribed by section 5.8(1)(a) of NI 81-102 for delivering notice of the Change of Control of Manager to the unitholders of the Funds to 48 days (the Notice Requirement) (the Exemption Sought);

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

(a) the British Columbia Securities Commission is the principal regulator for this application;

(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 Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon; and

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

Interpretation

2 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

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

The Manager

1. the Manager is incorporated under the *Canada Business Corporations Act (*CBCA) with its head office in Vancouver, British Columbia;

2. the Manager is the manager, portfolio advisor and trustee of each of the Funds;

3. the Manager is registered as an investment fund manager (IFM) in British Columbia, Alberta, Ontario, Quebec and Newfoundland and Labrador; the Manager is also registered as a portfolio manager (PM) and an exempt market dealer in British Columbia, Alberta and Ontario;

4. the Funds are reporting issuers in each of the provinces and territories of Canada; units of the Funds are qualified for distribution in each of the provinces and territories of Canada pursuant to a multiple simplified prospectus and are distributed through registered dealers in each of the provinces and territories;

5. the Manager and the Funds are not in default of securities legislation in any jurisdiction, except that the Manager is changing the Funds' custodial arrangements to ensure compliance with NI 81-102;

The Transaction

6. the Manager is a wholly-owned subsidiary of Qtrade Canada Inc (Qtrade), a corporation incorporated under the CBCA with its head office located in Vancouver, British Columbia, which provides wealth management services to the retail public as well as financial institutions through its wholly owned subsidiaries, Qtrade Asset Management Inc., a registered mutual fund dealer and exempt market dealer, Qtrade Securities Inc., a registered investment dealer, Qtrade Insurance Solutions Inc., a licensed insurance agency, and the Manager;

7. on February 4, 2013, Qtrade and Desjardins Financial Corporation (Desjardins) entered into an arrangement agreement whereby Desjardins will purchase between 24% and 40% of the issued and outstanding shares of Qtrade on a fully diluted basis from current Qtrade shareholders or optionholders by way of a statutory plan of arrangement under the CBCA (the Arrangement); on the effective date of the Arrangement, all of the common shares of Qtrade purchased by Desjardins will be converted into Class B Voting Shares while all of the other common shares and options to purchase common shares of Qtrade not tendered to Desjardins will be converted into Class A non-voting shares (Class A Shares) or Class C non-voting shares (Class C Shares) or options to purchase Class A Shares or Class C Shares; accordingly, the Arrangement, when effective, will result in an indirect change in control of the Manager;

8. the Arrangement is subject to receipt of all required regulatory, court and shareholder approvals and is expected to become effective on or about March 31, 2013 or on such later date when all of the conditions precedent have been satisfied or waived, and all required approvals have been obtained (the Closing);

9. following the Arrangement, no substantive changes are expected in the operation or management of the Funds by the Manager;

Desjardins

10. Desjardins is incorporated under the laws of Québec with its head office located in Lévis, Québec, and is an indirect wholly-owned subsidiary of the Fédération des caisses Desjardins du Québec (Fédération), a reporting issuer in the Province of Québec having assets of approximately $200 billion as at December 31, 2012; shares of the Fédération are not listed on any stock exchange; the Class F shares have been distributed under a prospectus to members of the members of the Fédération and are freely tradeable among the shareholders; the remaining classes of shares have been distributed under a private placement exemption and are not freely tradeable;

Change of Control of Manager

11. in respect of the impact of the Change of Control of Manager on the Manager and the management and administration of the Funds:

    (a) Qtrade and Desjardins have confirmed that there is no current intention:

        (i) to make any substantive changes as to how the Manager operates or manages the Funds;

        (ii) to merge the Manager with any other IFM;

        (iii) immediately following the Closing, to change the Manager to Desjardins or an affiliate of Desjardins; and

        (iv) within a foreseeable period of time, to change the Manager to Desjardins or an affiliate of Desjardins;

    (b) Qtrade and Desjardins currently intend to maintain the Funds as separately managed fund families with the Manager as their IFM and PM;

    (c) the Closing is not expected to have any material impact on the business, operations or affairs of the Funds or the unitholders of the Funds;

    (d) following the Closing, the directors and officers of the Manager will be unchanged and the Manager will retain the management teams and supervisory personnel that were in place immediately prior to the Closing;

    (e) it is not expected that there will be any change in the management of the Funds, including investment objectives and strategies of the Funds, or the expenses that are charged to the Funds as a result of the Closing;

    (f) there is no current intention to change the name of the Manager or the names of the Funds as a result of the Arrangement, immediately after the Closing;

    (g) the Arrangement is only expected to benefit the Manager and will not adversely affect the Manager's financial position or its ability to fulfill its regulatory obligations; and

    (h) upon the Change of Control of Manager, the members of the Manager's Independent Review Committee (IRC) will cease to be IRC members by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds*; immediately following the Change of Control of Manager, the IRC will be reconstituted;

Notice Requirement

12. the notice to the unitholders of the Funds with respect to the Arrangement in accordance with Section 5.8(1)(a) of NI 81-102 (Notice) was mailed to the unitholders on February 7, 2013 (Notice Date), which means that if the Closing occurs on March 31, 2013 such unitholders will have received the Notice approximately 48 days in advance of the Change of Control of Manager; and

13. it would not be prejudicial to the unitholders of the Funds to abridge the notice period prescribed by section 5.8(1)(a) of NI 81-102 from 60 days to not less than 48 days for the following reasons:

(a) while the Arrangement will result in the Change of Control of Manager, as noted above, there is not expected to be any change in how the Manager administers or manages the Funds;

(b) the Arrangement will not have any impact on the unitholders' interest in the Funds;

(c) the unitholders of the Funds will still be able to redeem their units of the Funds prior to the Closing; and

(d) the Arrangement has been well publicized since February 5, 2013 and copies of the press release disclosing the Arrangement and the Notice have been posted on the Funds' website such that most unitholders of the Funds are probably already aware of the Arrangement.

Decision

4 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:

(a) the Approval Sought is granted; and

(b) the Exemption Sought is granted provided that:

(i) the unitholders of the Funds are given at least 48 days' notice of the Change of Control of Manager; and

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

"Paul C. Bourque, Q.C."
Executive Director
British Columbia Securities Commission

Schedule A

List of Funds

Meritas Money Market Fund
Meritas Canadian Bond Fund
Meritas Monthly Dividend and Income Fund
Meritas Jantzi Social Index® Fund
Meritas U.S. Equity Fund
Meritas International Equity Fund
Meritas Income Portfolio
Meritas Income & Growth Portfolio
Meritas Balanced Portfolio
Meritas Growth & Income Portfolio
Meritas Growth Portfolio
Meritas Maximum Growth Portfolio
OceanRock Canadian Equity Fund
OceanRock U.S. Equity Fund
OceanRock International Equity Fund
OceanRock Income Portfolio
OceanRock Income & Growth Portfolio
OceanRock Balanced Portfolio
OceanRock Growth & Income Portfolio
OceanRock Growth Portfolio
OceanRock Maximum Growth Portfolio

2.1.3 Merrill Lynch Professional Clearing Corp.

Headnote

Filer exempted from section 13.12 [restriction on lending to clients] of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Variation of a previous order to extend time limitation in line with CSA Staff Notice 31-333 Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category – The filer is registered as a restricted dealer on terms and conditions – The filer is a registered broker-dealer with the SEC and a member of FINRA – Terms and conditions on the exemptions require that: (i) the head office or principal place of business of the filer be in the USA; (ii) the filer be registered under the securities legislation of the USA in a category of registration that permits it to carry on the activities in the USA that registration as an investment dealer would permit it to carry on in Ontario, (iii) by virtue of the securities legislation of the USA, the filer is subject to requirements in respect of lending money, extending credit or providing margin to clients that result in substantially similar regulatory protections to those provided for under the capital and margin requirements of IIROC, that would be applicable if the filer if it were registered under the Act as an investment dealer and were a member of IIROC.

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 14-101 Definitions
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.12 and 15.1

March 27, 2013

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 MERRILL LYNCH PROFESSIONAL CLEARING CORP.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received a further application from the Filer (the Application) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) to extend the existing terms and conditions (the **Existing Terms and Conditions**) placed on the Filer's registration under the Legislation as a restricted dealer pursuant to a decision of the Director dated October 21, 2011 (the **Original Decision**) so as to exempt the Filer from the requirement contained in section 13.12 *[restriction on lending to clients]* of National Instrument *31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) that a registrant must not lend money, extend credit or provide margin to a client (the **Exemption Sought**). The extension to the Existing Terms and Conditions of the Original Decision is in line with CSA Staff Notice 31-333 *Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category.*

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia and Quebec (the **Non-principal Jurisdictions**, or together with the Jurisdiction, **the Filing Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions,* MI 11-102 and the Original Decision have the same meaning if used in this decision, unless otherwise defined or the context otherwise requires.

Representations

This decision is based on the same representations made by the Filer in the Original Decision and which remain true and complete and for convenience are repeated below:

1. Pursuant to the Original Decision, the Filer is exempt from the requirement contained in section 13.12 of NI 31-103 that a registrant must not lend money, extend credit or provide margin to a client, provided that it complies with the Existing Terms and Conditions.

2. The Filer is a corporation incorporated under the laws of the State of Delaware. Its head office is located at 222 Broadway 6th Floor, New York, NY 10036, U.S.A.

3. The Filer is a subsidiary of Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is a wholly-owned subsidiary of Merrill Lynch & Co., Inc., which in turn is a wholly-owned subsidiary of Bank of America Corporation.

4. The Filer is registered as a restricted dealer, with terms and conditions including that it may only deal with permitted clients as defined in section 1.1 of NI 31-103, under the Legislation and under the securities legislation of the Non-principal Jurisdictions. As a restricted dealer under the securities legislation of the Filing Jurisdictions, the Filer is subject to the prohibition on lending money,

extending credit or providing margin to a client in section 13.12 of NI 31-103.

5. The Filer is registered as a broker-dealer with the United States Securities and Exchange Commission (**SEC**), and is a member of the Financial Industry Regulatory Authority (**FINRA**). This registration permits the Filer to carry on in the U.S.A., its home jurisdiction, substantially similar activities that registration as an investment dealer would authorize it to carry on in the Jurisdiction if the Filer were registered under the Legislation as an investment dealer.

6. The Filer is registered as a Futures Commission Merchant with the U.S. Commodity Futures Trading Commission, and is a member of the National Futures Association. Pursuant to these registrations, the Filer is authorized to handle customer orders and receive and hold customer margin deposits, and otherwise act as a futures broker, in the United States.

7. Services provided by the Filer to its clients include prime brokerage, securities financing, brokerage and clearing services to broker-dealers, introducing broker-dealers and other professional trading entities on a fully-disclosed basis. The Filer also trades as an option market maker on the International Securities Exchange.

8. In certain comments received on NI 31-103, after it was published for comment, it was suggested that the prohibitions in section 13.12 should not apply to certain dealers that are members of foreign self-regulatory organizations, or subject to regulatory requirements in a foreign jurisdiction, where the dealer is subject to margin regimes similar to that imposed by the Investment Industry Regulatory Organization of Canada (**IIROC**). The Canadian Securities Administrators responded to these comments by suggesting that these circumstances could be considered on a case-by-case basis, through exemption applications, and that an exemption should be made available to registrants who have "adequate measures in place to address the risks involved and other related regulatory concerns".

9. The Filer is subject to regulations of the United States Federal Reserve, the SEC, FINRA, the New York Stock Exchange, the U.S. Commodity Futures Trading Commission and the National Futures Association as well as the relevant exchanges and markets regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, the Filer is subject to the margin requirements imposed by the United States Federal Reserve, including Regulations T and X and under applicable SEC rules and the rules of the New York Stock Exchange. The Filer is in compliance in all material respects with all applicable U.S. Margin Regulations.

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 by the Filer is granted so long as:

(a) the head office and principal place of business of the Filer is in the United States;

(b) the Filer is registered under the securities legislation of the United States in a category of registration that permits it to carry on the activities in the United States that registration as an investment dealer would permit it to carry on in the Jurisdiction;

(c) by virtue of the registration referred to in paragraph (b), including required membership in one or more self-regulatory organizations, the Filer is subject to requirements in respect of its lending money, extending credit or providing margin to clients (including clients that are located in Canada) that are substantially similar to the capital and margin requirements of IIROC that would be applicable to the Filer if it were registered under NI 31-103 as an investment dealer and were a member of IIROC.

It is further the decision of the principal regulator that, in line with CSA Staff Notice 31-333 *Follow-Up to Broker-Dealer Registration in the Exempt Market Dealer Category,* the Exemption Sought shall expire on the date that is the earlier of:

(a) The date on which amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* come into force limiting brokerage activities in which exempt market dealers or restricted dealers engage; and

(b) December 31, 2014.

"Erez Blumberger"
Deputy Director, Compliance & Registrant Regulation
Ontario Securities Commission

2.1.4 HomeQ Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer under applicable securities laws – 15 beneficial securityholders in Ontario – requested relief granted – section 1(10)(a)(ii) of the Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

March 18, 2013

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

AND

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

AND

IN THE MATTER OF
HOMEQ CORPORATION
(the Applicant)

DECISION

Background

The local securities regulatory authority or regulator (the **Decision Maker**) in each of the Jurisdictions has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Applicant is not a reporting issuer in each of the Jurisdictions other than Quebec and that, in respect of the Legislation of Quebec, that the Applicant's status as a reporting issuer is revoked (the **Requested Relief**).

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

Defined terms contained in National Instrument 14-101 – *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

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

1. The Applicant is a corporation existing under the *Business Corporations Act* (Ontario) (**OBCA**).

2. The head office of the Applicant is located at 45 St. Clair Avenue West, Suite 600, Toronto, Ontario, M4V 1K9.

3. On March 30, 2012, HOMEQ Corporation and Monaco Acquisition Inc. (**Monaco**) (a newly incorporated entity controlled by Birch Hill Equity Partners Management Inc. (**Birch Hill**)) entered into an arrangement agreement pursuant to which Monaco would acquire all of the issued and outstanding Common Shares of HOMEQ Corporation (the **Common Shares**) for cash consideration of $9.50 per Common Share under a court-approved plan of arrangement under Section 182 of the OBCA (the **Arrangement**).

4. The Arrangement was approved by the shareholders of HOMEQ Corporation on May 28, 2012 and by the court on May 30, 2012 and October 5, 2012.

5. In connection with the Arrangement, certain of HOMEQ Corporation's directors and officers, namely Steven Ranson (President and Chief Executive Officer and a director), Gary Krikler (Senior Vice President and Chief Financial Officer), Greg Bandler (Senior Vice President, Sales and Marketing), Celia Cuthbertson (Vice President, General Counsel and Corporate Secretary), Scott Cameron (Vice President, Finance), Wendy Dryden (Vice President, Mortgage Operations) and Daniel Jauernig (a director) and certain of their related parties (collectively, the **Rollover Shareholders**) transferred, prior to the effective time of the Arrangement, Common Shares owned or controlled directly or indirectly by them to Monaco in exchange for common shares of Monaco. On the day prior to the closing of the Arrangement, 10 Rollover Shareholders became shareholders of Monaco.

6. The Arrangement was completed on November 30, 2012 and Monaco became the sole shareholder of HOMEQ Corporation on that date. Immediately following the effective time of the Arrangement on November 30, 2012, Monaco and HOMEQ Corporation amalgamated (the **Amalgamation**) to form the Applicant and the shareholders of Monaco became the shareholders of

the Applicant. Upon completion of the Amalgamation, the Applicant became a reporting issuer in the Jurisdictions.

7. The Common Shares were de-listed from the Toronto Stock Exchange at the close of trading on December 4, 2012. 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 any other facility for bringing together buyers and sellers of securities where trading data is publically reported.

8. The Applicant has no intention of seeking public financing by way of an offering of securities in a jurisdiction of Canada by way of private placement or public offering.

9. The Applicant ceased to be a reporting issuer in the province of British Columbia on December 15, 2012.

10. The Applicant is a reporting issuer, or the equivalent, in all of the Jurisdictions and is currently not in default of any of the applicable requirements under the legislation of those Jurisdictions.

11. Subsequent to the completion of the Amalgamation, the Applicant has no securities outstanding except common shares. The Applicant has 14 registered common shareholders all of which are resident in or organized under the laws of the province of Ontario; the 10 Rollover Shareholders and 4 funds all of which are controlled or managed by Birch Hill. One of these registered shareholders, HOMEQ Co-Invest LP, a fund managed by Birch Hill, was created solely for the purpose of holding securities of the Applicant; therefore, its two limited partners counted as holders of the Applicant's shares for purposes of CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer*.

12. The Applicant's outstanding securities, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each jurisdiction of Canada (except Ontario, where it has 15 securityholders) and by fewer than 51 securityholders in total worldwide.

13. Upon the grant of the Requested Relief, the Applicant will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

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 Requested Relief is granted.

"Edward P. Kerwin"
Ontario Securities Commission

"Paulette L. Kennedy"
Ontario Securities Commission

2.1.5 Two Harbors Investment Corp.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – relief from prospectus requirements to allow U.S. company to spin off shares of shares in a partially owned company it invested assets in to investors by way of distribution in specie – distribution not covered by legislative exemptions – both companies public in the U.S. but are not a reporting issuers in Canada – U.S. parent company has a de minimis presence in Canada. No investment decision required from the Canadian Shareholders in order to receive shares from distribution

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 53.

March 15, 2013

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
EACH OF THE PROVINCES AND
TERRITORIES OF CANADA
(TOGETHER, THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
TWO HARBORS INVESTMENT CORP.
(THE FILER)

DECISION

Background

The principal regulator in the Province of Ontario has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the prospectus requirements contained in the Legislation in connection with the distribution by the Filer of shares of common stock of Silver Bay Realty Trust Corp. (**Silver Bay**), a United States publicly traded corporation, on a *pro rata* basis and by way of a dividend *in specie*, to the Filer's shareholders (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada.

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 Filer is a Maryland corporation focused on investing in, financing and managing residential mortgage-backed securities, residential mortgage loans and other financial assets, and operates as a real estate investment trust (**REIT**) as defined under the United *States Internal Revenue Code of 1986*, as amended. The Filer was incorporated on May 21, 2009 and commenced operations as a U.S. publicly traded company on October 28, 2009. The Filer's corporate headquarters are located at 601 Carlson Parkway, Suite 1400, Minnetonka, Minnesota, 55305, U.S.A.

2. The Filer is externally managed and advised by PRCM Advisers LLC, a wholly-owned subsidiary of Pine River Capital Management L.P. (**Pine River**), such management including the provision of property acquisition and property management services with respect to the Portfolio Properties (as defined in paragraph 15 below) through an affiliate.

3. The Filer is not a reporting issuer under the securities laws of any province or territory of Canada. The Filer has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.

4. The Filer's common stock (the **Filer Shares**) are listed on the New York Stock Exchange (**NYSE**) under the symbol "TWO", and the Filer's warrants are listed on the NYSE Amex under the symbol "TWO.WS". The Filer Shares are not listed on any Canadian stock exchange and the Filer has no intention of listing its securities on any stock exchange in Canada.

5. Pursuant to a geographical breakdown report that the Filer received from its transfer agent, as at December 31, 2012, there were two holders of record of the Filer Shares resident in Canada holding 149 Filer Shares (one in Ontario holding 136 shares and one in British Columbia holding 13 shares), representing approximately 1.3% of the registered shareholders of the Filer worldwide and approximately 0.00005% of the outstanding Filer Shares.

6. Pursuant to a geographical survey report that the Filer received from Broadridge Financial Solutions, Inc., as at January 7, 2013, there were 2,209 beneficial holders of Filer Shares resident in Canada holding approximately 2,568,206 Filer Shares, representing approximately 2.2% of the beneficial shareholders of the Filer worldwide and approximately 0.9% of the outstanding Filer Shares.

7. As per the information above, the number of registered and beneficial shareholders of the Filer resident in Canada (collectively, the **Canadian Shareholders**), and the proportion of Filer Shares held by such shareholders, is *de minimis*.

8. The Filer is not in default of securities legislation in any of the provinces or territories of Canada.

9. Silver Bay is a Maryland corporation formed in 2012 that is focused on the acquisition, renovation, leasing and management of single-family properties in certain desirable markets in the United States, which intends to elect and qualify to be taxed as a REIT for U.S. federal tax purposes. Silver Bay's corporate headquarters are located at 601 Carlson Parkway, Suite 250, Minnetonka, Minnesota, 55305, U.S.A.

10. Silver Bay is externally managed by PRCM Real Estate Advisers LLC, a joint venture between an affiliate of Pine River and Provident Real Estate Advisors LLC (**Provident**).

11. Silver Bay completed its initial public offering in the United States on December 19, 2012 (the **IPO**).

12. Silver Bay is not a reporting issuer under the securities laws of any province or territory of Canada. To the knowledge of the Filer, Silver Bay has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.

13. Silver Bay's common stock is listed on the NYSE under the symbol "SBY". Silver Bay's common stock is not listed on any Canadian stock exchange and, to the knowledge of the Filer, Silver Bay has no intention of listing its securities on any stock exchange in Canada.

14. To the knowledge of the Filer, Silver Bay is not in default of securities legislation in any of the provinces or territories of Canada.

15. Concurrently with the closing of its IPO, Silver Bay completed certain formation transactions pursuant to which it acquired an initial portfolio of more than 3,300 single-family properties. As part of such transactions, the Filer and Silver Bay had entered into a contribution agreement (the **Contribution Agreement**) pursuant to which the Filer contributed its existing portfolio of over 2,200 single-family properties (the **Portfolio Properties**) to Silver Bay together with US$50 million in cash that was used to acquire and renovate properties through the closing of the transaction (together, the **Filer Contribution**). Entities managed by Provident also contributed approximately 880 single-family residential properties to Silver Bay in connection with the formation transactions.

16. Prior to the closing of its IPO, Silver Bay had no substantive operations. Silver Bay was created in part in order for the Filer to contribute its single-family Portfolio Properties, together with the contributed single-family properties managed by Provident, into a new stand-alone REIT focused on the acquisition, renovation, leasing and management of single-family properties.

17. In consideration for the Filer Contribution, the Filer received 17,824,647 shares of common stock of Silver Bay (the **Silver Bay Consideration Shares**) issued from treasury, which represent approximately 45.3% of the issued and outstanding Silver Bay common stock.

18. The Filer intends to distribute all or a portion of the Silver Bay Consideration Shares (the **Special Distribution**), on a *pro rata* basis and by way of a special dividend *in specie*, to the shareholders of the Filer (the **Filer Shareholders**) as of a record date which is expected to occur on or about April 2, 2013.

19. The Filer Shareholders will not be required to pay for Silver Bay Consideration Shares received in the Special Distribution or to surrender or exchange their Filer Shares or take any other action in order to be entitled to receive the Special Distribution shares. The Special Distribution will not cancel or affect the number of outstanding Filer Shares and the Filer Shareholders will retain their Filer Share stock certificates, if any. The Special Distribution will occur automatically and without any investment decision on the part of the Filer Shareholders. Neither the Filer Contribution nor the Special Distribution require the Filer Shareholders' approval under United States law.

20. No fractional Silver Bay Consideration Shares will be distributed as part of the Special Distribution. Instead, as soon as practicable after the Special Distribution, the distribution agent will aggregate all fractional shares into whole shares of Silver Bay common stock, sell such shares in the open market at prevailing market prices and distribute the aggregate net cash proceeds of these sales *pro rata* to each shareholder who otherwise would have been entitled to receive a fractional share in the Special Distribution.

21. As per a registration rights agreement entered into in connection with the Contribution Agreement,

Silver Bay has prepared and filed with the United States Securities and Exchange Commission (the **SEC**) a Form S-11 Registration Statement (as may be subsequently amended, restated and supplemented, the **Registration Statement**) under the United States *Securities Act of 1933*, with respect to the Silver Bay Consideration Shares.

22. The prospectus in the Registration Statement was prepared in accordance with the U.S. federal securities law. The Registration Statement was initially filed with the SEC on March 1, 2013 and was declared effective by the SEC as of March 13, 2013. The exact number of Silver Bay Consideration Shares that the Filer shall distribute, the distribution ratio and the record date for the Special Distribution will be disclosed by the Filer by way of news release.

23. All materials relating to the Special Distribution sent by or on behalf of the Filer or Silver Bay to the Filer Shareholders resident in the United States will be sent concurrently to the Canadian Shareholders.

24. The Canadian Shareholders who receive Silver Bay Consideration Shares pursuant to the Special Distribution will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Special Distribution that are available to the Filer Shareholders resident in the United States.

25. Following the completion of the Special Distribution, the Canadian Shareholders who receive Silver Bay Consideration Shares pursuant to the Special Distribution, to the extent they continue to hold such shares, will be treated as any other shareholder of Silver Bay and will be concurrently sent the same disclosure materials required to be sent under applicable U.S. laws that Silver Bay sends to holders of its common stock in the United States.

26. The Special Distribution to Canadian Shareholders would be exempt from the prospectus requirements pursuant to subsection 2.31(2) of National Instrument 45-106 – *Prospectus and Registration Exemptions* but for the fact that Silver Bay is not a reporting issuer under the Legislation.

27. In the absence of the Exemption Sought, qualification by prospectus of the Silver Bay Consideration Shares to Canadian Shareholders pursuant to the Special Distribution is not practicable, requiring that Canadian Shareholders be excluded from receiving the Special Distribution.

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 the first trade in Silver Bay Consideration Shares acquired pursuant to the Special Distribution will be deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 *Resale of Securities* are satisfied.

"Paulette L. Kennedy"
Ontario Securities Commission

"Edward P. Kerwin"
Ontario Securities Commission

2.1.6 High River Gold Mines Ltd.

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 28, 2013

HIGH RIVER GOLD MINES LTD.
Blake, Cassels & Graydon LLP
199 Bay street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9
Canada

Dear Sirs/Mesdames:

Re: High River Gold Mines Ltd. (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland & Labrador, (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 National Instrument 21-101 *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 is not a reporting issuer.

"Lisa Enright"
Manager, Corporate Finance
Ontario Securities Commission

2.2 Orders

2.2.1 York Rio Resources Inc. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
YORK RIO RESOURCES INC.,
BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUNIC, GEORGE SCHWARTZ,
PETER ROBINSON, ADAM SHERMAN,
RYAN DEMCHUK, MATTHEW OLIVER,
GORDON VALDE AND SCOTT BASSINGDALE

ORDER
(Section 127 and 127.1 of the Securities Act)

WHEREAS on March 2, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the Act accompanied by a Statement of Allegations dated March 2, 2010, issued by Staff of the Commission ("Staff") with respect to York Rio Resources Inc. ("**York Rio**"), Brilliante Brasilcan Resources Corp. ("**Brilliante**"), Victor York ("**York**"), Robert Runic ("**Runic**"), George Schwartz ("**Schwartz**"), Peter Robinson ("**Robinson**"), Adam Sherman ("**Sherman**"), Ryan Demchuk ("**Demchuk**"), Matthew Oliver ("**Oliver**"), Gordon Valde ("**Valde**") and Scott Bassingdale ("**Bassingdale**");

AND WHEREAS on November 5, 2010, the Commission approved a settlement agreement between Staff and Robinson;

AND WHEREAS on June 6, 2011, the Commission approved a settlement agreement between Staff and Sherman;

AND WHEREAS a hearing on the merits with respect to York Rio, Brilliante, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale (together, the "**Respondents**") was held before the Commission on March 21, 22, 23, 24 and 28, 2011, April 5, 2011, May 2 and 3, 2011, June 6, 8, 9, 10, 13, 14, 15, 16 and 17, 2011, July 20, 21, 22, 26 and 27, 2011, August 3, 9, 11, 12, 19 and 22, 2011, September 21 and 28, 2011, November 1, 2011, and December 19 and 21, 2011, and written submissions were filed on December on December 25 and 27, 2011;

AND WHEREAS following the hearing on the merits, the Commission issued its Reasons and Decision on the merits on March 25, 2013;

IT IS ORDERED THAT:

1. Staff shall file and serve written submissions on sanctions and costs by April 15, 2013;

2. Each Respondent shall file and serve written submissions on sanctions and costs by April 29, 2013; and

3. Staff shall file and serve reply submissions on sanctions and costs by May 6, 2013.

IT IS FURTHER ORDERED THAT the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, on May 14, 2013, 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

IT IS FURTHER ORDERED 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 proceeding.

DATED at Toronto this 25th day of March, 2013.

"Vern Krishna"

"Edward P. Kerwin"

2.2.2 Dupont Capital Management Corporation – s. 80 of the CFA

Headnote

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirements of subsection 22(1)(b) of the CFA in respect of acting as an adviser to a pension fund sponsored by an affiliate of the applicant for the benefit of the employees of the affiliate, with respect to commodity futures contracts and/or commodity futures options that are traded on a commodity futures exchange.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 22(1)(b), 80.
Securities Act, R.S.O. 1990, c. S.5, as am.
Rule 35-502 – Non Resident Advisers.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
DUPONT CAPITAL MANAGEMENT CORPORATION

ORDER
(Section 80 of the CFA)

UPON the application (the **Application**) of DuPont Capital Management Corporation (the **Applicant**) for an order pursuant to section 80 of the CFA that the Applicant and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Applicant (the **Representatives**) be exempt, for a period of five years, from the registration requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser to the E.I. du Pont Canada Company Pension Plan (the **Fund**) with respect to commodity futures contracts and/or commodity futures options that are traded on a commodity futures exchange;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is a corporation incorporated under the laws of Delaware, is not ordinarily resident in Ontario and is a wholly-owned subsidiary of E.I. DuPont de Nemours and Company (**DuPont**).

2. The Applicant is registered as an investment adviser with the United States Securities and Exchange Commission (the **SEC**). The Applicant is not registered in any capacity under the CFA or the *Securities Act* (Ontario) (the O**S**A). However, the Applicant relies on the international adviser exemption set out in section 8.26 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in Alberta, British Columbia, Manitoba, Ontario and Saskatchewan.

3. The Applicant is exempt in the U.S. from the advisor registration requirement of the Commodity Futures Trading Commission with respect to advising in commodity futures contracts and/or commodity futures options that are traded on a commodity futures exchange.

4. E.I. du Pont Canada Company (**DuPont Canada**) is incorporated under the laws of the *Canada Business Corporations Act*, and carries on manufacturing and other business activities in Canada. DuPont Canada is also a wholly-owned subsidiary of DuPont.

5. DuPont Canada established the Fund under the laws of Ontario for the benefit of its employees in Canada, and is the administrator and sponsor of the Fund.

6. DuPont Canada has decided that it is prudent to continue to retain the investment services of the Applicant, an affiliated company, pursuant to an investment management agreement, to provide investment advice to the Fund with respect to securities, commodity futures contracts and/or commodity futures options.

7. Pursuant to section 7.6 (Advising Pension Funds of Affiliates) of OSC Rule 35-502 *Non Resident Advisers* (**Rule 35-502**), the Applicant is exempt from the adviser registration requirement of the OSA with respect to acting as an adviser for the Fund since the Applicant is not ordinarily resident in Ontario and the Fund is sponsored by Dupont Canada, an affiliate of the Applicant, for the benefit of the employees of Dupont Canada.

8. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a partner or an officer of a registered adviser and is acting on behalf of a registered adviser. Under the CFA, “adviser” means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in “contracts”, and “contracts” means commodity futures contracts and commodity futures options.

9. There is presently no rule under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA for a person or company acting as an adviser in respect of commodity futures options and commodity futures contracts that is similar to the exemption from the adviser registration requirement in section 25(1)(c) of the OSA for

acting as an adviser (as defined in the OSA) in respect of securities that is provided under section 7.6 of Rule 35-502.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the exemption requested on the basis of the terms and conditions proposed;

IT IS ORDERED pursuant to section 80 of the CFA that the Applicant and its Representatives are exempted from the requirements of paragraph 22(1)(b) of the CFA in respect of acting as an adviser in connection with the Fund, provided that:

(a) The Applicant and its Representatives are appropriately registered or licensed to advise the Fund with respect to commodity futures contracts and/or commodity futures options that are traded on a commodity futures exchange pursuant to the applicable legislation of their principal jurisdiction, or are entitled to rely on appropriate exemptions from such registrations or licenses;

(b) this Order shall expire five years after the date hereof.

March 26, 2013

"Vern Krishna"
Commissioner
Ontario Securities Commission

"C. Wesley M. Scott"
Commissioner
Ontario Securities Commission

2.2.3 Frederick Johnathon Nielsen previously known as Frederick John Gilliland– 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
FREDERICK JOHNATHON NIELSEN,
previously known as FREDERICK JOHN GILLILAND

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on November 23, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter 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 Frederick Johnathon Nielsen, previously known as Frederick John Gilliland ("Nielsen");

AND WHEREAS on November 22, 2012, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

AND WHEREAS Nielsen entered into a settlement agreement with the British Columbia Securities Commission dated March 25, 2011 ("Settlement Agreement");

AND WHEREAS in the Settlement Agreement, Nielsen consented to any securities regulator in Canada relying on the facts admitted in the Settlement Agreement for the purpose of making a similar order;

AND WHEREAS the Respondent is subject to an order dated March 25, 2011 made by the British Columbia Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act (the "BC Order");

AND WHEREAS on December 14, 2012, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and established a schedule for the submission of materials by the parties;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS Nielsen did not appear and did not file any materials;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act, in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities by Nielsen shall cease until March 25, 2036, except that Nielsen may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if Nielsen first provides to the registrant a copy of the BC Order and this Order;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Nielsen is prohibited until March 25, 2036, except that Nielsen may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if he first provides to the registrant a copy of the BC Order and this Order;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Nielsen until March 25, 2036;

(d) pursuant to paragraph 7 of subsection 127(1) of the Act, Nielsen shall resign any positions that he holds as a director or officer of any issuer;

(e) pursuant to paragraph 8 of subsection 127(1) of the Act, Nielsen is prohibited from becoming or acting as a director or officer of any issuer until March 25, 2036; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Nielsen is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter until March 25, 2036.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

2.2.4 MI Capital Corporation and One Capital Corp. Limited – 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
MI CAPITAL CORPORATION
and ONE CAPITAL CORP. LIMITED

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on February 13, 2013, 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 MI Capital Corporation ("MI Capital") and One Capital Corp. Limited ("One Capital") (collectively, the "Respondents");

AND WHEREAS on February 12, 2013, Staff of the Commission ("Staff) filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 28, 2013, the Commission heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS the Respondents are subject to an order dated June 11, 2012 made by the New Brunswick Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act:

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently; and

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

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

2.2.5 Steven Vincent Weeres and Rebekah Donszelmann – ss. 127(1) and 127(10)

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

AND

IN THE MATTER OF
STEVEN VINCENT WEERES AND
REBEKAH DONSZELMANN

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on February 6, 2013, 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 Steven Vincent Weeres ("Weeres") and Rebekah Donszelmann ("Donszelmann") (collectively, the "Respondents");

AND WHEREAS on January 31, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 19, 2013, the Commission heard an application by Staff to convert the matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

AND WHEREAS Staff provided written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS the Respondents are subject to an order dated March 15, 2012 made by the New Brunswick Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act:

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Weeres cease permanently;

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

(c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Weeres resign any positions that he holds as a director or officer of any issuer;

(d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Weeres be prohibited from becoming or acting as a director or officer of any issuer permanently;

(e) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Donszelmann cease until March 15, 2032;

(f) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Donszelmann until March 15, 2032;

(g) pursuant to paragraph 7 of subsection 127(1) of the Act, Donszelmann resign any positions that she holds as a director or officer of any issuer; and

(h) pursuant to paragraph 8 of subsection 127(1) of the Act, Donszelmann be prohibited from becoming or acting as an officer or director of any issuer until March 15, 2032.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

2.2.6 Bernard Boily – 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
BERNARD BOILY

ORDER
(Sections 127(1) and 127.1)

WHEREAS on March 29, 2011, 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 29, 2011 with respect to Bernard Boily (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff (the "Settlement Agreement"), subject to the approval of the Commission;

AND WHEREAS the Commission issued a Notice of Hearing dated March 25, 2013 setting out that it proposed to consider the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing dated March 29, 2011, the Statement of Allegations of Staff, and upon considering submissions from counsel for Staff and counsel for the Respondent;

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 by the Respon-dent shall cease for a period that is the later of 15 years or until the penalty and costs set out in paragraphs 10 and 11 below are paid in full, with the exception that the Respondent shall be permitted to trade in the Locked-In Retirement Account ("LIRA") currently held by the Respondent provided that:

   i. the Respondent's LIRA is maintained in an account managed by a person who has exclusive authority to manage the Respondent's account at the person's discretion, and the person is either (a) an adviser who is registered as an adviser with the applicable provincial securities regulatory authority in Canada; or (b) a dealer who is registered as a dealer with the applicable provincial securities regulatory authority in Canada and is appropriately exempt from the adviser registration requirement; and

   ii. the said dealer or adviser is given a copy of this Order;

3. the acquisition of any securities by the Respondent shall cease for a period that is the later of 15 years or until the penalty and costs set out in paragraphs 10 and 11 below are paid in full, with the exception that the Respondent shall be permitted to acquire securities in the LIRA currently held by the Respondent provided that:

   i. the Respondent's LIRA is maintained in an account managed by a person who has exclusive authority to manage the Respondent's account at the person's discretion, and the person is either (a) an adviser who is registered as an adviser with the applicable provincial securities regulatory authority in Canada; or (b) a dealer who is registered as a dealer with the applicable provincial securities regulatory authority in Canada and is appropriately exempt from the adviser registration requirement; and

   ii. the said dealer or adviser is given a copy of this Order;

4. any exemptions contained in Ontario securities law do not apply to the Respondent for a period that is the later of 15 years or until the penalty and costs set out in paragraphs 10 and 11 below are paid in full;

5. the Respondent is reprimanded;

6. the Respondent shall immediately resign any position he holds as a director or officer of any issuer;

7. the Respondent is prohibited permanently from becoming or acting as a director or officer of any issuer;

8. the Respondent is prohibited permanently from becoming or acting as a director or officer of a registrant;

9. the Respondent is prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

10. the Respondent shall pay an administrative penalty of $750,000 for his failure to comply with Ontario securities law. The administrative penalty shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act; and

11. the Respondent shall pay costs in the amount of $50,000.

DATED at Toronto this 27th day of March, 2013.

"James D. Carnwath"

2.2.7 Stephen Campbell – 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
STEPHEN CAMPBELL

ORDER
(Subsections 127(1) and Section 127.1)

WHEREAS on March 26, 2013, Staff of the Ontario Securities Commission ("Staff" and 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 "Securities Act") in respect of Mr. Stephen Campbell (the "Respondent") in respect of conduct that occurred between January 1, 2010 and December 31, 2011 (the "Material Time");

AND WHEREAS the Respondent and Staff entered into a settlement agreement (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated March 26, 2013, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing, and upon hearing submissions from the Respondent and from counsel for Staff;

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 Settlement Agreement is hereby approved;

2. pursuant to paragraph 127(1)(6) of the *Securities Act,* the Respondent is hereby reprimanded;

3. pursuant to paragraph 127(1)(2) of the *Securities Act,* the Respondent is hereby prohibited from trading in any securities for a period of two years commencing from the date of this Order; and

4. pursuant to subsection 127.1(1) of the Securities Act, the Respondent shall within thirty days of this Order pay $25,000 towards the costs of Staff's investigation.

DATED at Toronto this 28th day of March, 2013.

"Christopher Portner"

2.2.8 Bernard Boily – s. 127

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

AND

IN THE MATTER OF
BERNARD BOILY

ORDER
(Section 127)

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on March 29, 2011 against Bernard Boily (the "Respondent");

AND WHEREAS on April 28, 2011, the Commission ordered that the matter be adjourned to June 29, 2011;

AND WHEREAS on July 5, 2011, the Commission ordered that the matter be adjourned to a confidential pre-hearing conference to be held on September 13, 2011 and that the following dates be reserved for the hearing on the merits in this matter: April 2, 3, 4, 5, 9, 11, 12, 13, 16, 17, 18, 19, 20, 23, 25, 26 and 27, 2012;

AND WHEREAS on September 13, 2011, the Commission ordered that the matter be adjourned to a confidential pre-hearing conference to be held on November 10, 2011 and that the hearing on the merits in this matter shall commence on April 2, 2012 at 10:00 a.m. and continue on the following dates: April 3, 4, 5, 9, 11, 12, 13, 16, 17, 18, 19, 20, 23, 25, 26 and 27, 2012;

AND WHEREAS on November 10, 2011, the Commission ordered that the matter be adjourned to a confidential pre-hearing conference to be held on December 13, 2011 at 9:00 a.m.;

AND WHEREAS on December 13, 2011, the Commission ordered that the matter be adjourned to a confidential pre-hearing conference to be held on January 30, 2012 at 2:00 p.m.;

AND WHEREAS on January 30, 2012, counsel for Staff and the Respondent appeared before the Commission for a pre-hearing conference and the Commission advised counsel for Staff and the Respondent that it would be necessary to postpone the hearing on the merits of this matter until the fall of 2012;

AND WHEREAS on January 30, 2012, the Commission ordered that the hearing on the merits originally scheduled to begin on April 2, 2012 be adjourned to a date in the fall of 2012 to be set by the Secretary's Office in consultation with the parties;

AND WHEREAS on February 17, 2012, the Commission ordered that the hearing on the merits of this matter shall commence on November 21, 2012 at 10:00 a.m. and shall continue on November 22, 23, 26, 27, 28, 29 and 30 and December 3, 5, 6, 7, 10, 11, 12, 13 and 14, 2012, each day commencing at 10:00 a.m.;

AND WHEREAS on October 19, 2012, the Commission advised Staff and the Respondent that the Commission was unable to hold the hearing as originally scheduled on November 21, 22, 23, 26, 27, 28, 29 and 30 and December 3, 5, 6, 7, 10, 11, 12, 13 and 14, 2012;

AND WHEREAS on December 21, 2012, the Commission ordered that the dates set for the hearing on the merits of this matter which had been scheduled for November 21, 22, 23, 26, 27, 28, 29 and 30 and December 3, 5, 6, 7, 10, 11, 12, 13 and 14, 2012 be vacated and that the hearing on the merits shall commence on March 25, 2013 at 10:00 a.m. and shall continue thereafter on March 27 and 28, April 8, 10, 11, 12, 17 and 19, May 13, 14, 15, 16, 17 and 22, and June 24, 25, 26, 27 and 28, 2013;

AND WHEREAS on March 15, 2013, the Commission ordered that the dates of March 25, 27 and 28, 2013 scheduled for the hearing on the merits of this matter be vacated and that the hearing on the merits shall commence on April 8, 2013 at 1:00 p.m. and shall continue thereafter on April 10, 11, 12, 17 and 19, May 13, 14, 15, 16, 17 and 22, and June 24, 25, 26, 27 and 28, 2013 commencing each day at 10 a.m.;

AND WHEREAS on March 25, 2013, the Commission issued a Notice of Hearing indicating that a hearing would be held on March 27, 2013 for the Commission to consider whether it is in the public interest to approve a Settlement Agreement between Staff and the Respondent;

AND WHEREAS on March 27, 2013, the Commission approved the aforementioned Settlement Agreement between 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 the dates of April 8, 10, 11, 12, 17 and 19, May 13, 14, 15, 16, 17 and 22, and June 24, 25, 26, 27 and 28, 2013 scheduled for the hearing on the merits of this matter shall be vacated.

DATED at Toronto this 27th day of March, 2013.

"James D. Carnwath"

2.2.9 HEIR Home Equity Investment Rewards Inc. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO;
PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.;
THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUITS INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
AND ARCHIBALD ROBERTSON

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on March 29, 2011, 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") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of HEIR Home Equity Investment Rewards Inc. ("HEIR"), FFI First Fruits Investments Inc. ("FFI"), Wealth Building Mortgages Inc. ("Wealth Building"), and Archibald Robertson ("Robertson") (collectively the "HEIR Respondents") and others. 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 March 29, 2011 and amended February 14, 2012;

AND WHEREAS the HEIR Respondents entered into a Settlement Agreement with Staff of the Commission dated March 22, 2013 (the "Settlement Agreement") in which the HEIR Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 29, 2011, subject to the approval of the Commission;

AND WHEREAS on March 25, 2013 , 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 HEIR Respondents;

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

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. Robertson shall pay to the Commission:

   (a) an administrative penalty in the amount of $350,000, for his failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act; and

   (b) the amount of $150,000, representing a portion of Staff's costs in this matter;

3. HEIR, FFI and Wealth Building shall pay to the Commission an administrative penalty in the aggregate amount of $1,000,000 (jointly and severally), for their failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

4. Pursuant to paragraph 6 of subsection 127(1) of the Act, the HEIR Respondents shall be reprimanded;

5. Pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by the HEIR Respondents shall cease permanently from the date of this Order;

6. Pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by the HEIR Respondents shall be prohibited permanently from the date of this Order;

7. Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the HEIR Respondents permanently from the date of this Order;

8. Pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Robertson shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph 9 below);

9. Pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Robertson shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager with the exception that Robertson is permitted to act or continue to act as a director and officer of any corporation through which he carries on business, so long as he, his spouse, and/or his immediate family are the only holders of the securities of the corporation;

10. Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Robertson shall be permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

11. As an exception to the provisions of paragraphs 5, 6, and 7, Robertson is permitted to: (1) trade on his own behalf in his accounts, and (2) acquire securities on his own behalf in his accounts, provided the schedule for payment set out in paragraph 12 below is followed. In the event that Robertson does not pay in accordance with the timelines indicated in paragraph 12 below, this exception shall be suspended until such time as those payments are made in full.

12. In regard to the payments ordered above in paragraph 2, Robertson shall personally make payments as follows:

   (a) $10,000.00 by certified cheque or bank draft when the Commission approves this Settlement Agreement;

   (b) a further $100,000 payable by cheque within one (1) year of the date of this Order;

   (c) a further $150,000 payable by cheque within 30 months of the date of this Order; and

   (d) the balance of $240,000 payable by cheque within four (4) years of the date of this Order.

13. Notwithstanding the payment plan set out in paragraph 12, in the event that Robertson fails to comply with the terms of the Settlement Agreement and his undertaking attached as Schedule "B", the amount set out in paragraph 2 is payable and enforceable immediately, along with postjudgment interest from the date of this Order in accordance with section 129 of the *Courts of Justice Act,* R.S.O. 1990 c. C-43 as amended.

DATED at Toronto this 28th day of March, 2013.

"Christopher Portner"

2.2.10 Rejean Desrosiers – 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
REJEAN DESROSIERS

ORDER
(Subsections 127 and 127.1)

WHEREAS on March 27, 2013, 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"), issued a Notice of Hearing (the "Notice of Hearing") in respect of Rejean DesRosier ("DesRosiers");

AND WHEREAS DesRosiers entered into a settlement agreement with staff of the Commission ("Staff") dated March 26, 2013 (the "Settlement Agreement") in which DesRosiers agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS in the Settlement Agreement, DesRosiers admitted to unregistered trading in securities of ZipZoom Canada Inc. and in securities of ZipZoom Horizons Inc. (the "ZipZoom Horizons Securities"), and distributing these securities where no preliminary prospectus and prospectus in respect of such securities had been filed and receipts issued by the Director;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and Statement of Allegations of Staff of the Commission dated March 27, 2013, and upon hearing submissions from counsel for DesRosiers and from Staff of the Commission;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by DesRosiers shall cease for a period of 7 years from the date of this order;

(c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by DesRosiers is prohibited for a period of 7 years from the date of this order;

(d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions

contained in Ontario securities law do not apply to DesRosiers for a period of 7 years from the date of this order;

(e) pursuant to paragraph 10 of subsection 127(1) of the Act, DesRosiers shall disgorge the amount of $803,400 obtained as a result of his non-compliance with Ontario securities law. The amount of $803,400 disgorged represents full disgorgement to all existing investors in ZipZoom Horizons Securities. Once Staff have received satisfactory confirmation that all investors in ZipZoom Horizons Securities have been fully repaid, then the trading, acquisition and exemption bans of subparagraphs (b), (c) and (d) above shall be reduced to 2 years from the date of Staff's written acceptance of the confirmation that investors have been fully repaid;

(f) pursuant to paragraphs 7, 8.1 and 8.3 respectively of subsection 127(1) of the Act, DesRosiers shall resign any positions he holds as a director or officer of any reporting issuer, registrant or investment fund manager;

(g) pursuant to paragraphs 8, 8.2 and 8.4 respectively of subsection 127(1) of the Act, DesRosiers is prohibited for a period of 5 years from the date of this order from becoming or acting as a director or officer of any reporting issuer, registrant, or investment fund manager;

(h) pursuant to paragraph 8.5 of subsection 127(1) of the Act, DesRosiers is prohibited for a period of 5 years from the date of this order from becoming or acting as a registrant, investment fund manager or promoter;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, DesRosiers shall pay to the Commission an administrative penalty in the amount of $25,000 for his failure to comply with Ontario securities law, payable upon satisfaction of the disgorgement provision in subparagraph (e) above. If the disgorgement provision in subparagraph (e) above is fully satisfied within 7 years of the date of approval of the Settlement Agreement, then the administrative penalty shall be deemed to have been paid in full; and

(j) pursuant to subsection 127.1 of the Act, DesRosiers shall pay to the Commission costs of the investigation and hearing in the amount of $14,691.25.

DATED AT TORONTO this 28th day of March, 2013.

"James D. Carnwath"

2.2.11 Aurelio Baglione 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
AURELIO BAGLIONE, WINCHESTER FINANCIAL CORPORATION,
RALEIGH MANAGEMENT AND LEASING CORPORATION, RUNDLE PROPERTIES CORPORATION,
DUNDAS & WELLINGTON INVESTMENT CORPORATION, PARRY SOUND MALL INVESTMENT CORPORATION,
KIRKLAND LAKE MALL INVESTMENT CORPORATION, CHAMBERLAND STREET INVESTMENT CORPORATION,
GATEWAY RETAIL CENTER LIMITED PARTNERSHIP, GATEWAY CENTER GENERAL PARTNER INC.,
18TH-PAULINA LIMITED PARTNERSHIP, 18TH-PAULINA GENERAL PARTNER INC., MHG HOLDINGS LIMITED,
CHELMSFORD/DUNNVILLE INVESTMENT CORPORATION, ESPANOLA MALL INC., 1096966 ONTARIO LTD.,
56-62 POND STREET INC., 169 DUFFERIN STREET INC., 1426430 ONTARIO INC., 274 DUNDAS STREET INC.,
833 UPPER JAMES STREET INC., 1855 LASALLE BOULEVARD INC., PARRY SOUND MALL INC.,
KIRKLAND LAKE MALL INC., 2620 CHAMBERLAND STREET INC., 1732577 ONTARIO INC.,
HURON AND SUNCOAST PLAZA INC., 80 COURTHOUSE SQUARE INC., 1729319 ONTARIO LTD.,
CHESTNUT MANOR INC., THE WINCHESTER LEASING TRUST, THE WINCHESTER LEASING GROUP INC.,
THE WINCHESTER CAPITAL TRUST, WINCHESTER CAPITAL CORPORATION,
WINCHESTER SECURITIES CORPORATION AND THE WINCHESTER REAL ESTATE INVESTMENT TRUST LTD.

ORDER
(Sections 127(1) and 127.1 of the Act)

WHEREAS on March 27, 2013, 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 Aurelio Baglione, Winchester Financial Corporation, Raleigh Management and Leasing Corporation, Rundle Properties Corporation, Dundas & Wellington Investment Corporation, Parry Sound Mall Investment Corporation, Kirkland Lake Mall Investment Corporation, Chamberland Street Investment Corporation, Gateway Retail Center Limited Partnership, Gateway Center General Partner Inc., 18th-Paulina Limited Partnership, 18th-Paulina General Partner Inc., MHG Holdings Limited, Chelmsford/Dunnville Investment Corporation, Espanola Mall Inc., 1096966 Ontario Ltd., 56-62 Pond Street Inc., 169 Dufferin Street Inc., 1426430 Ontario Inc., 274 Dundas Street Inc., 833 Upper James Street Inc., 1855 LaSalle Boulevard Inc., Parry Sound Mall Inc., Kirkland Lake Mall Inc., 2620 Chamberland Street Inc., 1732577 Ontario Inc., Huron and Suncoast Plaza Inc., 80 Courthouse Square Inc., 1729319 Ontario Ltd., Chestnut Manor Inc., The Winchester Leasing Trust, The Winchester Leasing Group Inc., The Winchester Capital Trust, Winchester Capital Corporation, Winchester Securities Corporation and The Winchester Real Estate Investment Trust Ltd. (collectively, the "Respondents");

AND WHEREAS the Respondents and Staff of the Commission ("Staff") entered into a settlement agreement dated March 27, 2013 (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated March 27, 2013, subject to the approval of the Commission;

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

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

IT IS ORDERED

1. The Settlement Agreement is approved;

2. The Respondents shall pay $50,000 on a joint and several basis, representing a portion of Staff's costs in this matter, pursuant to Section 127.1 of the Act;

3. The Respondents shall cease all trading activity until Winchester Securities Corporation is registered with the Commission or the Respondents retain another entity registered with the Commission, pursuant to paragraph (2) of subsection 127(1) of the Act; and

4. The Respondents are reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act.

DATED at Toronto this 28th day of March, 2013.

"Christopher Portner"

2.2.12 Quadrexx Asset Management Inc. et al. – ss. 127(1), (7) and (8)

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

AND

IN THE MATTER OF
QUADREXX ASSET MANAGEMENT INC.,
QUADREXX SECURED ASSETS INC.,
OFFSHORE OIL VESSEL SUPPLY SERVICES LP,
QUIBIK INCOME FUND
AND QUIBIK OPPORTUNITIES FUND

ORDER
(Subsections 127(1), (7) and (8) of the Act)

WHEREAS on February 6, 2013, the Ontario Securities Commission (the "Commission") issued a temporary order (the "Temporary Order") pursuant to subsections 127(1) and (5) of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the "Act") with respect to Quadrexx Asset Management Inc. ("Quadrexx") and with respect to Quadrexx Secured Assets Inc. ("QSA"), Offshore Oil Vessel Supply Services LP ("OOVSS"), Quibik Income Fund ("QIF") and Quibik Opportunity Fund ("QOF"), (collectively, the "Quadrexx Related Securities") ordering that:

1. Pursuant to paragraph 2 of subsection 127(1) of the Act that all trading in the securities of Quadrexx and Quadrexx Related Securities shall cease;

2. Pursuant to paragraph 1 of subsection 127(1) of the Act that the following terms and conditions apply to the registration of Quadrexx as an exempt market dealer ("EMD"):

    a) Quadrexx shall be entitled to trade only in securities that are not Quadrexx and Quadrexx Related Securities;

    b) before trading with or on behalf of any client after the date hereof, Quadrexx and any dealing representative shall (i) advise such client that Quadrexx has a working capital deficiency as at December 31, 2012, and (ii) deliver a copy of this Order to such client; and

    c) Quadrexx and any dealing representatives shall not accept any new clients or open any new client accounts of any kind;

3. Pursuant to paragraph 1 of subsection 127(1) of the Act that the following terms apply to the registration of Quadrexx as a portfolio manager ("PM") and as an investment fund manager ("IFM"):

    a) Quadrexx's activities as a portfolio manager and investment fund manager shall be applied exclusively to the Managed Accounts and to the Quadrexx Funds; and

    b) Quadrexx shall not accept any new clients or open any new client accounts of any kind; and

4. Pursuant to subsection 127(6) of the Act that the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on February 6, 2013, Staff filed the affidavit of Yvonne Lo sworn February 1, 2013 and the affidavit of Susan Pawelek sworn February 1, 2013 in support of the Temporary Order and made oral submissions in support of the Temporary Order;

AND WHEREAS on February 6, 2013, counsel for the Respondents filed the affidavit of Ken Thomson, president of Universal Financial Corp. ("Universal") sworn February 6, 2013 and made oral submissions opposing Staff's request for the Temporary Order;

AND WHEREAS on February 6, 2013, Ken Thomson advised the Commission that Universal had signed a Letter of Intent ("LOI") dated February 6, 2013 with Quadrexx under which the Quadrexx's assets would be purchased in exchange for the assumption of Quadrexx's senior debentures in the principal amount of $900,000;

AND WHEREAS on February 16, 2013, Quadrexx delivered to Staff an updated Form 31-103F1 – Calculation of Excess Working Capital which indicated that Quadrexx had a working capital deficiency of $852,617 as at January 31, 2013;

AND WHEREAS on February 19, 2013, Ken Thomson advised the Commission that it is unlikely that Universal will proceed with the transaction contemplated in the LOI dated February 6, 2013;

AND WHEREAS on February 19, 2013, counsel for the Respondents advised the Commission that the Respondents are not opposed to the suspension of the registration of Quadrexx as an EMD and requested fourteen days before the suspension of Quadrexx as a PM and as an IFM in order to deal with the transfer of the managed accounts for which Quadrexx is the PM to another registrant and to consider options for the Quadrexx Related Securities which are currently subject to the Temporary Order;

AND WHEREAS on February 19, 2013, Staff filed the affidavit of Michael Ho sworn February 18, 2013 updating the Commission on Quadrexx's current working capital deficiency and providing details on information received from Quadrexx and Ken Thomson;

AND WHEREAS on February 19, 2013, the Commission ordered:

1. the registration of Quadrexx as an EMD is suspended immediately;

2. the portion of the Temporary Order attaching terms and conditions to the registration of Quadrexx as a PM and as an IFM is extended to March 7, 2013;

3. the portion of the Temporary Order ordering all trading to cease in the securities of Quadrexx and Quadrexx Related Securities is extended to March 7, 2013;

4. notice of the ongoing Commission proceeding, the two Commission orders, and the status of the clients' accounts be sent to all Quadrexx clients; and

5. the hearing is adjourned to March 6, 2013 at 10:00 a.m.;

AND WHEREAS on March 1, 2013, John Ormston of Ormston List Frawley LLP served and filed a Notice of Change of Solicitors replacing Blake, Cassels & Graydon LLP as counsel of record on behalf of the Respondents;

AND WHEREAS on March 4, 2013, Quadrexx provided notice of these proceedings to its EMD and PM clients in a form approved by Staff;

AND WHEREAS on March 6, 2013, Staff filed the affidavit of Oriole Burton sworn March 4, 2013 updating the Commission on the third LOI between Quadrexx and Universal dated February 26, 2013 and information received from Legacy Investment Management Inc. ("Legacy") on the proposal to transfer Quadrexx's assets to Legacy;

AND WHEREAS on March 5, 2013, Ken Thomson advised Staff that Legacy had withdrawn from the transaction proposed in the LOI dated February 26, 2013;

AND WHEREAS on March 7, 2013, the Commission ordered:

1. the portion of the Temporary Order attaching terms and conditions to the registration of Quadrexx as a PM and as a IFM is extended to March 29, 2013;

2. the portion of the Temporary Order ordering all trading in the securities of Quadrexx and Quadrexx Related Securities is extended to March 29, 2013;

3. the name of QOF in the Temporary Order be changed to "Quibik Opportunities Fund"; and

4. the hearing is adjourned to March 28, 2013 at 2:00 p.m.;

AND WHEREAS on March 28, 2013, the Commission was advised by the Respondents that they had terminated their retainer with Ormston List Frawley LLP, and the Commission, on motion by Ormston List Frawley LLP, ordered Ormston List Frawley LLP removed as counsel of record for the Respondents;

AND WHEREAS on March 28, 2013, Staff filed: (i) Quaddrexx's proposal to appoint a Receiver for Quadrexx and QSA; (ii) Quadrexx's plans to wind up QSA and OOVSS; (iii) Quadrexx's plan to transfer Quadrexx's Managed Accounts, QIF and

QOF to Matco Financial Inc.; and (iv) Quadrexx's plan to appoint Robson Capital Management Inc. as the new PM and IFM of Diversified Assets LP and Property Values Income Fund Common Shares LP;

AND WHEREAS Staff has requested that the Temporary Order remain in place until: (i) the section 11.9 application filed by Matco Financial Inc. seeking Staff's approval to transfer the Managed Accounts, QIF and QOF to Matco Financial Inc. is reviewed by Staff; and (ii) further information has been provided to Staff on the distributions to be paid to investors as a result of the wind-ups of Quadrexx, OOVSS and QSA;

AND WHEREAS it appears to the Commission that Quadrexx has and will continue to have a capital deficient contrary to subsection 12.1(2) of NI 31-103 and may have engaged in conduct that is contrary to the Act;

AND WHEREAS Staff has advised that its investigation of Quadrexx is ongoing;

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

IT IS HEREBY ORDERED pursuant to subsection 127(7) of the Act that the portion of the Temporary Order issued under paragraph 1 of subsection 127(1) attaching terms and conditions to the registration of Quadrexx as a PM and as an IFM is extended to May 16, 2013;

IT IS FURTHER ORDERED pursuant to subsection 127(8) of the Act that the portion of the Temporary Order issued under paragraph 2 of subsection 127(1) that ordered all trading to cease in the securities of Quadrexx and Quadrexx Related Securities is extended to May 16, 2013;

IT IS FURTHER ORDERED that the hearing to: (i) receive an update on the wind-ups of Quadrexx, OOVSS and QSA and the possible transfer of the Managed Accounts, QIF and QOF to Matco Financial Inc.; (ii) consider whether to suspend Quadrexx's registrations as a PM and/or as an IFM; and (iii) consider whether to vary any of the terms of the Temporary Order, will proceed on May 15, 2013 at 10:00 a.m.

DATED at Toronto this 28th day of March, 2013.

"James E. A. Turner"

2.2.13 HEIR Home Equity Investment Rewards Inc. 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
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS; MARCO CARUSO;
PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.;
THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

ORDER
(Sections 127(1) and 127.1)

WHEREAS on March 29, 2011, 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") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC (together the "Canyon Entities"), Brent Borland ("Borland"), Wayne D. Robbins ("Robbins"), Marco Caruso ("Caruso"), the Placencia Estates Development LLC also referred to as Placencia Estates Development, Ltd., Copal Resort Development Group, LLC, Rendezvous Island, Ltd., The Placencia Marina, Ltd., and The Placencia Hotel and Residences Ltd. (all collectively the "Canyon Respondents") and others. 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 March 29, 2011 and amended February 14, 2012;

AND WHEREAS the Canyon Respondents entered into a Settlement Agreement with Staff of the Commission dated March 22, 2013 (the "Settlement Agreement") in which the Canyon Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS on March 25, 2013, 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 Canyon Respondents;

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

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) trading in any securities by any of the Canyon Respondents shall cease permanently from the date of this Order pursuant to paragraph 2 of subsection 127(1);

(c) the acquisition of any securities by any of the Canyon Respondents shall be prohibited permanently from the date of this Order pursuant to paragraph 2.1 of subsection 127(1);

(d) any exemptions contained in Ontario securities law do not apply to any of the Canyon Respondents permanently from the date of this Order pursuant to paragraph 3 of subsection 127(1);

(e) Borland, Robbins and Caruso shall resign all positions that any of them hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

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

(g) each of Caruso and Borland shall be permanently prohibited from the date of this Order, pursuant to paragraphs 8.2 and 8.4 of subsection 127(1) of the Act, from becoming or acting as a director or officer of any registrant or investment fund manager;

(h) each of Borland and Caruso shall be prohibited from the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act, for a period of five (5) years from the date of the Order attached as Schedule "A" from becoming or acting as a director or officer of any issuer; and

(i) each of the Canyon Respondents shall be permanently prohibited from the date of this Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act, from becoming or acting as a registrant, as an investment fund manager or as a promoter.

(j) each of the Canyon Respondents shall be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(k) the Canyon Respondents shall immediately pay to the Commission:

i. an administrative penalty in the aggregate amount of C$350,000 (jointly and severally), for their failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act; and

ii. the aggregate amount of C$150,000 on a joint and several basis, representing a portion of Staff's costs in this matter;

(l) the Canyon Respondents shall pay to the Commission (jointly and severally) by way of disgorgement within 60 days of the date of this Order, the sum of C$1,671,066, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act, which amount shall be reduced by the amounts paid in cash by the Canyon Respondents to the remaining Ontario investors who invested in Canyon securities in Belize and still hold those securities as of March 15, 2013, provided that the Canyon Respondents have provided accurate information to Staff along with satisfactory supporting evidence of such payments to those investors; and

(m) Borland, Robbins, Canyon Acquisitions, LLC and Canyon Acquisitions International, LLC shall pay to the Commission (jointly and severally) by way of disgorgement the sum of C$1,519,658, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act, which amount shall be payable in one year from the date of this Order, and shall be reduced by the amounts paid in cash by the Canyon Respondents to the remaining Ontario investors holding Dominican Republic Canyon securities as of March 15, 2013, provided that Borland, Robbins and the Canyon Entities have provided accurate information to Staff along with satisfactory supporting evidence of such payments to those investors.

DATED AT TORONTO this 28th day of March, 2013.

"Christopher Portner"

2.2.14 North Halton Golf & Country Club – s. 74(1)

Headnote

Paragraph 25(1)(a), section 53, and subsection 74(1) of the Act – certain sales, transfers, and issuances of Class G Common Shares of issuer not subject to prospectus requirements of the Act, subject to conditions

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c.S.5, as am. ss. 25(1)(a), 53, and 74(1).

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

AND

IN THE MATTER OF
NORTH HALTON GOLF & COUNTRY CLUB

ORDER
(Subsection 74(1))

UPON the application (the Application) of North Halton Golf & Country Club Limited (the **Club**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 74(1) of the Act that the prospectus requirements of section 53 of the Act (the **Prospectus Requirements**) shall not apply to certain trades in securities of the Club, as described below;

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

AND UPON the Club having represented to the Commission as follows:

Background

1. The Club was incorporated as a corporation with share capital under the *Corporations Act* (Ontario) (the **OCA**) in 1954 and was continued as a corporation under the *Canada Business Corporations Act* (the **CBCA**) on June 6, 2008 (the **Continuance**). The Club amalgamated with NH Equity Corp. in 2011. The Club is not a "private company" within the meaning of the Act and is not a "private issuer" within the meaning of National Instrument 45-106 (**NI 45-106**). The Club is not, and does not intend to become, a reporting issuer under the Act or under the securities legislation of any other Canadian jurisdiction. The shares of the Club are not traded on any stock exchange. The Club is a "for profit" corporation.

2. On February 22, 2008, the Commission issued an Order under Section 74(1) of the Act exempting the Club from the Prospectus Requirements subject to certain conditions (the **Current Orde**r).

3. The Club wishes to amend its By-law to provide for, among other things, membership incentives including trial golf memberships and the ability to pay for Class G Shares over time. Certain of the proposed amendments to the By-law are inconsistent with the Current Order.

4. The Club has applied to revoke and replace the Current Order with this Order.

Capital

5. The authorized share capital of the Club currently consists of:

   (a) 375 Class A Common Shares. The holders of Class A Common Shares are entitled to receive notice of and to attend all meetings of the shareholders of the Club and are entitled to one vote for each Class A Common Share held. On a winding up or liquidation of the Club, each Class A Common Share will be immediately converted into one Class G Common Share and 10 Class X Preference Shares. Class A Common Shares are not transferable. In order to transfer a Class A Common Share, the holder of a Class A Common Share will be required to exchange that Class A Common Share for one Class G Common Share and 10 Class X Preference Shares;

   (b) 625 Class G Common Shares which rank pari passu with the Class A Common Shares as to the payment of dividends and the right to vote at meetings of the shareholders of the Club. The Class A Common Shares and

the Class G Common Shares represent equity ownership of the Club and, upon conversion of all of the Class A Common Shares, the Class G Common Shares will represent the entire equity ownership of the Club;

(c) 3750 Class X Preference Shares which are non-voting and non-transferable, bear a 4% annual cumulative dividend and are redeemable by the Corporation and retractable by the holder at $1,000 per Share. The redemption right shall be exercisable immediately. The retraction right will be exercisable at any time after June 13, 2013.

The Club does not intend to create additional Class A Common Shares.

6. Each holder of a Class A common Share is entitled (but not required) to exchange (the **Class A Exchange Right**) that Class A Common Share for one Class G Common Share and 10 Class X Preference Shares. Upon such exchange, the Class A Common Share will be cancelled.

7. Under the Current Order new adult golf-playing members of the Club are required to purchase one Class G Common Share. Currently the consideration payable for each Class G Share is $22,000. Existing holders of Class G Common Shares who hold Class X Preference Shares who wish to purchase a Class G Common Share for a "Family Golf Member" (i.e., a spouse, a common law spouse, a child or a grandchild, including a spouse of the child or grandchild, that is or will become, upon issue of the Class G Common Share, a golf member that pays annual golf fees) (the **Family Membership Subscription Credit**) are entitled to surrender up to 10 of their Class X Preference Shares to the Club in partial consideration for such purchase and will receive a credit of up to $10,000 ($1,000 per Class X Preference Share surrendered) against the amount payable in respect of such Class G Common Share. Any Class X Preference Shares so surrendered will be cancelled.

8. Purchases of Class G Common Shares by new members may be made: (a) from the Club (**Treasury Issue**); or (b) from another member or non-member shareholder (the **Inter-Shareholder Transfer**), subject to the approval of the Board of Directors of the Club. The Board of Directors of the Club will establish policies and procedures governing the issue/transfer of Class G Common shares to new members. The first 150 Class G Common Shares sold to new members, following the continuance of the Club under the CBCA were issued by the Club.

Trading in securities of the Club

9. The Club has considered whether, under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and the Legislation, it could be considered to be engaged in or holding itself out as engaging in the business of trading in securities and therefore required to register as a dealer, rely on another exemption from the dealer registration requirement or seek exemptive relief from the dealer registration requirement. In light of the particular facts and circumstances of the Club, and having considered the guidance in section 1.3 of the Companion Policy to NI 31-103, the Club has concluded that it should not be considered to be engaged in registrable activities and therefore does not require relief from the registration requirement of the Legislation.

Changes to the By-law

10. The changes to the Club's existing by-law contemplated by the Amended By-law are as follows:

(a) Certain changes to the procedures for the election of directors, specifically:

i. to provide that of the three (of nine) directors elected for three year terms, the President or Past-President may be elected for up to a third three-year term (all other directors are limited to two three-year terms);

ii. to provide for the creation of a nominating committee comprised of the Chair of the Governance Committee and two non-director shareholders and to define the duties of such committee;

iii. to provide that any two shareholders may nominate another shareholder for any of the three year director positions;

(b) Certain changes to membership categories and rules, specifically;

i. elimination of the category of tennis membership;

ii. to provide for the creation of a category of "trial golf member" to allow prospective new golf members to have a trial membership at the Club for a period of up to 15 months by paying the annual financial obligations of an existing member and a premium assessed by the Board (the **Trial Membership**);

iii. a waiver or reduction of annual golf dues for a one year period for new shareholders who subscribe for a Class G Share and pay the subscription price in full at the time of subscription (so long as the total number of golf members is then below 575, or such number as may be adjusted from time to time by a Special Resolution of the Shareholders);

iv. to provide for spousal golf trial membership rights for a limited three year period for existing shareholders or new shareholders who subscribe for a Class G Share and pay the subscription price in full at the time of the subscription (so long as the total number of golf members is then below 575, or such number as may be adjusted from time to time by a Special Resolution of the Shareholders);

v. to provide for an increase in the "intermediate" age range from 19 to 36 years of age (as opposed to 19 to 29 years of age). This age range will also be adjusted from time to time as may be determined by a special resolution of the shareholders;

vi. to include a restriction that would preclude the sale of Class G Shares by current shareholders directly to prospective members who have enrolled as members on a trial basis;

vii. to implement a change in policy of sales of Class G Shares so that shares are issued to new members by the Club more frequently than they are transferred from other members than is presently the case. In particular, a Class G Share will be sold from treasury for every second share sold rather than every third share sold;

viii. to restrict the aggregate number of trial golf members and persons who have subscribed for a Class G Share of the Club that pay their subscription price for such share over a period of time;

ix. to provide that persons who have subscribed for a Class G Share of the corporation may arrange to pay the subscription price for such share over a period of time not to exceed seven years subject to such terms and conditions as may be established by the Board (the Subscription Plan). Class G Shares will not be issued to a subscriber until the subscription price is paid in full. However, such subscriber shall be entitled to play golf at the Club during the subscription period;

x. to provide that the Board, with the prior approval of 60% of the shareholders voting on the question, may provide incentives to new golf members, including waiver or reduction of golf dues for a one year period;

xi. to shorten the period within which membership arrears must be paid from 30 to 10 days after due notice in writing.

11. The Club believes that the requested relief is necessary as:

(a) (i) the trades outlined in paragraphs (a) through (c) below will not be made to "accredited" investors (as such term is defined in NI 45-106) in every case where such a trade is made; (ii) the Club is not entitled to rely on the exemption provided in Paragraph 2.38 of NI 45-106 and it does not appear that any of the other exemptions set forth in NI 45-106 will be available in respect of such trades;

(b) the ability of the Club to sell Class G Common Shares to new and existing golf members including sales pursuant to the Family Membership Subscription Credit and the Subscription Plan is essential to the continued existence of the Club;

(c) the ability of the Club to provide incentives to potential members in the form of the Trial Membership and the Subscription Plan is essential to attracting new members; and

(d) under the Current Order all amendments to the Articles or By-laws of the Club must be approved by the Director.

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

IT IS HEREBY ORDERED, pursuant to subsection 74(1) of the Act, that the Prospectus Requirements shall not apply to:

(a) the issue of Class G Common Shares by the Club to new golf-playing members of the Club (including Class G Common Shares issued pursuant to the Family Member Subscription Credit and the Subscription Plan); and;

(b) the sale or transfer of Class G Common Shares to new golf-playing members of the Club or to non-shareholder golf members;

for so long as,

(c) each purchaser or transferee of Class G Common Shares under paragraph (a) or (b) is provided with

i. the By-Laws and Articles of the Club, and all amendments thereto;

ii. the most recent annual audited financial statements of the Club, and a copy of any subsequent interim financial statements;

iii. a copy of this decision; and

iv. a written statement to the effect that certain protections, rights and remedies provided by the Act, including statutory rights of rescission and damages, will be unavailable to that purchaser or transferee and that there are restrictions imposed on the disposition or transfer of the Class G Common Shares;

(d) in respect of a sale, transfer or issue under paragraph (a) or (b):

i. the sale, transfer, or issue is approved by the Board of Directors of the Club;

ii. in respect of a sale or transfer under paragraph (b), the Board of Directors of the Club only gives its approval under subparagraph (i) if it has determined that it is appropriate to approve such a sale or transfer in lieu of issuing new Class G Common Shares from Treasury of the Club,

iii. in respect of a sale or transfer under paragraph (b), the Club charges the transferring member (other than a selling or transferring member who acquired the Class G Common Share being sold or transferred pursuant to the Class A Exchange Right under the Continuance) a “transfer fee” equal to 20% of the then current price at which Class G Common Shares are being issued by the Club from Treasury in respect of any such sale or transfer, and

iv. the restrictions in subparagraphs (i), (ii) and (iii) are, at the time of the sale, transfer, or issue, contained in the conditions attached to the Class G Common Shares which form part of the Articles of the Club,

(e) the Club has not issued any securities from Treasury since the Continuance other than Class G Common Shares and Class X Preference Shares;

(f) the By-laws or Articles of the Club require that a new adult golf member of the Club (i) own a Class A Common Share or a Class G Common Share; or (ii) have agreed to subscribe for a Class G Common Share pursuant to the terms of a subscription plan that has been approved by the Director; or (iii) be a participant in a trial membership program, the terms of which program have been approved by the Director;

(g) the By-laws and Articles of the Club are not amended without notice to, and the consent of, the Director (as defined in the Act);

(h) the first trade of any Class G Common Shares purchased or acquired pursuant to paragraph (a) or (b) will be a distribution; and

(i) the amendment of the By-law in the manner described in representation 10 hereof is approved by the required shareholder vote.

Dated at Toronto this 1st day of March, 2013.

“Judith Robertson”
Commissioner
Ontario Securities Commission

“Edward P. Kerwin”
Commissioner
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 York Rio Resources Inc. et al. – s. 127

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

AND

IN THE MATTER OF
YORK RIO RESOURCES INC., BRILLIANTE BRASILCAN RESOURCES CORP.,
VICTOR YORK, ROBERT RUNIC, GEORGE SCHWARTZ, PETER ROBINSON,
ADAM SHERMAN, RYAN DEMCHUK, MATTHEW OLIVER, GORDON VALDE
AND SCOTT BASSINGDALE

REASONS AND DECISION
(Section 127 of the Act)

Hearing:	March 21, 22, 23, 24 and 28, 2011 April 5, 2011 May 2 and 3, 2011 June 6, 8, 9, 10, 13, 14, 15, 16 and 17, 2011 July 20, 21, 22, 26 and 27, 2011 August 3, 9, 11, 12, 19 and 22, 2011 September 21 and 28, 2011 November 1, 2011 December 19 and 21, 2011 December 25 and 27, 2011 (Written Submissions)		
Decision:	March 25, 2013		
Panel:	Vern Krishna, QC	–	Commissioner and Chair of the Panel
	Edward P. Kerwin	–	Commissioner
Appearances:	Hugh Craig Cameron Watson Carlo Rossi	–	For Staff of the Commission
	Victor York	–	Self-represented
	George Schwartz	–	Self-represented

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REASONS AND DECISION

I. INTRODUCTION

[1] This proceeding arises out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") dated March 2, 2010, in relation to a Statement of Allegations, also dated March 2, 2010, filed by Staff of the Commission ("**Staff**") against York Rio Resources Inc. ("**York Rio**"), Brilliante Brasilcan Resources Corp. ("**Brilliante**"), Victor York ("**York**"), Robert Runic ("**Runic**"), George Schwartz ("**Schwartz**"), Peter Robinson ("**Robinson**"), Adam Sherman ("**Sherman**"), Ryan Demchuk ("**Demchuk**"), Matthew Oliver ("**Oliver**"), Gordon Valde ("**Valde**") and Scott Bassingdale ("**Bassingdale**").

[2] On November 5, 2010, the Commission approved a settlement agreement between Staff and Robinson (*Re Robinson* (2010), 33 O.S.C.B. 10434). On June 6, 2011, the Commission approved a settlement agreement between Staff and Sherman (*Re Sherman* (2011), 34 O.S.C.B. 6560). York Rio, Brilliante, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale are referred to collectively in these reasons, as the "**Respondents**").

A. The Allegations

[3] Staff alleges that York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale (together, the "**York Rio Respondents**") engaged in the illegal distribution of York Rio securities that raised approximately $18 million from May 10, 2004 to October 21, 2008 (the "**Material Time**"). Staff alleges that the York Rio Respondents contravened subsections 25(1)(a) and 53(1) and section 126.1(b) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), contrary to the public interest. Staff alleges that York, Runic, Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act, contrary to the public interest. Staff also alleges that York, Runic and Schwartz, being directors and/or officers of York Rio, authorized, permitted or acquiesced in the contraventions of the Act by York Rio or its salespersons, representatives or agents, contrary to section 129.2 of the Act and contrary to the public interest.

[4] Staff alleges that Schwartz, by trading in York Rio securities, breached the Commission's temporary cease trade order made against him on May 1, 2006 in relation to another matter, *Re Euston Capital Corp. and Schwartz* (2006), 29 O.S.C.B. 3920, which was extended from time to time and remained in effect during the latter thirty months of the Material Time ("**Euston**" and the "**Euston Order**"), contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

[5] Staff alleges that Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale (together, the "**Brilliante Respondents**") engaged in the illegal distribution of Brilliante securities that raised approximately $150,000 from January 17, 2007 to October 21, 2008. Staff alleges that the Brilliante Respondents contravened subsections 25(1)(a) and 53(1) and section 126.1(b) of the Act, contrary to the public interest. Staff alleges that Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act, contrary to the public interest. Staff also alleges that York and Runic, being directors and/or officers of Brilliante, authorized, permitted or acquiesced in the contraventions of the Act by Brilliante or its salespersons, representatives or agents, contrary to section 129.2 of the Act and contrary to the public interest.

B. Temporary Orders

1. Temporary Cease Trade Orders

[6] As stated above, Schwartz was subject to the Euston Order, which, amongst other things, ordered him to cease trading in all securities, during the latter thirty months of the Material Time.

[7] On October 21, 2008, the Commission issued a temporary cease trade order that the trading of Brilliante securities shall cease and that Brilliante, York Rio, and their representatives, including Brian Aidelman ("**Aidelman**"), Jason Georgiadis ("**Georgiadis**"), Richard Taylor ("**Taylor**", later admitted to be an alias for Runic) and York shall not trade in any securities. On November 14, 2008, the order was amended to allow a personal RRSP trading carve-out for York, Aidelman, Georgiadis and Taylor. The order, as amended, was extended from time to time, and on October 15, 2010, it was extended until the completion of the York Rio hearing, subject to any further order by the Commission.

2. Freeze Orders

[8] Approximately $5 million worth of assets has been frozen by orders of the Commission and the British Columbia Securities Commission (the "**BCSC**").

[9] On October 21, 2008, pursuant to subsection 126(1) of the Act, the Commission issued freeze directions to financial institutions in relation to accounts allegedly associated with the proceeds of the sale of York Rio securities (the "**York Rio Proceeds**") and the proceeds of the sale of Brilliante securities (the "**Brilliante Proceeds**") (together, the "**Proceeds**"), including accounts in the name of Brilliante, Munket Capital Holdings Inc. ("**Munket**"), of which York is the sole director and signatory, and 2180353 Ontario Inc. ("**2180353**"), of which Georgiadis, who is York's nephew, is the sole director and signatory, and these

freeze directions have been continued by court order, pursuant to subsection 126(5) of the Act, from time to time. On January 21, 2009, the Commission issued a freeze direction in relation to an account in the name of Demchuk's mother, and that freeze direction was continued in respect of a specific amount, which was transferred to a separate account, on March 18, 2009, pending further court order.

[10] On July 7, 2009, pursuant to subsections 126(1) and (4) of the Act, the Commission ordered a Certificate of Direction to be registered on title of a certain property in Aurora that is allegedly associated with Runic's involvement in the sale of York Rio and Brilliante securities (the "**Aurora Property**"), and the Certificate of Direction has been continued from time to time.

[11] In early 2009, the BCSC issued several freeze orders, pursuant to section 151 of the *Securities Act* of British Columbia, relating to approximately $4 million of assets held by Robert Palkowski ("**Palkowski**") and Palkowski & Company Law Corporation ("**Palkowski Law**") and others, in accounts associated with York Rio, Brilliante, York, Runic, Superior Home Building Systems Inc. (formerly known as Anyphone Communications Inc. ("**Superior Home**" or "**Anyphone**"), British Holdings Corporation ("**British Holdings**"), NatWest Holding Company Inc. ("**NatWest**"), Wayne Koch ("**Koch**"), Koch & Associates or Koch, Roberts & Associates, Inc. ("**Koch Inc.**") and other entities which are allegedly associated with the Proceeds.

C. Pre-Hearing Motions

[12] Schwartz and York brought two motions prior to the commencement of the Merits Hearing. In December 2010, they moved for an order staying or adjourning this proceeding (the "**York Rio Proceeding**"), and a proceeding in relation to Uranium308 Resources Inc., Michael Friedman ("**Friedman**"), Schwartz, Robinson and Shafi Khan (the "**Uranium308 Proceeding**"), on the following grounds:

1. they claimed that there is a reasonable apprehension of bias due to (a) the Commission's multifunctional structure and (b) a separate panel of the Commission's approval of settlement agreements with other respondents in these matters, which contain agreed facts; and

2. they claimed that the Commission does not have jurisdiction to make an order against them pursuant to s. 127 of the Act because they are not participants in Ontario's capital markets.

[13] They requested an order:

(a) staying these proceedings; or, in the alternative;

(b) adjourning these matters to be heard before the Canadian Securities Tribunal, once it is in a position to adjudicate these proceedings; or, in the further alternative;

(c) appointing interim non-members to adjudicate these proceedings.

[14] Commissioner Carnwath dismissed the motion with reasons issued on December 15, 2010 (*Re Uranium308 Resources Inc. et al. and York Rio Resources Inc. et al.* (2010), 33 O.S.C.B. 12028) (the "**Stay Motion**" and the "**Stay Decision**").

[15] In February 2011, Schwartz and York moved for an adjournment of the merits hearings in the York Rio Proceeding and the Uranium308 Proceeding in order to allow Schwartz to appeal the Stay Decision to the Divisional Court (the "**Adjournment Motion**"). Commissioner Condon, as she then was, dismissed the Adjournment Motion with reasons issued on March 30, 2011 (*Re Uranium308 Resources Inc. et al. and York Rio Resources Inc. et al.* (2011), 34 O.S.C.B. 4097) (the "**Adjournment Decision**").

[16] On the first day of the Merits Hearing, Schwartz stated that he had abandoned his appeal of the Stay Decision.

[17] However, in his written closing submissions, Schwartz reiterated his motion for a stay of proceedings pending establishment of an independent tribunal, and York adopted his submissions on this point. In our view, the matter is *res judicata*, having been decided by Commissioner Carnwath in the Stay Decision, and we find no further need to address it in these reasons.

D. The Merits Hearing

[18] The Merits Hearing started on March 21, 2011 and continued for 33 days, ending on December 21, 2011. York and Schwartz attended and participated throughout the Merits Hearing. Schwartz was the only Respondent to testify. Oliver appeared on the first day, but stated, through counsel, that he would not participate in the Merits Hearing thereafter. Runic, Demchuk, Valde and Bassingdale did not appear or participate.

[19] Schwartz filed post-hearing written submissions on December 25 and 27, 2011 in relation to the Bias Motion.

E. Failure to attend the Merits Hearing

[20] Throughout the proceeding, Staff provided a number of Affidavits of Service as evidence that they served or attempted to serve each of the Respondents in accordance with the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") and the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "**Rules**").

[21] At the commencement of the Merits Hearing, Staff provided the Affidavit of Service of Charlene Rochman ("**Rochman**"), sworn March 21, 2011. At our request, Staff provided an additional Affidavit of Service of Rochman, sworn March 23, 2011. Staff also described its attempts to serve Runic and Bassingdale, as well as Demchuk and Valde, as set out in Affidavits of Service filed previously in the proceeding: Affidavits of Service of Kathleen McMillan, sworn April 9, 2010 and July 21, 2010, and an Affidavit of Service of Rochman, sworn January 6, 2011.

[22] Staff attempted to serve Runic at his parents' address, which was the address given on his driver's licence, which Staff obtained from the Ministry of Transportation, but his parents refused to accept service. Staff made numerous attempts to serve Runic at the Aurora Property, which is associated with him, and where Staff alleges that he resided at the time. Staff located Runic by April 5, 2011 (the sixth day of the Merits Hearing). Staff conducted a compelled examination of Runic, who was assisted by counsel, pursuant to section 13 of the Act, on April 20 and May 4, 2011. Runic was served with notice of the Merits Hearing through counsel, but did not appear or participate.

[23] Staff conducted a compelled examination of Demchuk, pursuant to section 13 of the Act, on December 16, 2008. On March 8, 2010, Staff personally served Demchuk at his workplace, which Demchuk had identified as his address for service, with the Notice of Hearing, the Statement of Allegations, the March 3, 2010 order, and a covering letter giving the date, time and location of the next appearance. Demchuk appeared before the Commission, representing himself, at the second appearance on April 12, 2010. He left his job shortly afterwards, and when Staff attempted to serve him at his parents' address, they were informed that he was travelling. Staff's subsequent attempts to serve him at his parents' address and the email address he had provided during his compelled examination were unsuccessful.

[24] Staff conducted a compelled examination of Valde, pursuant to section 13 of the Act, on January 13, 2009. Staff made several attempts to serve Valde at the address given on his driver's licence, which Staff obtained from the Ministry of Transportation. At his compelled examination, Valde confirmed this was his home address. Staff's attempts to serve Valde were unsuccessful.

[25] Staff made numerous unsuccessful attempts to serve Bassingdale at the address given on his driver's licence, which Staff obtained from the Ministry of Transportation. Staff was unable to locate Bassingdale for purposes of compelled examination and Bassingdale did not appear or participate in the Merits Hearing.

[26] Having reviewed the Affidavits of Service submitted by Staff, we were satisfied that Staff had made reasonable attempts to serve Runic, Demchuk, Valde and Bassingdale, in accordance with Rule 1.5. We note, as well, that the Notice of Hearing and Statement of Allegations, and all subsequent orders and decisions in this matter, have been posted on the Commission's website. We are prepared to validate service in these circumstances, in accordance with Rule 1.5.3(3).

[27] The Notice of Hearing included the caution that if any party failed to attend the hearing, the hearing would proceed in their absence and they would not be entitled to any further notice of the proceeding. Accordingly, pursuant to section 7 of the SPPA and Rule 7.1, we found that we were authorized to proceed with the hearing without further notice to Runic, Demchuk, Oliver, Valde and Bassingdale.

F. The Search Warrant Motions

[28] On October 21, 2008, Staff conducted a search of offices located at 1315 Finch Avenue, West, Suite 501, Toronto (the "**Finch Location**"), pursuant to a search warrant that was issued under section 158 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (the "**POA**") on October 16, 2008 (the "**Search Warrant**").

[29] In motions brought by Schwartz (on March 28, 2011) and York (on April 15, 2011), after the commencement of the Merits Hearing. Schwartz and York argued that the seizure of materials relating to York Rio (the "**York Rio Materials**") was not authorized by the Search Warrant, which authorized a search of the Premises for things and materials related to CD Capital Ltd., operating as Brilliante, York, Aidelman, Georgiadis and Taylor. The Search Warrant identified a long list of "things to be searched for" pertaining to Brilliante at the Premises. It was based on the Information to Obtain a Warrant ("**ITO**") prepared by Staff Investigator Wayne Vanderlaan ("**Vanderlaan**").

[30] The ITO did not identify things and materials pertaining to York Rio as "things to be searched for" at the Premises. Schwartz and York submitted that at the time Vanderlaan swore the ITO, he had reason to believe that things and materials

relating to York Rio would be found at the Premises but deliberately omitted this from the ITO. Therefore, Schwartz and York submitted that the seizure of York Rio Materials was illegal, unfair and contrary to the public interest. They requested an order terminating the Merits Hearing or alternatively, excluding the seized York Rio Materials from the evidence (the "**Search Warrant Motions**").

[31] We gave oral rulings and issued orders dismissing the Search Warrant Motions on April 5, 2011 ((2011), 34 O.S.C.B. 4109) (Schwartz) and on May 5, 2011 ((2011), 34 O.S.C.B. 5455) (York), and issued written reasons for our decisions on June 1, 2011 ((2011), 34 O.S.C.B. 6545) (the "**Search Warrant Decision**").

[32] The conduct of the Search Warrant Motions by Schwartz and York resulted in delays in the Merits Hearing.

[33] Although Schwartz brought his Search Warrant Motion some two and a half years after the Search Warrant was executed on October 28, 2008 and a year after Staff provided its initial disclosure, which included the Search Warrant and the ITO, in March 2010, he sought leave to bring the motion without notice, pursuant to Rule 3.8 (the "**Schwartz Motion**"). On March 29, 2011, we were advised that York wished to join the Schwartz Motion, but York withdrew this request the next day (March 30, 2011).

[34] Staff opposed the Schwartz Motion as untimely, amongst other things.

[35] Our ruling is described at paragraph 15 of the Search Warrant Decision, as follows:

> Because Schwartz was self-represented at the hearing, we waived the time limits set out in Rule 3.8, as permitted by Rule 1.6(2) of the Rules. Rather than refusing to hear the Schwartz Motion, as permitted by Rule 3.9 of the Rules, we adjourned the Merits Hearing to allow Schwartz and Staff to file and serve their respective materials pursuant to the Rules. We invited Staff to file and serve, by 5:00 p.m. on March 30, 2011, a Memorandum of Fact and Law addressing the question: "what is the effect (in terms of admissibility of evidence) of not including reference to York Rio in paragraph 1 of the Warrant, which reference was subsequently included in the related detention orders?" (the "**Question**"). We invited Schwartz to file and serve, by 3:30 p.m. on April 1, 2011, a Memorandum of Fact and Law addressing the Question. We set down April 5, 2011 for oral argument on the Question.

[36] On March 30, 2011, Staff filed and served a Memorandum of Fact and Law and a Brief of Authorities, and Schwartz filed and served a Memorandum of Fact and Law on April 1, 2011. On April 5, 2011, Staff and Schwartz gave oral submissions on the Schwartz Motion. York attended at the hearing on April 5, 2011, confirmed that he was not joining the motion and declined an opportunity to speak to it. We gave an oral ruling dismissing the Schwartz Motion on the same day, with reasons to follow.

[37] This was not the end of the matter, for reasons described at paragraphs 18-27 of the Search Warrant Decision. On April 15, 2011, ten days after we issued our order dismissing the Schwartz Motion, York filed and served a Notice of Motion seeking the same remedies as the Schwartz Motion and on very similar grounds (the "**York Motion**"). York provided a Memorandum of Fact and Law and stated that he would rely on Schwartz's motion materials. Staff objected on the basis, amongst other reasons, that the York Motion was untimely and was virtually identical to the Schwartz Motion, which had been dismissed. Our ruling is set out at paragraph 23 of the Search Warrant Motion, as follows:

> The York Motion is untimely, having been brought without advance notice after we had given York several opportunities to join the Schwartz Motion and after we gave our oral ruling in the Schwartz Motion. However, we decided to consider the York Motion, because York was self-represented at the hearing and in the interests of judicial economy.

[38] When the hearing resumed on May 2, 2011, York stated that he was not prepared to speak to the York Motion. "To ensure that York had an opportunity to prepare for and speak to the York Motion, we agreed to adjourn the York Motion until 10:30 a.m. on May 3, 2011." (Search Warrant Decision, paragraph 24)

[39] On May 3, 2011, York gave brief oral submissions. We gave him an opportunity to give evidence in support of the York Motion, but he declined. Staff relied on its written submissions. We dismissed the York Motion by order issued on May 5, 2011, with reasons to follow. The York Motion added nothing of substance to the Schwartz Motion.

[40] In the Search Warrant Decision, we found that: (i) Schwartz's rights were not engaged by the seizure of the York Rio Materials from the Finch Location and accordingly he lacked standing to bring the Schwartz Motion; (ii) there was no evidence to support the assertions by Schwartz and York that Staff's seizure of the York Rio Materials from the Finch Location was illegal or improper, or that Schwartz and York have been prejudiced or their rights have been infringed as a result of the seizure of the York Rio Materials; and (iii) there was no reason to stay the proceeding or exclude the York Rio Materials from the evidence on

the basis of fairness or the public interest. We concluded that it was in the public interest to continue the Merits Hearing and to admit the York Rio Materials into evidence.

G. The Exclusion of Evidence Motion

[41] On June 16, 2011 (day 16 of the Merits Hearing), Schwartz asked that a time and date be scheduled for the hearing of a motion to exclude from the evidence admitted at the Merits Hearing his compelled evidence and any other compelled evidence obtained by Staff in its investigation of him, and an order that the compelled evidence admitted at the Merits Hearing be sealed by the Commission, to ensure it is not disclosed to any police force (the "**Exclusion of Evidence Motion**"). York took no part in the Exclusion of Evidence Motion.

[42] After raising the issue on June 16, 2011, Schwartz did not pursue the Exclusion of Evidence Motion. When the Panel asked about it on July 20, 2011, Schwartz said he could not proceed until he had finished cross-examining Vanderlaan. Vanderlaan's testimony, including cross-examination on whether the investigation was administrative or criminal in nature, was completed on July 27, 2011.

[43] On August 10, 2011, Schwartz filed and served another request that a time and date be scheduled for the hearing of the Motion. At the start of the hearing on August 11, 2011, we scheduled August 22, 2011 for the hearing of the Exclusion of Evidence Motion and directed Schwartz to file his Notice of Motion by Friday, August 12, 2011, in accordance with Rule 3.2. On the morning of August 12, 2011, Schwartz advised that he would not be able to file and serve his Notice of Motion that day, but could do so by Monday, August 15, 2011. As Schwartz and Staff agreed that the requested extension would not require an adjournment of the August 22, 2011 motion hearing, we granted Schwartz's request, in accordance with Rule 1.6(2).

[44] We heard the submissions of Schwartz and Staff on the Exclusion of Evidence Motion on August 22, 2011 and November 1, 2011.

[45] When the Merits Hearing resumed on September 21, 2011, we invited Schwartz and Staff to provide additional written submissions, in respect of the Exclusion of Evidence Motion, on *R. v. Wilder* (2001), 53 O.R. (3d) 519, a decision of the Ontario Court of Appeal ("***Wilder***"), by September 28, 2011 (Schwartz) and September 30, 2011 (Staff). Schwartz filed and served his supplementary submissions in respect of the *Wilder* decision on September 27, 2011. When the Merits Hearing resumed on September 28, 2011, Staff asked for an opportunity to give oral submissions on *Wilder*, and this was scheduled for November 1, 2011. We gave York an opportunity to telephone Schwartz from the hearing room to ask whether he intended to supplement his written submissions with oral argument. Schwartz stated, through York, that he did not wish to do so. The next day (September 29, 2011), Schwartz sent an email to the Panel through the Office of the Secretary and copied to Staff, stating that he had "by error thought the oral submission [*sic*] were to be made this Friday, which is a religious holiday to me. I did not know until a subsequent discussion with Mr. York that they in fact were scheduled for November 1". He asked for "15 or 20 minutes on November 1" to make his oral submissions. The Panel, having considered the matter, granted the request the next day by email from the Office of the Secretary, allowing Schwartz 15 minutes on November 1, 2011 to offer any additional comments that he wished to make and giving Staff a brief opportunity to reply.

[46] We issued an order dismissing the Exclusion of Evidence Motion on November 8, 2011 ((2011), 34 O.S.C.B. 11376), and issued our reasons on December 22, 2011 ((2011), 35 O.S.C.B. 99) (the "**Exclusion of Evidence Decision**"). In the Exclusion of Evidence Decision, we found that: (i) the York Rio Proceeding is an administrative proceeding, not a quasi-criminal or criminal proceeding, and does not involve penal liability; (ii) a respondent's compelled evidence, obtained pursuant to section 13 of the Act, is admissible against him in an administrative proceeding; (iii) a respondent's compelled evidence is not admissible against him in a quasi-criminal or criminal proceeding; and (iv) there was no basis for holding an *in camera* hearing with respect to the reading-in of the compelled evidence or for sealing the compelled evidence.

[47] Schwartz returned to this issue in his written closing submissions, and York incorporated Schwartz's submissions by reference.

[48] We have nothing further to add to the Exclusion of Evidence Decision.

[49] Schwartz's conduct of the Exclusion of Evidence Motion resulted in delays in the Merits Hearing (see paragraphs 16-22 of the Exclusion of Evidence Decision).

H. The Bias Motion

[50] On December 19, 2011, Staff made its brief closing argument, relying mainly on its written submissions, dated November 24, 2011. Commissioner Kerwin asked for amplification of several points, including a breakout of the dollars raised from the respective "boiler rooms" or offices that operated at the five locations identified by Staff as listed in a chart labelled "Boiler Room Timeline" set forth in Staff's written submissions. Staff counsel provided Supplemental Submissions in response to the Panel's questions on December 21, 2011, the final day of the hearing.

[51] In the interim, Schwartz filed "Amended Submissions on the Merits" by email on December 20, 2011. In three paragraphs in an attachment to an email, Schwartz submitted that Commissioner Kerwin's use of the phrase "boiler rooms" proved actual bias and a predisposition to conclude that the Respondents were engaged in illegal "boiler room" activities, as alleged. Schwartz submitted that the hearing should be dismissed because the Panel had been fatally compromised.

[52] Schwartz did not appear on December 21, 2011 to argue what was essentially a bias motion. York attended, but stated that he was not part of the motion.

[53] Staff submitted that there was no proper motion before the Panel, noting that Schwartz, having brought two motions prior to the commencement of the Merits Hearing and two further motions during the Merits Hearing, should be familiar with the procedure for bringing a motion pursuant to Rule 3.

[54] As we had done on several previous occasions during the Merits Hearing, we were prepared to waive or vary the Commission's procedural rules in order to ensure that Schwartz, who was self-represented, had a full and fair opportunity to be heard. We ruled that Schwartz should file any bias motion by January 5, 2012.

[55] We did not receive a notice of motion, motion record, memorandum of fact and law or brief of authorities, as required by Rule 3. However, on December 25, 2011, Schwartz filed, by email, "Supplemental Submissions on the Merits", in which he provided additional submissions on bias. In reaching our decision on bias, we considered Schwartz's written submissions of December 20 and December 25, 2011, and Staff's oral submissions on December 21, 2011.

[56] The test for reasonable apprehension of bias was recently addressed by the Commission in *Re Norshield* (2009), 32 O.S.C.B. 1249, at paragraphs 53-58, as follows:

> The reasonable apprehension of bias test has been considered by the Supreme Court of Canada on numerous occasions. It is well established that because of the difficulty in determining actual bias, courts and administrative tribunals should concern themselves with the question of whether or not a reasonable apprehension of bias exists, and not whether actual bias exists.
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> Lord Hewart C.J. famously expressed another reason why the test of a reasonable apprehension of bias is preferred:
>
> > [it] is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.
> >
> > (*R. v. Sussex Justices, Ex parte McCarthy* (1923), [1924] 1 K.B. 256 (K.B.) at p. 259)
>
> The manner in which the test should be applied was set out by Mr. Justice de Grandpré in dissent in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 394 ("*Committee for Justice and Liberty*"), and has been referenced with approval by the Supreme Court of Canada on numerous occasions:
>
> > … the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information … [The] test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly".
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> The Supreme Court of Canada had another opportunity to elaborate upon and apply the reasonable apprehension of bias test in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 ("*Newfoundland Telephone*") and R. v. R.D.S., [1997] 3 S.C.R. 484 ("*R.D.S.*"); as well as in other cases.
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> In *Newfoundland Telephone*, above at para. 22, Mr. Justice Cory stated that procedural fairness:
>
> > … cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.

> Further, Mr. Justice Cory pointed out that the conduct of members of administrative boards which are primarily adjudicative in nature, must be such that there can be no reasonable apprehension of bias with regard to their decision, similar to the standard applicable to the courts (see *Newfoundland Telephone*, above at para. 27).

[57] On appeal, the Divisional Court upheld the Commission decision, applying the well-established test:

> The test to establish bias is well-known. It does not require a finding of actual bias. The issue to be determined is whether the comments made would cause a reasonable person, who is informed of the facts, to conclude that the OSC had pre-judged the conduct of the appellants and that they did not and would not receive an impartial hearing.
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> (*Xanthoudakis v. Ontario Securities Commission*, 2011 ONSC 4685, at paragraph 26)

[58] We are not satisfied that Commissioner Kerwin's use of the term "boiler rooms" in the context of a request for additional submissions from Staff in respect of offices listed in a chart labelled "Boiler Room timeline" set forth in Staff's written submissions would cause a reasonable person, informed of the circumstances, to conclude that Commissioner Kerwin had pre-judged the Respondents' conduct or that they would not receive an impartial hearing.

[59] Schwartz's submissions are directed, in part, to the "innumerable references to boiler rooms" in Staff's disclosures and submissions. There is no question that Staff characterized the York Rio and Brilliante offices as "boiler rooms" in its opening statement and accompanying slide-deck at the Merits Hearing on the first day, and in written submissions at the close of the hearing. Throughout the Merits Hearing, the term "boiler room" was used repeatedly by Staff counsel and by Vanderlaan in his testimony, and Schwartz and York used the term in their cross-examination of Vanderlaan and other witnesses. However, only the reference by Commissioner Kerwin on December 19, 2012 in requesting a breakout of dollars raised by office location led to an objection by Schwartz.

[60] We are not bound by Staff's submissions or by the characterization of alleged conduct by any party or witness.

[61] It was Staff's written submissions, and in particular a chart labelled "Boiler Room Timeline" at page 8 of Staff's written submissions that formed the immediate context for Commissioner Kerwin's reference to "boiler rooms" in his request for additional Staff submissions, including a breakout of the amounts raised from the five locations identified as office locations on the chart submitted by Staff. Staff's chart identified, for each of the locations associated with York Rio and Brilliante, the period of activity and the individuals associated with the location. What the Panel sought from Staff was a further synthesis of Staff's submissions with respect to the amount, source and use of investor funds raised at each location. In our view, a reasonable observer, informed of the circumstances, could not reasonably conclude that in seeking clarification of Staff's submissions, Commissioner Kerwin or the Panel had pre-judged the case or determined the outcome. Throughout the Merits Hearing, the Panel made it abundantly clear that this matter would be decided based on the evidence and submissions provided by the parties.

II. THE RESPONDENTS

A. The Individual Respondents

[62] Each of York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale (the "**Individual Respondents**") is, or was, during the Material Time, a resident of Ontario.

[63] Staff filed certified statements, pursuant to section 139 of the Act ("**Section 139 Certificates**"), with respect to the registration status of the Individual Respondents. Based on Staff's Section 139 Certificates, which were uncontroverted, we find that none of the Individual Respondents has ever been registered with the Commission in any capacity.

[64] For the reasons given below, we find that Runic used the names "Richard Turner" ("**Turner**"), "Taylor" and "John Taylor" in relation to his involvement with York Rio and Brilliante, Demchuk used the name "Simon McKay" ("**McKay**") when selling York Rio securities and "Andrew Sutton" ("**Sutton**") when selling Brilliante securities, Oliver used the name "Mark Roberts" ("**Roberts**") when selling York Rio securities and "Bill Hastings" ("**Hastings**") when selling Brilliante securities, Valde used the name "Doug Bennett" ("**Bennett**") when selling York Rio securities and "Don Wade" ("**Wade**") when selling Brilliante securities, and Bassingdale used the name "Gavin Myles" ("**Myles**") when selling York Rio securities and "Brent Gordon" ("**Gordon**") when selling Brilliante securities.

B. The Corporate Respondents

[65] Staff filed Corporation Profile Reports obtained from the Ontario Ministry of Consumer and Business Services, which indicate that York Rio was incorporated in Ontario on May 10, 2004, and that York was listed as its President and sole director.

We heard evidence that York was the co-founder of York Rio, along with Richard Jbeily ("**Jbeily**"), who was Chair of York Rio until September 2005, when he and York parted ways.

[66] Staff filed Corporation Profile Reports indicate that Brilliante was incorporated in Ontario on January 19, 2007, and that Aidelman was listed as its sole director. We heard evidence that Aidelman is the former son-in-law of York and was named as the President of Brilliante.

[67] Staff filed Section 139 Certificates indicating that neither York Rio nor Brilliante has ever been a registrant, reporting issuer or filer of a preliminary prospectus or prospectus. We accept this evidence, which was uncontroverted.

III. THE ISSUES

[68] The issues before us are as follows:

A. York Rio

1. Did York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale trade in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest?

2. Did York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale distribute York Rio securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest?

3. Did York, Runic, Demchuk, Oliver, Valde and Bassingdale make prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest?

4. Did York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale engage in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest?

5. Did York, Runic and Schwartz, being directors and/or officers of York Rio, authorize, permit or acquiesce in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest?

6. Did Schwartz trade in York Rio securities while he was prohibited from trading in securities by order of the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest?

B. Brilliante

1. Did Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale trade in Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest?

2. Did Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale distribute Brilliante securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest?

3. Did Demchuk, Oliver, Valde and Bassingdale make prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest?

4. Did Brilliante, York, Runic, Demchuk, Oliver, Valde and Bassingdale engage in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest?

5. Did York and Runic, being directors and/or officers of Brilliante, authorize, permit or acquiesce in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest?

IV. SUMMARY OF FINDINGS

A. York Rio

[69] For the reasons given, we find that:

1. York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

2. York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale distributed York Rio securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

3. York, Demchuk, Oliver and Valde made prohibited representations contrary to subsection 38(3) of the Act and contrary to the public interest;

4. York Rio, York, Runic, Schwartz, Demchuk, Oliver, Valde and Bassingdale engaged or participated in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest;

5. York, Runic and Schwartz, being directors and/or officers of York Rio, authorized permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest; and

6. Schwartz traded in York Rio securities while prohibited from trading in securities by order of the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

B. Brilliante

[70] For the reasons given, we find that:

1. Brilliante, York, Runic, Demchuk, Valde and Bassingdale traded in Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

2. Brilliante, York, Runic, Demchuk, Valde and Bassingdale distributed Brilliante securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

3. Valde and Bassingdale made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;

4. Brilliante, York, Runic, Demchuk, Valde and Bassingdale engaged or participated in a course of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and

5. York and Runic, being directors and/or officers of Brilliante, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

V. THE LAW

A. The Commission's Mandate

[71] The Commission's mandate is found in section 1.1 of the Act, which states that the purposes of the Act are to provide protection to investors from unfair, improper or fraudulent practices; and to foster fair and efficient capital markets and confidence in capital markets.

[72] Section 2.1 of the Act states that in pursuing the purposes of the Act, the Commission shall have regard to the following fundamental principles:

...

2. The primary means for achieving the purposes of the Act are:

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

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

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

B. The Standard of Proof

[73] Staff must prove its allegations on the balance of probabilities (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671, ("***Re Sunwide***") at paragraphs 26 to 28, applying *F. H. v. McDougall*, [2008] S.C.J. No. 54 (S.C.C.) ("***F.H. v. McDougall***")). This is the civil standard of proof. The Panel must scrutinize the evidence with care and be satisfied whether it is more likely than not that the allegations occurred (*F.H. v. McDougall*, above, at paragraph 49).

C. Evidence

1. Hearsay Evidence

[74] We accept that hearsay evidence is admissible in administrative proceedings before the Commission, pursuant to subsection 15(1) of the SPPA, which states:

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

[75] The Commission's approach to hearsay evidence was summarized in *Re Sunwide* in the following statement:

> Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability *(Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115).
>
> (*Re Sunwid*e, above, at paragraph 22)

2. Transcripts of Compelled Examination

[76] Through Vanderlaan, Staff introduced into evidence the transcripts of compelled examination of all of the Individual Respondents, except for Bassingdale, who could not be located. In *Re Boock* (2010), 33 O.S.C.B. 1589, at paragraphs 108-109, the Commission held that a transcript of a respondent's compelled examination, obtained pursuant to section 13 of the Act, is admissible against that respondent as part of Staff's case, subject to the Panel's discretion as to the weight to be given that evidence. In this case, we have considered, as part of Staff's case, the transcripts of the compelled examinations of York, Runic, Demchuk, Oliver and Valde, none of whom testified at the Merits Hearing.

[77] Staff did not, however, attempt to rely on the compelled examination of any Individual Respondent, which is hearsay evidence, to support its allegations against any other Individual Respondent. We accept that it would be inappropriate to do so, particularly in this case, given the conflicting evidence we received from the various Individual Respondents about the roles played by other Individual Respondents, and the inherent unreliability of such statements. Accordingly, we have relied on admissions made by each of the Individual Respondents in their compelled examinations, but we have disregarded their testimony that is inculpatory of other Individual Respondents.

[78] With respect to Schwartz, who testified at the Merits Hearing, we have considered only his testimony at the Merits Hearing.

3. Credibility

[79] In cross-examination, York and Schwartz challenged the credibility of a number of Staff's witnesses. For example, they challenged Jbeily's testimony about steps purportedly taken by York Rio to acquire an interest in a company that held mining rights in Brazil. Schwartz challenged the testimony of Friedman and Robinson about his role in the trades of York Rio securities, and gave contrary evidence when he testified. York challenged the testimony of Aidelman, Ungaro and McDonald about his role in the trades of Brilliante securities.

[80] We also heard evidence about the current and former friendships, working relationships and family connections between various Individual Respondents and non-Respondent witnesses. For example, Aidelman is York's former son-in-law, Georgiadis is his nephew, Ungaro is York's friend and McDonald is Ungaro's daughter.

[81] When weighing the conflicting testimony of the witnesses in this case, we have considered whether the evidence is in harmony with the preponderance of probabilities disclosed by the facts and circumstances in this case.

4. The B.C. Witnesses

[82] At the outset of the Merits Hearing, we issued an order under section 152 of the Act authorizing Staff to apply to the Ontario Superior Court of Justice for an order appointing the Panel to take the evidence outside of Ontario of Koch and Palkowski (together, the "B**.C. Witnesses**") for use in the Merits Hearing, and providing for the issuance of a letter of request directed to the British Columbia Supreme Court (the "**B.C. Court**") requesting the issuance of such process as is necessary to compel the B.C. Witnesses to attend before the Panel to give testimony on oath or otherwise and to produce documents and things relevant to the subject matter of this proceeding. As a result of the adjournment of the Merits Hearing, another section 152 order was issued on May 10, 2011. Koch and Palkowski challenged the summonses that were issued by the B.C. Court, and ultimately, Staff chose not to pursue the matter.

D. The Registration Requirement: Subsection 25(1)a) of the Act

[83] Staff alleges that each of the Respondents traded in securities without registration in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

1. The Registration Requirement

[84] At the Material Time, subsection 25(1)(a) of the Act stated:

> **25(1)** – 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

[85] As stated in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Re Limelight***"):

> The requirement that an individual be registered in order to trade in securities is an essential element of the regulatory framework with the purpose of achieving the regulatory objectives of the Act. Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.
>
> (*Re Limelight*, above, at paragraph 135)

2. Trades and Acts in Furtherance of Trades

[86] The terms "trade" and "trading" are broadly defined in subsection 1(1) of the Act, and include, in clauses (a) and (e) of the definition, "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing".

[87] The Commission has adopted a contextual approach to determining whether a respondent engaged in acts in furtherance of a trade. Ultimately, the question is whether a respondent's conduct has "a sufficiently proximate connection to an actual trade":

> There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.
>
> (*Re Costello* (2003), 26 O.S.C.B. 1617, at paragraph 47)

[88] The Commission's approach was reaffirmed in *Re Limelight*:

> In determining whether a person or company has engaged or participated in acts in furtherance of a trade, the Commission has taken "a contextual approach" that examines "the totality of the conduct and the setting in which the acts have occurred." The primary consideration is, however, the effect of the acts on investors and potential investors. The Commission considered this issue in *Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 ["***Re Momentas***"], at paras. 77-80, noting that "acts directly or indirectly in furtherance of a trade" include (i) providing promotional materials, agreements for signature and share certificates to investors, and (ii) accepting money; a completed sale is not necessary. In our view, depositing an investor cheque in a bank account is an act in furtherance of a trade.
>
> (*Re Limelight*, above, at paragraph 131. See also, for example, *Re Sabourin* (2009), 32 O.S.C.B. 2707 ("***Re Sabourin***") at paragraphs 54-63)

[89] In *Re Momentas*, the Commission reviewed the jurisprudence and set out the following examples of conduct found to constitute acts in furtherance of trades:

a. providing potential investors with subscription agreements to execute;

b. distributing promotional materials concerning potential investments;

c. issuing and signing share certificates;

d. preparing and disseminating materials describing investment programs;

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.

(*Re Momentas*, above, at paragraph 80)

[90] Receiving consideration for the sale of securities has also been found to constitute an act in furtherance of trades (*Re Momentas*, above, at paragraphs 87-88; *Re Lett* (2004), 27 O.S.C.B. 3215 ("***Re Lett***"), at paragraph 85; *Re Limelight*, above, at paragraphs 131 and 133).

[91] Setting up a website that offers securities to investors has been found to constitute an act in furtherance of a trade (*Re First Federal Capital (Canada) Corp*. (2004), 27 O.S.C.B. 1603, at paragraph 45). Where a website is designed to excite the reader about the company's prospects, the material on the website is considered an advertisement or solicitation for investors to purchase the company's shares. Accordingly, a person who provides that content is engaging in an act in furtherance of a trade (*Re American Technology Exploration Corp.*, (1998) L.N.B.C.S.C. 1 (B.C.S.C.)).

[92] Solicitation or direct contact with investors is not required (*Re Lett*, above, at paragraphs 48-51 and 64; *Re Allen* (2005), 28 O.S.C.B. 8541, at paragraph 85).

E. The Prospectus Requirement: Subsection 53(1) of the Act

[93] Staff alleges that each of the Respondents distributed securities without a prospectus, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[94] "Distribution" is defined in subsection 1(1) of the Act to mean, amongst other things, "a trade in securities of an issuer that have not been previously issued."

[95] At the start of the Material Time in May 2004, subsection 53(1) of the Act read as follows:

> 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 where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefor obtained from the Director.

[96] Effective December 20, 2006, subsection 53(1) of the Act was amended to read:

> 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 where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.
>
> (S.O. 2006, c. 33, Sch. Z.5, s. 2)

[97] The amended provision remains in effect. The amendment makes no difference to our analysis and conclusions.

[98] As the Commission held in *Re Limelight*, the prospectus requirement is fundamental to the protection of the investing public:

> The requirement to comply with section 53 of the *Securities Act* is important because a prospectus ensures that prospective investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed investment decision. The prospectus requirements of the Act play a significant role in the overall scheme of investor protection. As stated by the court in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) (at page 5590), "there can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares."
>
> (*Re Limelight*, above, at paragraph 139)

F. The Accredited Investor Exemption

[99] Once Staff has established that a respondent traded without registration and distributed securities without a prospectus, the onus shifts to the respondent to establish the availability of an exemption from the registration and prospectus requirements (see, for example, *Re Lydia Diamond Exploration of Canada Ltd.* (2003), 26 O.S.C.B. 2511, at paragraphs 83-84; *Re Limelight*, above, at paragraph 142; and *Re Al-tar* (2010), 33 O.S.C.B. 5535 ("***Re Al-tar***")).

[100] I n this case, securities of York Rio and Brilliante were purportedly traded only to accredited investors, and York and Schwartz rely on the accredited investor exemption in their submissions.

1. Registration and Prospectus Exemptions

[101] Throughout the Material Time, Ontario securities law provided an exemption from the registration and prospectus requirements for trades and distributions to accredited investors.

[102] In May 2004, the accredited investor exemption was set out in section 2.3 of OSC Rule 45-501 – *Exempt Distributions* ("**OSC Rule 45-501**"). Clauses (m), (n) and (t) of the definition of "accredited investor" in s. 1.1 of OSC Rule 45-501 included three categories that are relevant to this matter:

> ...
>
> (m) an individual who beneficially owns, or who together with a spouse beneficially own, financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000; ("**Net Financial Assets**" and the "**Net Financial Assets Test**");
>
> (n) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years and who, in either case, has a reasonable expectation of exceeding the same net income level in the current year; ("**Net Income**" and the "**Net Income Test**");

...

(t) a company, limited liability company, limited partnership, limited liability partnership, trust or estate, other than a mutual fund or non-redeemable investment fund, that had net assets of at least $5,000,000 as reflected in its most recently prepared financial statements; ("**Net Business Assets**" and the "**Net Business Assets Test**")

...

[103] On September 14, 2005, these provisions were replaced by substantially similar provisions in National Instrument 45-106, *Prospectus and Registration Exemptions* ("**NI 45-106**"), and a new net assets test was added to the accredited investor definition. The relevant provisions (clauses (j), (k), (l) and (m)), which remained unchanged through October 2008, are as follows:

...

(j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000;

(k) an individual whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year;

(l) an individual who, either alone or with a spouse, has net assets of at least $5,000,000; ("**Net Assets**" and the "**Net Assets Test**");

...

(m) a person, other than an individual or investment fund, that has net assets of at least $5,000,000 as shown on its most recently prepared financial statements;

2. The Net Financial Assets Test

[104] "Financial assets" in OSC Rule 45-501 was defined as follows:

"financial assets" means cash, securities, or any contract of insurance or deposit or evidence thereof that is not a security for the purposes of the Act;

[105] The definition is substantially similar in NI 45-106, which defines "financial assets" to mean:

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation.

[106] Schwartz submits that the Net Financial Assets Test includes the value of real property. He relies on clause (b) of the definition of "security" in the Act, which says that "security" includes "any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company". He submits that a document evidencing ownership of real or personal property is a "document constituting evidence of title to or interest in the ... property ... of any person or company" and is therefore a security.

[107] The Net Assets Test, which was added in NI 45-106, is not limited to financial assets and is set at a much higher level than the Net Financial Assets Test – $5 million rather than $1 million – because the Net Assets Test requires consideration of all of the investor's total assets minus the investor's total liabilities, such that the calculation of total assets would include the value of an investor's principal residence, and the calculation of total liabilities would include the amount of any liability (such as a mortgage) in respect of the investor's principal residence. In contrast, the Net Financial Assets Test is intended to measure an investor's net assets that are generally liquid or relatively easy to liquidate, and to exclude the value of real property that is a principal residence. It is a well-established principle of statutory interpretation that "the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the

intention of Parliament" (R. Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis, 2008), at pp. 1-21; *Re Rizzo & Rizzo Shoes*, [1998] 1 S.C.R. 27, at paragraph 21; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, at paragraph 26). In the context of the two qualifying tests for accredited investor status (the Net Assets Test and the Net Financial Assets Test) an investor's principal residence is not within the definition of "financial assets" set out in OSC Rule 45-501 and NI 45-106.

3. The Seller's Responsibility for Compliance

[108] The York Rio and Brilliante subscription agreements required the investor to certify that he or she was an accredited investor. We heard from eight York Rio investors during the Merits Hearing (the "**Investor Witnesses**"), and Schwartz cross-examined each of them about whether they understood that York Rio or Brilliante would be relying on their accredited investor certification. He submits that the Investor Witnesses "were vague, confused, imprecise, dismissive and generally unconcerned with what they may have said in their initial qualifying contacts or what they certified to the Respondents", and that they did not take seriously the certification provision of the subscription agreements but treated it as "boilerplate verbiage" they had seen in other legal documents.

[109] We do not accept this submission, which inappropriately attempts to put the burden of compliance on the investor. At the opening of the Material Time, section 3.1 of the Companion Policy to OSC Rule 45-501 ("**OSC Rule 45-501CP**") described the seller's due diligence obligations as follows:

> It is the seller's responsibility to ensure that its trades in securities are made in compliance with applicable securities laws. In the case of a seller's reliance upon exemptions from the prospectus and registration requirements, the Commission expects that the seller will exercise reasonable diligence for the purposes of determining the availability of the exemption used in any particular circumstances. The Commission will normally be satisfied that a seller has exercised reasonable diligence in relying upon a particular exemption if the seller has obtained statutory declarations or written certifications from the purchasers, unless the seller has knowledge that any facts set out in the declarations or certifications are incorrect.

[110] Reasonable diligence demands that the seller conduct a serious factual inquiry in good faith before accepting a prospective subscription, which includes a duty to look behind the boilerplate language of a subscription agreement, and to make reasonable inquiries to determine whether a prospective investor qualifies as an accredited investor under the Net Income Test, Net Financial Assets Test or Net Assets Test, the Net Business Assets Test, or other relevant categories.

[111] For the reasons given below, we find that several of the Investor Witnesses were never asked about their financial circumstances, and others were misinformed about the accredited investor exemption prior to receiving the subscription agreement.

4. Market Intermediary

[112] The accredited investor exemption from the registration requirement is not available to a market intermediary (OSC Rule 45-501, section 3.4; NI 45-106, section 2.43(1)(b)).

[113] "Market intermediary" is defined in subsection 204(1) of O. Reg. 1015, R.R.O. 1990, as amended ("**Regulation 1015**") to include "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, ... "

[114] In *Re Momentas*, the Commission held that an issuer may be a market intermediary, if a "significant part" of its business is selling its own securities, even if the issuer is involved in more than one business (*Re Momentas*, above, at paragraphs 56-57). In determining the "business purpose" of the issuer, the Commission considered the source of its revenue, the composition of its workforce, and the nature of its expenditures (*Re Momentas*, above, at paragraphs 57-63). The Commission stated: "a key consideration for us is the degree to which management's activities and the proceeds of the offering were allocated to the raising of capital as opposed to being invested in the company's stated business activities" (*Re Momentas*, above, at paragraph 54).

[115] In *Re Lett*, the Commission held that the respondents were market intermediaries because "a substantial part" of their time was spent on the high yield program, and investors deposited and the respondents accepted monies for the purpose of the high yield program (*Re Lett*, above, at paragraph 68; see also *Re Allen*, above, at paragraphs 78-83).

[116] For the reasons given below, we find that York Rio and Brilliante were market intermediaries and therefore the accredited investor exemption from the registration requirement was not available with respect to the sale of York Rio or Brilliante securities.

5. Exempt Distribution Reports

[117] An issuer that relies on a prospectus exemption, including the accredited investor exemption, is required to file a Report of Exempt Distribution in Form 45-106F1 ("**Exempt Distribution Report**") in the jurisdiction where the distribution occurs no later than 10 days after the distribution (OSC Rule 45-501, s. 7.5, NI 45-106, s. 6.1).

G. Prohibited Representations: Subsection 38(3) of the Act

[118] Staff alleges that York, Runic, Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act in respect of York Rio securities, contrary to the public interest, and that Demchuk, Oliver, Valde and Bassingdale contravened subsection 38(3) of the Act in respect of Brilliante securities, contrary to the public interest.

[119] At the Material Time, subsection 38(3) of the Act stated:

> Subject to the regulations, no person or company, with the intention of effecting a trade in a security, shall, except with the written permission of the Director, make any representation, written or oral, that such security will be listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system, unless,
>
> (a) application has been made to list or quote the securities being traded, and securities of the same issuer are currently listed on any stock exchange or quoted on any quotation and trade reporting system; or
>
> (b) the stock exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[120] As there was no suggestion in this case that either of the exemptions set out in clauses (a) and (b) of subsection 38(3) is applicable, the issue is whether a Respondent, "with the intention of effecting a trade in a security", made "any representation, written or oral, that such security will be listed on any stock exchange listed on any stock exchange or quoted on any quotation and trade reporting system, or that application has been or will be made to list such security upon any stock exchange or quote such security on any quotation and trade reporting system".

H. Fraud: Section 126.1(b) of the Act

[121] Staff alleges that each of the Respondents engaged or participated in securities fraud, contrary to section 126.1(b) of the Act and contrary to the public interest.

[122] Section 126.1(b) of the Act is as follows:

> 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.

[123] Section 126.1(b) was proclaimed into law on December 31, 2005, and therefore does not apply to conduct during the first 20 months of the Material Time (from May 2004 to December 2005). Accordingly, our reasons concerning Staff's fraud allegations against the Respondents pertain only to the period from January 1, 2006 to October 21, 2008.

[124] Section 126.1(b) of the Act was first considered by the Commission in Re Al-tar, above, and the Commission set out the following statement of the law at paragraphs 214-221 of that decision:

> 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 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).

The term fraud is not defined in the Act. Due to the recent introduction of the fraud provision in the Act, there are no decisions from the Commission interpreting this provision. However, we can draw out guidance and principles from criminal and administrative law jurisprudence and decisions from other securities commissions.

The British Columbia Court of Appeal addressed the application of the substantially identical fraud provision in the British Columbia Securities Act, R.S.B.C. 1996, c. 418, as amended (the "BC Act") in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 ("*Anderson*"). The Supreme Court of Canada denied leave to appeal the Anderson decision ([2004] S.C.C.A. No. 81).

In *Anderson*, the British Columbia Court of Appeal reviewed the legal test for fraud and relied on *R. v. Théroux*, [1993] 2 S.C.R. 5 ("*Théroux*"). In *Théroux*, Justice McLachlin (as she then was) summarized the elements of fraud as follows at paragraph 27:

> ... 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 in actual loss or the placing of the victim's pecuniary interests 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 in knowledge that the victim's pecuniary interests are put at risk).

Section 126.1 of the Act has the identical operative language as the fraud provision in the British Columbia Act. In interpreting the fraud provision in the British Columbia Act and with respect to the mental element, the British Columbia Court of Appeal in *Anderson* stated at paragraph 26 that:

> …[the fraud provision of the BC Act] does not dispense with proof of fraud, including proof of a guilty mind... . Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated *by others*, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions. [emphasis in original]

The British Columbia Court of Appeal in *Anderson* further explained at paragraph 29 that:

Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.

The British Columbia Court of Appeal approach to the legal test in the context of securities fraud as set out in Anderson was adopted in *Re Capital Alternatives Inc.*, 2007 ABASC 79, which was affirmed in *Alberta (Securities Commission) v. Brost*, [2008] A.J. No. 1071 (C.A.).

For a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of section 126.1(b) of the Act.

[125] The Commission has adopted substantially the same analysis in a number of subsequent decisions which were provided by Staff, including *Re Lehman Cohort* (2010), 33 O.S.C.B. 7041 ("***Re Lehman Cohort***"), at paragraphs 86-100; *Re Global Partners* (2010), 33 O.S.C.B. 7783 ("***Re Global Partners***"), at paragraphs 238-245; and *Re Borealis International Inc.* (2011), 34 O.S.C.B. 777 ("***Re Borealis***"), at paragraphs 65-67.

I. Directors and Officers: Section 129.2 of the Act

[126] Staff alleges that York, Runic and Schwartz, being directors and/or officers of York Rio, authorized, permitted or acquiesced in the contraventions of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest, and that York and Runic, being directors and/or officers of Brilliante, authorized, permitted or acquiesced in the contraventions of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

[127] Section 129.2 of the Act states:

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

[128] For an individual respondent to be deemed non-compliant under section 129.2, Staff must establish (i) that the individual respondent was a "director or officer" of a company or person other than an individual, (ii) that the company or person other than an individual has not complied with Ontario securities law, and (iii) that the individual respondent "authorized, permitted or acquiesced in" the non-compliance.

[129] "Director" is defined in subsection 1(1) of the Act to mean "a director of a company or an individual performing a similar function or occupying a similar position for any person".

[130] "Officer", with respect to an issuer or registrant, is defined in subsection 1(1) of the Act to mean:

> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[131] The leading decision on the meaning of "authorized, permitted or acquiesced in" is *Momentas*:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing [in] the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Re Momentas*, above, at paragraph 118)

J. Breach of Euston Order: Subsection 122(1)(c) of the Act

[132] Subsection 122(1)(c) of the Act makes it an offence to contravene Ontario securities law. Subsection 1(1) of the Act defines "Ontario securities law" to mean the Act, the regulations, and, "in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject". The Euston Order was a decision of the Commission to which Schwartz was subject, and Staff alleges that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading York Rio securities while the Euston Order prohibited him from doing so.

VI. THE EVIDENCE

A. Staff's Evidence

1. Overview

[133] Staff called 20 witnesses at the Merits Hearing: two Staff investigators; two former respondents in this matter who settled (Robinson and Sherman); eight individuals who were not respondents but had knowledge of York Rio or Brilliante

(Aidelman, Jeffrey Brown ("**Brown**"), Friedman, Georgiadis, Bernadine Hoyme ("**Hoyme**"), Jbeily, McDonald and Ungaro; and the eight Investor Witnesses.

2. Staff Investigators

[134] We heard evidence from two Staff investigators: Vanderlaan, a senior investigator with the Commission, who was the primary investigator assigned to the York Rio and Brilliante investigations, and Albert Ciorma ("**Ciorma**"), a Certified Management Accountant, who prepared account profiles and summaries showing the source and use of funds that flowed through York Rio and Brilliante.

[135] Vanderlaan testified that his primary focus, since he started with the Commission in August 2007, has been "boiler room" investigations. He testified that a boiler room "is a group of people that get together to establish some sort of an office where they will usually conduct telephone solicitations to sell people stock on the phone, and in the vast majority of cases there's nothing behind the stock in that there are no assets, and there's assurances made to the investor about certain aspects of the business of the company that's being sold but in fact there is no business and the money is merely taken from the investor and put right in the pockets of the people who are selling the investment". Vanderlaan testified that the characteristics of a boiler room include initial cold-calls by "qualifiers", whose job is to solicit initial interest, which will be followed up with a brochure sent to the prospective investor, and a follow-up call from a salesperson based on the information provided by the qualifier. After the investor's initial investment, a "loader" may contact the investor to attempt to solicit an additional and higher investment. Other characteristics of boiler rooms include the use of aliases, sales scripts and virtual offices, the use of couriers to collect investor cheques, and websites that include pirated content. Investments offered by boiler rooms are often characterized as private placements offered to accredited investors, but without complying with the criteria for accredited investor status.

[136] Vanderlaan's testimony extended over nine days of the Merits Hearing. He testified about the early stages of the investigation; the search of the Finch Location and the materials seized; the Corporation Profile Reports, Section 139 Certificates and Exempt Distribution Reports in relation to York Rio and Brilliante; the York Rio and Brilliante websites and emails; the locations from which York Rio and Brilliante securities were sold; the sales scripts; and accredited investor information provided to investors. In addition, Staff introduced the compelled examinations through Vanderlaan.

[137] Vanderlaan and Ciorma also testified about non-respondent companies that were associated with the Respondents; the flow of funds from York Rio and Brilliante investors to the Respondents and associated individuals and companies; and the use of the Proceeds.

(a) **The early stages of the investigation**

[138] On March 22, 2011, the second day of the Merits Hearing, Vanderlaan began his testimony by describing the early stages of the investigation, the execution of the Search Warrant at the Finch Location on October 21, 2008 and the material seized during the Search. His evidence was then interrupted to accommodate the scheduling of other Staff witnesses on March 23 and 24, 2011. Vanderlaan did not resume his testimony until June 9, 2011.

[139] In the meantime, Schwartz and York brought the Search Warrant Motions, which we dismissed in oral rulings on April 5 (Schwartz) and May 5 (York), with written reasons issued on June 1, 2011. A detailed summary of Vanderlaan's testimony about the early stages of the investigation was included in the Search Warrant Decision, at paragraphs 54 and 55.

[140] As a result of his early investigation, Vanderlaan formed the view that a "boiler room" was operating out of the Finch Location.

(b) **The search of the Finch Location and the materials seized**

[141] Vanderlaan testified that Staff seized about ten boxes of materials as a result of the search of the Finch Location on October 21, 2008, including a computer and emails taken from it. Vanderlaan's testimony about the things seized is included in the Search Warrant Decision, at paragraphs 56-59.

[142] Vanderlaan testified that documents relating to York Rio and Brilliante were seized, including: newsletters, corporate profiles, company information sheets and business plans for York Rio and Brilliante; lead lists; lead cards; handwritten client information notes; multiple scripts for use by qualifiers and salespersons; tip sheets for qualifiers; questionnaires relating to accredited investor status, entitled "Accreditation Information", most of which give incorrect information; subscription agreements; print-outs of emails between investors and Respondents, including York, and York Rio and Brilliante salespersons; sales order logs; and file folders containing names that were later determined to be aliases for York Rio and Brilliante salespersons.

[143] As a result of the search and review of the materials seized, Vanderlaan formed the view that both York Rio and Brilliante securities were being sold from the Finch Location, and that York Rio, which had been running since 2004, was now being shut down and that the focus of securities sales was being transferred to Brilliante in 2008.

(c) *Corporation Profile Reports, Section 139 Certificates and Exempt Distribution Reports*

(i) York Rio

[144] Vanderlaan testified that the Corporation Profile Report for York Rio indicates that York Rio was incorporated in Ontario on May 10, 2004, and that York was listed as its President and sole director. On October 28, 2008, one week after the execution of the Search Warrant, a Change Notice was registered, giving the name of another person as director. Vanderlaan testified that he visited the address given for the new director and learned that no one by that name had ever lived there. A prior report, produced on July 18, 2008, listed York as the director. The registered office address for York Rio was determined to be the residential address of York's mother, and the mailing address reported for York Rio (a suite at 965 Bay Street, Toronto ("**965 Bay**")) was York's former residential address. In summary, York was the sole reported director and officer of York Rio during the Material Time.

[145] Vanderlaan testified that Staff's Section 139 Certificates for York Rio indicate that York Rio has never been registered with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed or obtained a receipt for a preliminary prospectus or prospectus.

[146] Vanderlaan testified that York Rio filed three Exempt Distribution Reports in Ontario, dated September 21, 2005, January 25, 2006 and April 25, 2006, which were certified to be true by York, who signed as President of York Rio. They indicate that York Rio, which is not a reporting issuer, distributed a total of approximately 1.7 million common shares, purporting to rely on the accredited investor exemption, and raised a total of approximately $2.7 million from investors in Yukon, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and the United States. In each report, under "Commissions & finder's fees", the notation is "N/A".

[147] At about the same time, York Rio also filed Exempt Distribution Reports with securities regulators in British Columbia, Alberta, Saskatchewan and Manitoba, in each case purporting to rely on the accredited investor exemption. For example, the September 21, 2005 Exempt Distribution Report which was filed in Ontario was also filed with the Alberta Securities Commission ("**ASC**"); this was the first of the Exempt Distribution Reports that York Rio filed with the ASC. Each of the Exempt Distribution Reports indicates that common shares of York Rio were distributed to Alberta purchasers under the accredited investor exemption, and is signed and certified by York as President of York Rio. As stated above, under "Commissions & finder's fees", the notation is "N/A". Similarly completed Exempt Distribution Reports were filed with the ASC until June 20, 2008.

[148] York Rio took a different approach to the "Commissions & finder's fees" question from July to September 2008.

[149] In the Exempt Distribution Reports filed from July 7, 2008 to October 15, 2008, under "Commissions & finder's fees", the typed notation "N/A" is crossed out and replaced with various handwritten notes – "Consulting fees (72%) [illegible] Anyphone Communication, 5140 Yonge Street, Toronto, ON" (July 7, 2008), "Consulting fees paid directly by cheque to Anyphone Communications, 5140 Yonge Street, Toronto Ont." (July 31, 2008), "Only consulting fees paid by cheque to Anyphone Communications, 5140 Yonge Street, Toronto" (August 13, 2008 to September 14, 2008, "only consulting fees paid, no commission" (October 3, 2008), and "consulting fees only" (October 15, 2008).

[150] A similar pattern is found in York Rio's Exempt Distribution Reports filed with the BCSC. In the Exempt Distribution Reports filed from January 1, 2007 to June 20, 2008, "N/A" is typed in the "Commissions & finder's fees" field. In the Exempt Distribution Reports filed from August 13, 2008 to September 15, 2008, it is replaced by a handwritten note stating that consulting fees only were paid to Anyphone Communications.

(ii) Brilliante

[151] Vanderlaan testified that the Corporation Profile Report for Brilliante indicates that Brilliante was incorporated in Ontario on January 19, 2007, with Aidelman listed as its sole director.

[152] Vanderlaan also testified that Staff's Section 139 Certificates for Brilliante indicate that it has never been a registrant with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed a prospectus or preliminary prospectus with the Commission or received a receipt for a prospectus from the Director.

(d) *The York Rio and Brilliante Websites and Emails*

[153] Vanderlaan testified that his investigation of Brilliante began in the summer of 2008, after he was contacted by a Brilliante investor who forwarded an email from Brilliante that linked to the Brilliante website – www.brillianteresources.com. The Brilliante website identified Aidelman as the President of Brilliante.

[154] Vanderlaan testified that much of the content of the Brilliante website was copied from Wikipedia and from a government of Brazil website about a different mine. Staff alleges that the Brilliante website included a number of misrepresentations, including the following:

- "We are a junior open pit uranium mine, that has the claim to a mining right of a 24,000 hectare site."
- "The existing investment of $5,000,000 USD by the corporation was used to acquire the physical property, secure the exploration rights and bring Brilliante to its present day status."
- Aidelman is listed as President and is represented to have a "Batchelor [sic] of Commerce, background in sedimentary geology at University of Utah, and has had extensive background and knowledge in Australia at the Alligator Rivers Region uranium mining sites."

[155] Vanderlaan's investigation, beginning with his review of the Brilliante website, indicated that Brilliante and York Rio were linked:

- The Brilliante website was registered to McDonald, who was identified as the Vice-President of York Rio on the York Rio website.
- Both websites were registered to 965 Bay, which was the same address that was given as the corporate mailing address on York Rio's Corporation Profile Report.
- The geologist named on the Brilliante website, Daniel Pasin ("**Pasin**"), was also named as the geologist for York Rio on the York Rio website.
- The Brilliante website listed an address of 20 Bay Street, 11th Floor, Toronto ("**20 Bay**"), which is a virtual office operated by Rostie Group Business Centres ("**Rostie**"). The account application form, which was obtained from Rostie, indicated that the account was in the name of Brilliante and Aidelman and that McDonald had opened it by email. Aidelman was listed as having an email address associated with York ("**York's Email Address**"). Vanderlaan learned later that York had initially opened the file, but the name on the file had later been changed to Aidelman. The billing address Rostie had for Brilliante was a suite at 44 Charles Street West, Toronto ("**44 Charles**"), which was York's more recent residential address.
- A March 22, 2007 email was sent from York's Email Address to an email address associated with York Rio – investorrelations@yrresources.com. York's Email Address was also listed on the Rostie documents relating to Brilliante.
- A March 26, 2007 email from York's Email Address to an email address associated with McDonald ("**McDonald's Email Address**") had the subject line, "start putting everything together for the Brilliante company so we can have it on the web", and its text stated "I'd like to have this put together as soon as is practical given your schedule and the need for the website to be in place for potential investors. Thanks, Victor York."
- Emails received by Brilliante investors were traced to the Finch Location, which was leased to Georgiadis, who listed "Richard Taylor" as his partner on the lease application, dated June 24, 2008. Vanderlaan later determined that Georgiadis was York's nephew and "Richard Taylor" was an alias used by Runic. The lease application listed the business as a call centre.

[156] Vanderlaan testified that he was aware of York Rio and believed that Brilliante was created as a natural progression of the York Rio activities and that York Rio was being shut down and Brilliante was been activated in the late summer of 2008.

[157] The York Rio website – www.yorkrio.com and www.yrresources.com – identified York as the President of York Rio, Ungaro as Vice President Sales and Marketing and McDonald as Vice President Research and Development. Pasin is identified as York Rio's geological engineer, and Jorge Valente ("**Valente**") is identified as York Rio's geologist.

[158] Vanderlaan testified that the York Rio website included a number of claims which Staff alleges are misrepresentations, including that:

- York Rio had already started the mining and production of diamonds in Brazil;
- "[i]n July 2004, York-Rio purchased 90% ownership of Nova Mineração Limitada, which owns the mineral rights to the claim ... and further obtained an "Exploration License";
- the claim is stated to be located on the Rio Paranaiba, which borders the states of Goias and Minas Gerais in Brazil; and
- photographs on the website include photographs of dredging on the Rio Paranaiba, and a close-up of someone's hands holding a raw diamond.

(e) *The York Rio and Brilliante Business Plans*

[159] Vanderlaan testified about copies of the York Rio and Brilliante business plans that were seized from the Finch Location (the "**York Rio Business Plan**" and the "**Brilliante Business Plan**").

[160] The York Rio Business Plan lists York as President, Ungaro as Vice President Sales and Marketing, McDonald as Vice President Research and Development, Pasin as Geological Engineer and Valente as Geologist; William Farrage ("**Farrage**") is named as providing accounting services. The York Rio Business Plan includes the following statements:

- We have purchased a Brazilian mineral company (Nova Mineração Limitada) that has the claim to an alluvial mining right of a 727 hectare (1795 acre) site.
- The existing investment of US$600,000 by the corporation was used to acquire the physical property, secure the exploration rights and bring York-Rio to its present day status.

[161] The Brilliante Business Plan lists Aidelman as President, Theodore G. George as Executive Vice President Exploration and Corporate Development and Pasin as Geological Engineer; Farrage is named as providing accounting services. Contacts listed are 20 Bay (the Rostie address) and investorrelations@brillianteresources.com (email). The Brilliante Business Plan includes the following statements:

- We are a junior open pit uranium mine, that has the claim to a mining right of a 8,500 hectare (21,000 acre) site.
- The existing investment of US $875,000 by the corporation was used to acquire the physical property, secure the exploration rights and bring Brilliante to its present day status.

[162] Vanderlaan testified that he had examined the net income projections figures contained in the York Rio Business Plan and the Brilliante Business Plan and observed that they are "exactly identical" (Hearing Transcript, June 9, 2011, p. 72, ll. 10-11). According to the York Rio and Brilliante Business Plans, both issuers are projected to earn net income of US $12,615,140 (year 1), US $13,097,500 (year 2), US $16,870,200 (year 3) and US $16,808,200 (year 4). The total projected expenditures for York Rio and Brilliante are US $345,500.

(f) *The sales scripts*

[163] Vanderlaan testified about various sales scripts seized from the Finch Location. One handwritten Brilliante script contained in a notebook found at the Finch Location stated: "Hello, my name is Pamela Riley and I'm calling from Brilliante Resources. We spoke back in 2006 regarding an investment opportunity by the name Blue Pearl Mining. Back then we were at $0.60/share, but in 2007, Thompson Creek Metals, the same people who brought you Blue Pearl, went up to $25/share on the TSX." Vanderlaan testified that Blue Pearl Mining, which later became Thompson Creek Metals Company Inc. ("**Thompson Creek**"), were real companies that did do well, and their names were often used to drive boiler room sales. Similar representations about Blue Pearl and Thompson Creek, and about Aurelian Resources, were found in various scripts relating to Brilliante that were seized from the Finch Location.

[164] York Rio scripts followed a similar pattern. One script stated: "I don't know if you remember, it's been about two years since we last spoke. Back then I brought you an investment opportunity called 'Aurelian Resources Inc.' It's a Canadian mining firm. I brought you that as a private offering back in March of 2005 at $2.75 per share. This went on to open on the TSX Venture in Dec. 2005 and is currently trading in around the $30 range... . I am more confident with 'York Rio Resources' than I was with 'Aurelian Resources'." Another similar York Rio script claimed that Aurelian Resources Inc. ("**Aurelian**") had been offered to the prospective investor at $2.75, and "hit a high of $43 ..., which is considered a blockbuster in terms of profit".

[165] Another York Rio script, called "The Close (Own Paper)" states:

- "I am a venture capitalist. I look at about 40-60 proposals every year from companies all over the globe and Canada ... ";
- "I make my money when the companies make money, because I don't receive a salary. I only get shares as payment for my services"

[166] Similar claims were made in a Brilliante script.

[167] A York Rio script entitled "Cancer Pitch" states that a long-term client needs to sell his York Rio options because his wife, to whom he has been married for 39 years, has breast cancer and he is taking her to Germany for treatment; the prospective investor is then offered 800,000 York Rio shares at $0.375 per share.

[168] Another York Rio script, entitled "Load A, Call 1", which was apparently used to sell additional York Rio shares to existing investors, states "Mine stripping began 3 weeks ago and presently we are extracting anywhere from 1 carat to 69 carat diamonds right out of the ground. These diamonds are going directly to the wholesalers." The same script states that York Rio is being courted by three different companies in respect of a buyout.

(g) *Accredited investor information provided to investors*

[169] Although the York Rio subscription agreements seized from the Finch Location and provided by the Investor Witnesses set out the Net Financial Assets Test and the Net Income Test correctly, investors were misled by qualifiers and salespersons who misrepresented the qualifying tests for accredited investor status.

[170] For example, the documents seized from the Finch Location included multiple copies of a questionnaire entitled "Accreditation Information", which was apparently intended to be used by qualifiers and salespersons who spoke to investors by phone. The questionnaire misstated the Net Financial Assets Test by representing that an investor could qualify based on combined net worth (with a spouse) of $1 million, "meaning your home, automobiles, everything!". Similar misrepresentations are found in several scripts seized from the Finch Location.

[171] The Net Financial Assets Test for accredited investor status requires the investor to have, alone or with a spouse, net assets of $1 million or more, excluding the investor's principal residence, amongst other things. The Net Assets Test, which includes an investor's principal residence, requires net worth of at least $5 million, alone or with a spouse.

[172] Copies of the Brilliante subscription agreement seized from the Finch Location require the prospective investor to complete a Representation Letter for Accredited Investors, appended to the subscription agreement, which certifies that the investor is an accredited investor under NI 45-106. The Representation Letter states the Net Income Test and the Net Financial Assets Test correctly, but also incorrectly sets out an additional qualifying test for accredited investor status: "The Subscriber, either alone or with a spouse, has net assets of at least $200,000".

(h) *The flow of funds*

[173] Vanderlaan and Ciorma testified about the investigation into the flow of funds into and out of the York Rio and Brilliante bank accounts and the accounts associated with the Respondents. Their evidence was based on the Corporation Profile Reports for York Rio and Brilliante and other companies associated with the flow of funds, banking records obtained by summons, and the compelled examinations of various witnesses.

[174] Ciorma created account profiles, indicating the account holders and signatories for each of the various bank accounts through which investor funds flowed in this matter ("**Account Profiles**'), and a financial analysis of each of those accounts, showing the source and use of funds ("**Account Summaries**"), based on bank statements that he and Vanderlaan obtained from the various financial institutions. A Flow of Funds Chart was created based on Ciorma's Account Summaries.

3. Witnesses Called by Staff

(a) *Jbeily*

[175] Jbeily and York were the co-founders of York Rio. Until late August or early September 2005, Jbeily was Chairman of York Rio. York remained President and CEO throughout the Material Time. Jbeily testified about the creation of York Rio, the attempt to secure property and mining rights in Brazil, and his expulsion from the company in September 2005. On cross-examination of Jbeily, York and Schwartz challenged his testimony that York Rio had never completed the purchase of the mining claim.

(b) *Ungaro*

[176] Ungaro did not have an office at any of the York Rio locations, but performed administrative functions for York Rio and Brilliante, at York's direction, from her home, including receiving the signed subscription agreements and investor cheques, sending out letters to investors, sending information to Capital Transfer Agency, and keeping records for York Rio. She testified that York reimbursed her for her work by giving her cash, paying some of her expenses and taking her and McDonald on vacation.

(c) *McDonald*

[177] McDonald testified that she was involved in putting together the York Rio website and materials, based on instructions and content that were provided, initially by York and Jbeily, then, after Jbeily's ouster, by York and Runic. She also prepared the Brilliante website and materials, based on content that was provided by Aidelman and York. She testified that York reimbursed her for her work by giving her cash and cheques, paying some of her expenses and taking her and Ungaro on four trips.

(d) *Brown*

[178] In 2003, Brown began working with McDonald to develop the York Rio website. He testified about his communications with McDonald, the instructions he received from York, including providing usernames and passwords for investors to gain access to the York Rio Investors' Lounge. He also testified that he was paid by personal cheque from York. Brown also testified that he worked with McDonald to develop the Brilliante website, on McDonald's instructions, in 2008.

(e) *Robinson*

[179] Robinson, a former respondent, was registered with the Commission from 1989 to 1992 when he worked for Gordon-Daly Grenadier Securities, a broker-dealer. His registration ceased two years after leaving the firm and he has not been registered with the Commission or any other securities regulator since then.

[180] In November 2010, the Commission approved settlement agreements between Robinson and Staff in relation to York Rio and in relation to *Re Global Energy Group, Ltd.* (2010), 33 O.S.C.B. 10427, *Re Uranium 308 Resources Inc.* (2010), 33 O.S.C.B. 10441, and *Re Robinson and Platinum International Investments Inc.* (2010), 33 O.S.C.B. 10450.

[181] Robinson testified that he began selling York Rio securities from the Eglinton Location in around November 2005, and he continued to work as a York Rio salesperson when the office moved to the Sheppard Location in late 2005 or early 2006. He testified that he stopped selling York Rio securities in June of 2007.

[182] Robinson testified about the sales operation at the Eglinton and Sheppard Locations, and about the roles played by York, Runic and Schwartz. On cross-examination, Schwartz challenged Robinson on his testimony that Schwartz "probably" ran the sales operation at the Eglinton and Sheppard Locations.

(f) *Friedman*

[183] Friedman, who has never been registered with the Commission or any other securities regulator, testified that he began working with York Rio in an administrative role near the end of 2005 at the Eglinton Location, and continued to do so when the sales operation moved to the Sheppard Location in the summer of 2006.

[184] On September 30, 2010, Friedman entered into a settlement agreement with Staff in relation to his involvement in another matter, *Re Uranium308* (2010) 33, O.S.C.B. 9481.

[185] Friedman testified about the sales operation at the Eglinton and Sheppard Locations and about the roles played by York, Runic, and especially Schwartz, who ran the sales operation, according to Friedman. Schwartz disputed Friedman's testimony on this point.

(g) *Aidelman*

[186] Aidelman, who has never been registered with the Commission or any other securities regulator, testified that although he is registered as the sole director of Brilliante, his role was minimal, and that York was in charge of the incorporation and operation of Brilliante and controlled the Brilliante Account. York challenged his testimony.

(h) *Georgiadis*

[187] Georgiadis, who has never been registered with the Commission or any other securities regulator, testified that York introduced him to Runic. Georgiadis worked with Runic at the Yonge Location starting in June 2007. He played an administrative

role that included giving investor cheques to York and receiving cheques from York to be given to Runic. In July 2008, he incorporated 2180353, which was used to flow York Rio investor funds from the York Companies (defined at paragraph 303 below) through to the Runic Companies (defined at paragraph 307 below). He testified that the sales operation moved from the Yonge Location to the Finch Location over the long weekend at the beginning of August 2008. When the sale of Brilliante securities began at the Finch Location in the summer of 2008, Georgiadis continued to play the same role as he had in the sale of York Rio securities. He testified about the sales operation at the Yonge and Finch Locations and about the roles played by Runic and York.

(i) *Sherman*

[188] Sherman, a former respondent, has never been registered with the Commission or any other securities regulator. He testified that in June or July of 2007, he was hired by Runic to sell York Rio securities at the Yonge Location, and he continued to do so at the Finch Location until the execution of the Search Warrant in October 2008. Sherman sold additional York Rio securities to existing York Rio investors, and received a commission of up to 10% of the proceeds of the sale. He used the alias "Jason Sebrook" ("**Sebrook**").

[189] In June 2011, just before he testified at the Merits Hearing, the Commission approved a settlement agreement between Sherman and Staff.

[190] Sherman testified about the sales operation at the Yonge and Finch Locations, and about the roles played by Runic and York.

(j) *Hoyme*

[191] Hoyme testified that Runic hired her to perform administrative tasks, including acting as the receptionist at the Yonge Location in July 2007, and she continued to do that work at the Finch Location until the execution of the search warrant on October 21, 2008. She testified about the sales operation at the Yonge and Finch Locations, about the transition from York Rio to Brilliante, and about the roles played by Runic and Georgiadis.

4. The Investor Witnesses

(a) *Investor One*

[192] In March 2008, Investor One, a resident of Alberta, purchased 13,334 York Rio securities, at $0.75 per share, for a total cost of $10,000. He was contacted by York Rio salespersons who identified themselves as "Maryanne Marler", "Tom Parker" ("**Parker**"), "Jack Baker" ("**Baker**"), "Sebrook" (Sherman), and "Ron Reid" ("**Reid**"). After the Temporary Order was issued, Investor One contacted York.

[193] Investor One is a management consultant specializing in information technology. He has an undergraduate commerce degree. He has never been registered to sell securities or other financial products, and describes himself as a moderately knowledgeable investor. He testified that he has earned a gross income of more than $200,000 a year for nine or ten years. His income, combined with his wife's income, would exceed $300,000 gross, but potentially not net. He and his wife have a diversified portfolio, including stocks and land investments (REITs) exceeding $1 million.

[194] We find that Investor One was probably an accredited investor.

(b) *Investor Two*

[195] Investor Two, a resident of British Columbia, purchased 50,000 York Rio securities, at $0.55 per share, for a total cost of $27,500, in April 2008, and purchased another 320,000 York Rio shares, this time at $0.375 per share, for a total cost of $120,000 in June 2008. He testified that it was a York Rio salesperson who identified himself as "Mark Roberts" (Oliver) who solicited these sales. In July 2008, "Roberts" called again, this time offering additional shares at $0.25 per share. Investor Two testified that he asked to speak to York because what "Roberts" was telling him seemed "unusual". Investor Two testified that York resolved his concerns, and accordingly, he purchased another 400,000 York Rio securities, at $0.25 per share, for a total cost of $100,000. Investor Two invested a total of approximately $247,500 in York Rio.

[196] Investor Two acknowledged that he signed the York Rio subscription agreement, stating that he was an accredited investor. However, he testified that he was not familiar with the term "accredited investor" in 2008 and "Roberts" never asked him about his income or assets. He testified that in 2008, he owned his house, which was worth approximately $600,000, and financial assets of approximately $400,000, including the approximately $250,000 he invested in York Rio securities. His income at the time, and for the previous five years, was approximately $50,000-$75,000 range.

[197] We find that Investor Two was not an accredited investor.

(c) *Investor Three*

[198] Investor Three, an investor in Manitoba, testified that he and his company, XYZ Co., invested approximately $800,000-$850,000 in York Rio. Investor Three was contacted initially by Robinson and another salesperson in late 2004, but "Sebrook" (Sherman) also called him to solicit sales of York Rio securities in September 2008. Investor Three met York, along with Robinson, at a Toronto restaurant to discuss potential investment in the company, and Investor Three later spoke to York on the phone.

[199] Investor Three has a background in civil engineering, and he has never been registered to sell securities. He is self-employed through XYZ Co. In 2005, when Investor Three first invested in York Rio, XYZ Co. was worth about $2 million. We find that XYZ Co. was not an accredited investor. We were given no evidence about Investor Three's net income, net financial assets or net assets.

[200] We did not receive sufficient evidence to determine whether Investor Three was an accredited investor.

(d) *Investor Four*

[201] Investor Four, an investor in Saskatchewan, purchased 33,334 York Rio securities in June 2007, at $0.75 per share, for a total cost of $25,000. A York Rio salesperson who identified himself as "Kevin Crawford" solicited this sale. In July 2007, "Sebrook" (Sherman) contacted Investor Four, who bought another 50,000 York Rio securities at $0.39 per share, for a total cost of $19,500. "Sebrook" called Investor Four again in February 2008, and offered him shares at $0.39 per share. Investor Four purchased an additional 25,000 York Rio securities for a total cost of $9,750, bringing Investor Four's total investment to $54,250. In the fall of 2008, after being contacted by the Commission, Investor Four spoke to York by telephone.

[202] Investor Four is self-employed, and has never been registered to sell securities. He testified that at the time of his investments in York Rio, he did not qualify as an accredited investor under the Net Financial Assets Test, the Net Income Test or the Net Assets Test. He testified that he was asked if he was an accredited investor, but was told that he would qualify if he earned $60,000 a year, which he did.

[203] We find that Investor Four was not an accredited investor.

(e) *Investor Five*

[204] Investor Five, an investor in Alberta, made three purchases of York Rio securities for a total cost of $55,000. In November 2007, after being contacted by "Baker", Investor Five purchased 13,334 York Rio securities, at $0.75 per share, for a total cost of $10,000. In February 2008, "Roberts" (Oliver) contacted Investor Five and persuaded him to invest another $25,000, purchasing 45,455 shares at $0.55 per share. In September 2008, "Roberts" called Investor Five again, and, as a result, Investor Five purchased another 80,000 York Rio securities, at $0.25 per share, for a total cost of $20,000.

[205] Investor Five acknowledged that he had signed the York Rio subscription agreement, indicating that he was an accredited investor. When questioned by Staff as to whether "Roberts" or "Baker" had asked him if his financial assets, excluding real property, exceeded $1 million, and whether his net income, before taxes, exceeded $200,000, a year, Investor Five answered "yes" and testified that he answered both questions in the affirmative.

[206] We find that Investor Five was probably an accredited investor, based on his evidence.

(f) *Investor Six*

[207] Investor Six, an investor in Ontario, invested $10,000 in York Rio, at $1.50 per share, through Jack Shkoury ("**Shkoury**"), who identified himself as York Rio's President, International Sales. Investor Six phoned York to explain her concerns about the share certificate she received, which listed three of her family members as owners, rather than beneficiaries, of the shares.

[208] Investor Six is a nurse, earning less than $200,000 per year, and in 2005, her husband, who has now retired, was working as a municipal parking enforcement officer. Investor Six and her husband also earned rental income of approximately $12,000 per year in 2005. Investor Six testified that her net annual income, considered together with her husband's net annual income, fell short of $300,000.

[209] Turning to the Net Financial Assets Test, Investor Six testified that she and her husband owned their family home, which was worth about $750,000, as well as a rental property worth about $225,000 and a cottage worth about $275,000. In response to questions asked by Schwartz in cross-examination, Investor Six agreed that she and her husband owned real property that was likely worth $1 million, net of debts. But Schwartz's questions incorrectly assumed that Net Financial Assets include an investor's principal residence. We find that Investor Six does not satisfy the Net Financial Assets Test.

[210] Investor Six testified that she did not read the York Rio subscription agreement word for word because "even if you go sign a mortgage at the bank, they say, you sign here, you sign there. That's what I did." (Hearing Transcript, July 21, 2011, p. 35, ll. 8-10). She testified that Shkoury never explained what an accredited investor is, no one pointed out the Certification of Investor Accreditation to her, and she paid no attention to it.

[211] We find that Investor Six was not an accredited investor.

(g) *Investor Seven*

[212] In May 2007, Investor Seven, an investor in Alberta, purchased 13,334 York Rio securities, at $0.75 per share, for a total cost of $10,000, through a York Rio salesperson who identified himself as "Bennett" (Valde). About a month later, "Bennett" called Investor Seven and told him that he was moving on, but "Sebrook" would be calling him in the future. In June 2007, Investor Seven was contacted by "Sebrook", and purchased another 6,667 shares of York Rio, at $0.55 per share, for a total cost of $3,666.85. Investor Seven made his third and final investment in York Rio in March 2008, again at "Sebrook's" solicitation, purchasing 60,000 York Rio securities, at $0.25 per share, for a total cost of $15,000, bringing Investor Seven's total investment in York Rio to approximately $29,000.

[213] Investor Seven testified that neither "Bennett" nor "Sebrook" asked him about his personal financial circumstances. He completed a two year technical course at college, and currently works as an air field coordinator and quality control manager for an oil company. He testified that in 2007, his average annual income was from $200,000-$400,000. In 2006, he was still an employee and earned approximately $110,000, and he probably earned about $100,000 in 2005. He and his wife separated in 2003 and divorced in 2006. His Net Financial Assets in 2005-2006 came to approximately $20,000 cash plus $150,000 in an RRSP, and his net worth, including his principal residence, came to approximately $600,000. We note that although Investor Seven's income exceeded $200,000 in 2007, his income did not reach that threshold in the two most recent calendar years, and therefore did not qualify as an accredited investor under the Net Income Test.

[214] At Investor Seven's request, as indicated on the York Rio subscription agreements, the York Rio shares he purchased were registered in the name of a numbered company that he owns with his mother. He testified that he started the company in the fall of 2005, his mother is the main shareholder, and he is a part shareholder and the manager of the company. Investor Seven estimated that the company had a net worth of $150,000 in 2007.

[215] We find that the numbered company was not an accredited investor under paragraph (m) of the definition of "accredited investor" when the York Rio securities were purchased.

[216] We find that neither Investor Seven nor the numbered company he owns with his mother qualified as an accredited investor at the time of the purchase of York Rio securities.

(h) *Investor Eight*

[217] Investor Eight, an investor in Ontario, bought 10,000 York Rio securities, at US $1.50 per share, for a total cost of CDN $18,607.50, through Shkoury.

[218] Investor Eight testified that he was never asked about his income or assets before he purchased York Rio securities.

[219] Investor Eight testified that he is self-employed and has no designations or experience in the financial markets. He described his level of investment knowledge in 2005 as "just learning". In 2005, his Net Income was approximately $30,000-$35,000 and he owned Net Financial Assets of approximately $40,000.

[220] On cross-examination, Schwartz questioned Investor Eight as to whether his mother, who is named as the principal on the York Rio subscription agreement he signed, was an accredited investor. Investor Eight explained that he added his mother's name because he was still living at home. We accept his testimony that his mother is not an accredited investor.

[221] We find that Investor Eight was not an accredited investor.

(i) *Summary of the Investor Witnesses' Evidence*

[222] For the reasons given above, we find that at least five of the Investor Witnesses (Investors Two, Four, Six, Seven and Eight) were not accredited investors, four of the Investor Witnesses (Investors Two, Six, Seven and Eight) were not asked about their financial circumstances, and at least one of the Investor Witnesses (Investor Four) was misled about the qualifications for accredited investor status.

[223] The Investor Witnesses gave similar descriptions of the York Rio sales process. With the exception of Investor Six, who met Shkoury at a real estate open house, and Investor Eight, who met Shkoury through a colleague, each of the Investor

Witnesses was contacted by a York Rio salesperson who made a number of representations in order to solicit a sale of York Rio securities. Additional sales were solicited in follow-up calls, often by a different salesperson. The salespersons' representations included prohibited representations that York Rio securities would be listed on a stock exchange and fraudulent misrepresentations about York Rio's purported mining operation. For example:

- In the summer of 2007, "Parker" told Investor One that the York Rio mine was in production, and had been pulling 1-69 carat diamonds out of the ground for over three weeks, and that the plan was for York Rio to go public within months. "Parker" also told Investor One that York Rio had already raised $49 million, and planned to raise another $15 million in private financing before going public. Investor One did not invest at that time, but testified that he "took the bait" when "Baker" called him in February 2008 and made "a hard sell sales pitch explaining that it was now or never, that they were about to take York Rio public and now is my opportunity to make some money". In mid-June 2008, "Sebrook" told Investor One that York Rio was in negotiations for sale to a European company, that the negotiations were 85% complete, that the merged company was likely soon to be listed on the Frankfurt Exchange, and that he was busy lining up market makers to ensure there would be an increase in the share price. In September 2008, "Reid" told Investor One that the first deal had fallen through, but there was now a different "imminent" deal with a European company.

- Investor Three testified that he was told – by Robinson, Sebrook, another salesperson and York – that York Rio would be going public, initially in New York, but later this changed to Frankfurt. He was told that there were talks about a buyout by another company, but when that fell through, York Rio was on its way to going public again. Investor Three also testified that he was encouraged to make additional investments by the representation on the York Rio website that the company had acquired more land, was already mining diamonds and was about to pay a dividend.

- When "Sebrook" offered Investor Four additional shares at $0.39 per share, he explained that the reason the price had been reduced from the $0.75 per share that Investor Four had initially paid was that a shareholder in Calgary had bought these shares at $0.39 per share and needed to sell them because he was going through a divorce. Investor Four was also told that the mine was already producing diamonds, that millions of dollars of diamonds had already been sold, and that the money raised was being used to buy equipment and continue mining operations. Investor Four was told that York Rio would be going public in late 2008 or early 2009. Initially, he was told it would be listed on the Toronto Stock Exchange, then NASDAQ, and finally the Frankfurt Stock Exchange. He was told that the securities would be "double digit Euro" when the company went public, and that York Rio was talking to a private company about a buyout before going public. He was also told that once York Rio went public, he would have an opportunity to invest in Brilliante, a uranium mine, which was going to be their next investment.

- Investor Six testified that Shkoury told her York Rio was probably going to open on the New York Stock Exchange and that there was a German company that was interested in buying it.

- Investor Seven testified that in May 2007, he was told, among other things, that York Rio wanted to go public on the Frankfurt exchange and start at €1.50 per share. In February 2008, "Sebrook" told him that York Rio was very close to being listed on the Frankfurt exchange, and there would be a takeover bid for no less than €3 per share. "Sebrook" told him that they were selling the shares at $0.25 per share at that time because they wanted to sell the last million shares before going public. He also told Investor Seven that he and York were very excited about the next development, a "uranium play". On October 3, 2008, "Sebrook" called Investor Seven to tell him that York Rio had been halted because of a private takeover with a huge diamond mine in the Brazil property, that the deal would be finalized in January of the new year. After hearing that York Rio had been cease traded, Investor Seven called "Sebrook", who told him not to worry about it because the investigation concerned Brilliante, another company York Rio shared office space with.

- Shkoury told Investor Eight that York Rio was a start-up mining company that was in the process of getting permits to mine diamonds in Brazil, and that the company intended to get listed on NASDAQ.

[224] Each of the Investor Witnesses testified that after completing the subscription agreement, they would arrange to have it couriered to York Rio, along with their investment cheque, as instructed by a York Rio salesperson. Each of the Investor Witnesses received a York Rio share certificate and welcome letter, both signed by York, as well as instructions for gaining access to the Investors Lounge portal on the York Rio website.

[225] Some of the Investor Witnesses received additional letters signed by York – for example:

- A letter dated November 1, 2004 referred to "[o]ur goal to have a NASDAQ listed stock".

- A letter with the heading "Exciting News" announced a 4:1 share split effective May 11, 2006.

- A letter, dated August 1, 2007, started out by saying "We have very good news! In the last newsletter, we indicated that York-Rio would be applying for a listing on the Frankfurt stock exchange" and describing steps the company had purportedly taken to move forward. The letter enclosed a US share certificate for the same number of shares purchased by the investor, which would replace the no longer valid Canadian certificate, and would be 'the only certificate recognized once we receive the listing at the Frankfurt exchange."

[226] None of the Investor Witnesses was made aware that 70% of the money raised by the sale of York Rio shares went to sales commissions. For example:

- Investor Two testified that no one explained the commission structure to him, and he would not have invested if he had known that 70% of all proceeds went to commission as that would not have seemed a reasonable use of the money.

- Robinson told Investor Three that he was being paid in York Rio shares, and made no mention of commission payments. "Sebrook" told him he was being paid in York Rio shares and was not receiving commission. Investor Three testified that he would never have invested if he had known that approximately 70% of the money raised was going to commissions.

- Investor Four testified that he asked several times how the salespeople were being paid, and whether they were on commission, and he was told that they were being paid in York Rio shares only and were not paid on commission. He testified that it would have made "a big difference" to him if he had known the salespeople were paid on commission.

- Investor Five testified that neither "Roberts" nor "Baker" told him they were paid a 20% commission, and if they had, he "would have thought more about" his investment, because it would mean they were selling the security "because they were putting money in their own pocket", not "because it was a good stock".

[227] None of the Investor Witnesses received any return on their investment or any repayment of their purchase price.

B. The Respondents' Evidence

1. Overview

[228] Schwartz was the only Individual Respondent to testify at the Merits Hearing. York called two witnesses: Farrage, who was York Rio's accountant or bookkeeper, and Kenneth Helowka ("**Helowka**"), an employee at 965 Bay, York's former residence.

2. Schwartz

[229] Schwartz testified over four days of the Merits Hearing, including a lengthy cross-examination by Staff. He testified about the role he and others played at the Eglinton and Sheppard Locations, claiming that he and Debrebud did not trade or engage in acts in furtherance of trades in York Rio securities, but acted only in the role of a "paymaster" on an "outsourced" or independent contractor basis. He also testified about the source and use of funds that flowed through the Debrebud Account.

[230] Schwartz's evidence is discussed in detail at paragraphs 483-496 below.

3. Farrage

[231] Farrage testified about York Rio's corporate income tax return for the year ended July 31, 2005 (the "**2005 Tax Return**"), which he prepared, and about his work with York Rio in subsequent years. He also testified about Jbeily's role in York Rio, stating, for example, that Jbeily refused to provide supporting documentation for payments he authorized for travel expenses. Farrage's characterization of Jbeily's role conflicted with Jbeily's evidence and tended to support the position of York and Schwartz about the ouster of Jbeily from York Rio. We find, however, that Farrage's evidence did not support the position of York and Schwartz that York Rio was a legitimate mining start-up.

4. Helowka

[232] Helowka testified about information he provided to Vanderlaan relating to York's residency at 965 Bay. York submits that Helowka's testimony refutes a statement Vanderlaan made in his diary as to the reason for the termination of York's tenancy.

[233] This has no bearing on the issues before us and therefore we find Helowka's testimony to be irrelevant.

VII. THE INVESTMENT SCHEMES

A. The Business of York Rio and Brilliante

1. The Positions of the Parties

[234] Staff alleges that although the York Rio Respondents promoted York Rio by representing that its business purpose was to operate a diamond mine in Brazil, there was no mine, there were no diamonds, and York Rio had never acquired mining rights. Staff relied on Jbeily's evidence about the steps taken by York Rio to purchase 90% of Nova Mineração Limitada ("**Nova**") in 2004 and 2005 (the "**Nova Transaction**"), on York's admissions during his compelled examination, on documentary evidence, including the two agreements entered into by York Rio and Nova in July 2004 and March 2005, and on evidence that only a minimal percentage of the York Rio Proceeds was spent on purported mining purposes.

[235] York and Schwartz attempted to undermine Jbeily's credibility, and alleged that Jbeily misappropriated $100,000 that was to be used towards the Nova Transaction. However, they were unable to rebut his testimony that York Rio had never completed the Nova Transaction.

[236] Staff alleges that although the Brilliante Respondents promoted Brilliante by representing that its business purpose was to operate a uranium mine in Brazil, there was no mine, and Brilliante was intended to facilitate the continued sale of worthless securities as the sale of York Rio securities was wound down in mid-2008. We heard no evidence to rebut the evidence relied on by Staff.

2. The Evidence

(a) J*beily*

[237] Jbeily began his evidence by testifying about his involvement in his family's diamond mining interests in Brazil through Dourados Mineracao ("**Dourados**"), a Brazilian company incorporated by his uncle, Francois Khouri ("**Khouri**"), and Khouri's wife, Elaine Prado Cury ("**Cury**"). Jbeily was the sole directing mind of Brinton Mining Group Inc. ("**Brinton**"), a company he incorporated in Ontario and Nevada, which owned 98 percent of Dourados. According to Jbeily, this structure was necessary because Brazilian law does not allow a foreign entity to own mineral rights, though it does allow a joint venture.

[238] Dourados was involved in dredging on the Rio Paranaiba in Brazil, but wanted to move away from dredging and find land to make a claim to the Brazilian government for mineral rights. Jbeily and Khouri located suitable land in the Rio Preto region and made a claim. Jbeily explained that the process for obtaining government approval for a mining claim is a lengthy process in Brazil, involving many permits from various authorities. One requirement made by the Brazilian government was that a survey be done by an approved geologist selected from a list. Jbeily testified that he chose Valente from that list because he trusted his integrity as a geologist.

[239] Jbeily testified that early open pit exploration at the Rio Preto site between 2001 and 2003 produced some samples with indications of diamonds and some diamonds. By 2004, the infrastructure was already in place, including a power source, and Brinton had obtained a preliminary and temporary licence. But Jbeily needed more financing to obtain the remaining licences and buy equipment.

[240] Jbeily testified that in 2004, he was introduced to York by Dikram Khatcherian ("**Khatcherian**"), who was involved in marketing investments in precious gemstones. Jbeily and York discussed the financing of Brinton. York suggested taking Brinton public, but Jbeily wanted to keep Brinton private or work on a joint venture.

[241] Jbeily told York about a neighbouring claim in the Rio Paranaiba region (straddling the boundary between the Brazilian states of Goias and Minas Gerais) that was for sale for US $300,000. Jbeily proposed that a new company be created to develop that claim, as Brinton had done with the Rio Preto claim, with the idea that eventually Brinton and York Rio could merge. York agreed, and they incorporated York Rio in May 2004, with Jbeily as Chair and York as President and CEO. York's role was to raise capital; Jbeily's was to run the Brazilian operation.

[242] Jbeily and York were each to own 50% of York Rio, York would hold half of his 50% in trust for Shkoury, his friend, and Jbeily would hold half of his 50% in trust for Khatcherian. Jbeily testified that they were issued 10 million shares each. He did not pay any consideration for his shares and believes that York did not put any money in either.

[243] Jbeily testified that the Langstaff Location was chosen for York Rio's office because he lived nearby. York Rio's accountant would be Farrage, who was well known to York and had an office near the Langstaff Location.

[244] Jbeily testified that he and York agreed that the York Rio bank account would be held at a branch of the Scotiabank downtown, where York was known, and he and York were to be the signatories on the account. He recalled that the only money

in the account at the start-up was approximately $20,000 from Shkoury. Jbeily testified that he and York agreed that York Rio would purchase 90% of a new Brazilian company, Nova, which would be controlled by Khouri and Cury, its directors.

[245] Jbeily testified that in June or July of 2004, he went to Brazil with a cheque from Khatcherian for $100,000, payable to Khouri, and he told Khouri that York Rio was committed to buying 90% of Nova for $300,000.

[246] While in Brazil, Jbeily signed a contract dated July 22, 2004 on behalf of York Rio. Khouri and Cury signed on behalf of Nova. Titled "Private Contract of Commitment for the Purchase and Sale of Mineral Assets", the contract stated that York Rio had paid US $225,000 towards the US $300,000 purchase price, and would pay the remaining US $75,000 to complete the purchase within 40 days (the "**July 2004 Contract**").

[247] On March 21, 2005, another contract was signed by the same parties (the "**March 2005 Contract**"). Jbeily testified that the March 2005 Contract was entered into because the July 2004 Contract had not been fulfilled. Jbeily testified that the purpose of the March 2005 Contract was to incorporate Nova and commit to injecting capital into it by December 31, 2005, as required by Brazilian law. Jbeily testified that the remaining payment owing under the March 2005 Contract was never paid.

[248] In the summer of 2005, Jbeily found that he had been locked out of the York Rio Account on which he and York were signatories. He approached Farrage about York Rio's finances, but Farrage said he had been instructed by York not to speak to him. He got the same response when he approached the transfer agent for a shareholder list. Jbeily wrote to the bank demanding that they stop processing cheques or funds transfers without both signatures. According to Jbeily, York paid an angry visit to him.

[249] Jbeily wrote to York on August 8, 2005, asking that a meeting be held on September 6, 2005 to discuss why the purchase of the claim had not been completed, why a lot of shares were being sold without notice to Jbeily, and why he had been denied access to the bank account, the accountant and the transfer agent.

[250] When Jbeily went to the Langstaff Location on September 6, 2005, he found the doors locked. York opened the door, told him to collect his things, and presented him with a lawyer's letter. This was the last time Jbeily was at the Langstaff Location.

[251] Jbeily contacted his own lawyer, who responded by letter, requesting a meeting to attempt to resolve the issues. This was turned down by York's lawyer, who also advised that Jbeily's name had been removed from York Rio's Corporation Profile Report.

[252] Jbeily testified that to his knowledge, York Rio had no assets in September 2005, when he was locked out of the company. Jbeily has never received documents authorizing the issuance of shares and has never received shareholder lists. He did not recall seeing York Rio's financial statements for the year ending July 31, 2004, or the letter dated September 2, 2005.

(b) *Farrage*

[253] Farrage, who was York's witness, has an ICIA (Industrial **Commercial** Institutional Accounting) designation, which he testified is a British designation similar to a Certified General Accountant ("CGA"). On cross-examination, he conceded that he is not a CGA, a Certified Management Accountant or a Chartered Accountant.

[254] Farrage has known York since they met at the Canada Revenue Agency ("**CRA**") in 1992 or 1993. He testified that he was a CRA auditor for 10 years, then left to establish his own firm, Olive Tree Accounting, which was incorporated in August 1996. The Olive Tree office was almost next door to the York Rio office at the Langstaff Location. Farrage testified that he has been York Rio's accountant since York Rio was incorporated in May 2004 and continues to have the retainer.

[255] Through Farrage, York introduced York Rio's 2005 Tax Return, which was certified as accurate by York, in his capacity as director of York Rio, on July 17, 2008. Farrage testified he prepared the 2005 Tax Return in its entirety, and that it was filed electronically. The 2005 Tax Return indicates that York Rio reported no revenue, no profit and no taxable income in 2004 or 2005.

[256] On September 21, 2011, when Farrage gave his evidence in chief, he testified that he did not have the original Notice of Assessment from CRA. We stated that this would be required if the 2005 Tax Return were to be given any weight, and directed that it be provided by September 28, 2011. We also ruled that Staff's cross-examination of Farrage would be adjourned until November 1, 2011, to allow Farrage to obtain the Notice of Assessment from the CRA and allow Staff time to review it. The Notice of Assessment was not produced by September 28, 2011, and had still not been produced on November 1, 2011, when Farrage returned for cross-examination. We ruled that the Notice of Assessment must be produced by November 18, 2011. It was not produced by then or at any other time.

[257] Turning to the Balance Sheet Information (Schedule 100) on the 2005 Tax Return, Farrage testified that the entry for $479,707 under "Mining Rights", on the asset side of the balance sheet, represented the fund transfers to Brazil to purchase the mining rights from Jbeily's uncle (Khouri). He could not explain the difference between that figure and the entry for mining rights in the prior year ($68,366), though he said that he understood that at least $300,000 had been sent to Brazil to complete the Nova Transaction, and other amounts may have been given to Jbeily. Farrage testified that he prepared the balance sheet based on the books and records and income statements of York Rio. He also testified that he and York met with Jbeily in order to confirm that the transfers were made, but Jbeily did not provide supporting documents, apart from the July 2004 Contract. Farrage testified that he had seen cancelled cheques or bank drafts adding up to US $225,000, the down payment specified in the July 2004 Contract, and had seen bank drafts to support the balance sheet item of $479,707, but he no longer has these documents because they were provided to Staff through his former counsel.

[258] Farrage also testified that Jbeily refused to provide documentation for travel and other expenses which he instructed Farrage to enter as business expenses, or for his substantial withdrawals from the company, and that he instructed Farrage to make payments that were not, in Farrage's view, commensurate with services provided.

[259] Farrage has continued to be York Rio's accountant since 2005, when Jbeily left the company, but he testified that York Rio has not filed any income tax returns after 2005, and the receipts he received from York between 2005 and 2008 mainly related to York Rio's legal expenses. In 2008, York Rio filed an incomplete income tax return in order to receive a GST rebate, but Farrage was not asked to prepare unaudited financial statements or income tax returns between 2005 and 2008. Farrage testified that there was no change in York Rio's share capital reported after 2005 because he was receiving no further documentation. In fact, York Rio has never had any revenue, apart from the gain on foreign exchange. The information from the 2005 balance sheet was simply rolled over in subsequent tax years because he did not have enough documentation to verify how the company was being run, and there was not much activity to report.

[260] The 2005 Tax Return indicates that, as of the July 31, 2005 fiscal year end, York held 100% of York Rio's common shares, and there were no preferred shares; there is no reference to Jbeily owning any shares. Farrage testified that he was not aware that anyone else owned any York Rio shares at that time.

[261] Farrage testified that he was not aware that York Rio had received over $16 million from August 24, 2005 to May 19, 2009 and had never seen receipts for the approximately $2.5 million paid by York Rio during the same period for York's Visa payments (including three payments for travel expenses of approximately $20,000 for a trip to Nassau, Bahamas), York's vehicle expenses (totalling approximately $344,000), payments of approximately $17,000 to Ungaro, approximately $166,000 of personal care expenses, approximately $18,000 for pet care and approximately $171,000 paid to various stores.

[262] Farrage could not recall whether he saw any documentation to support the $1,245,623 entry for common shares on the Schedule 100 of the 2005 Tax Return (Nov. 1:65). Nor could he explain why the 2005 Tax Return indicates that York Rio owned mining rights of only $68,366 prior to the end of the 2004 tax year (July 31, 2004), when the July 2004 Contract indicates the cost of the mining rights was US $300,000, US $225,000 having already been paid, and US $75,000 due to be paid by August 24, 2004. Farrage could not explain why the 2005 Tax Return does not reference assets of mining rights worth US $225,000 in 2005, he could not explain the reported $479,707 in mining rights in 2005, and he acknowledged that he was not aware whether the transaction had been completed.

(c) *York*

[263] York did not testify at the Merits Hearing. In his compelled examination and in his written submissions at the Merits Hearing, he claimed that Jbeily had misappropriated some of the money that was intended for the acquisition of Nova. However, York also claimed that the purchase of Nova was completed. York was unable to provide a coherent or credible account as to the status of the Nova Transaction.

[264] We place significant weight on York's admission, during his compelled examination, that York Rio had never acquired the 90% interest in Nova and that he had known this by September 2005:

> Q. Was the 90 percent, percentage in this company, was it fully paid for by York Rio?
>
> A. On paper, yeah.
>
> Q. But in reality you're saying [Jbeily] kept some money and didn't fully pay for it, is that what you're saying?
>
> A. Yeah.
>
> Q. Okay. So in effect this 90 percent interest was never really acquired by York Rio?

A. Well, in reality, yes, that would be correct.

Q. When did you come to that realization?

A. Between the early spring of 2005 and – the early spring of 2005 and Labour Day 2005.

(Transcript of compelled examination of York, January 15, 2009, pp. 83-84)

[265] In his compelled examination, York admitted that, despite representations and photographs on the York Rio website showing dredge-mining on the Rio Paranaiba, York Rio was not involved in dredging and the site depicted was Brinton's claim, not the site that York Rio planned to mine.

[266] York claims that the 30% of investor funds that remained after the payment of Schwartz's consulting fee was sufficient to fund York Rio's exploratory and development work. However, in his compelled examination, he admitted that York Rio was not a revenue-producing company, never had a working mine, never obtained the required approvals from the Brazilian government, and did not obtain core samples or a survey. He admitted that he was unaware of the whereabouts of any mining licences or geologists' reports, or any other documents that would support his testimony about steps taken by York Rio to develop a mine in Brazil, and could not say how much money was sent to Brazil to develop the mine.

3. Discussion

[267] Farrage was not an impartial witness. His concern about Jbeily's travel expenses and other payments Jbeily may have received, contrasted with his inability to recall or explain the basis for certain entries in the 2005 Tax Return, his testimony that he was not provided with documentation for subsequent years, and his lack of awareness of York Rio's approximately $18 million in share subscriptions or of millions of dollars of payments to or for the benefit of York or his friends and family during and after the 2005 tax year. We did not find Farrage to be a credible witness.

[268] However, we are also not persuaded by Jbeily's characterization of his role in the creation of York Rio and his testimony about the reasons for his ouster from the company.

[269] For example, Jbeily testified that he was unaware of funds being raised from the general public while he was involved with York Rio, and testified that he never received the July 5, 2004 letter from a lawyer enclosing a draft subscription agreement for his review; the letter was directed to his attention at his home address, but he testified he did not recognize the fax number. Jbeily provided no written or other evidence to corroborate his testimony that he objected to the sale of York Rio securities to the general public.

[270] Similarly, Jbeily identified pages from the York Rio website, dated Feb. 13, 2008, which included claims that in July 2004, York-Rio purchased 90% ownership of Nova, and that York-Rio had secured its first project. He testified that in July 2004, what York Rio had was an agreement to purchase 90% of Nova, which had a claim. On cross-examination by Schwartz, Jbeily testified that he had brought this issue to York's attention many times while these claims were on the website. Again, Jbeily could not corroborate his testimony with any written or other evidence that he raised these issues during the period when he was Chairman of York Rio.

[271] Nor does Jbeily recall a September 2, 2005 letter to him from York's lawyer, which included particulars of (alleged) misappropriation of York Rio assets and demanded that Jbeily immediately resign as a director of York Rio and repay misappropriated expenses, or the letters subsequently exchanged from September to December 2005 between York's lawyer and Jbeily's lawyer. We do not believe that Jbeily did not recall this exchange of correspondence.

[272] We find that Jbeily's testimony as a whole reflected a selective inability to recall communications that may raise questions about his own conduct. This undermined his credibility as a witness in this matter. However, the main point of Jbeily's testimony was that York Rio never completed the purchase of the 90% interest in Nova which would have secured the mining rights. Although York and Schwartz vigorously disputed Jbeily's evidence on this point, it was not rebutted by Farrage or by any other credible evidence.

[273] In our view, compelling evidence that York Rio had not completed the Nova Transaction comes from the July 2004 Contract, which states that York Rio had paid US $225,000 and that the remaining payment of US $75,000 remained due, from the March 2005 contract, which states that an amount remained to be paid, and from York's admission in his compelled examination that he knew by Labour Day of 2005 that York Rio had not completed the Nova Transaction.

[274] For the reasons given below, we accept Staff's evidence that York Rio raised approximately $1.8 million from May 1, 2004 to August 31, 2005, and raised another approximately $16 million from September 1, 2005 to October 21, 2008 (a total of approximately $18 million during the Material Time). Of the approximately $16 million raised by the sale of York Rio securities after September 1, 2005, approximately $2.75 million went to Debrebud, approximately $9.2 million went to Runic and the Runic

Companies, and approximately $4.1 million went to York and the York Companies, leaving only a small amount for York Rio's purported mining operations. We find that only a minimal amount – at most 2.7% of the York Rio Proceeds and likely much less – was spent on mining-related expenses. We find there is ample evidence that almost all of York Rio's activities related to the sale of its own securities, and that very little, if any, activity was directed towards York Rio's purported mining purposes.

4. Findings and Conclusions

[275] We find that there is no evidence that York Rio had any viable business assets or any legitimate business operations, and therefore York Rio securities had no value. York Rio, whose sole business was to issue its own worthless securities, was a complete sham.

[276] We find that Brilliante was even more clearly a complete sham. Although Brilliante purported to have a uranium claim in Brazil, and claimed to have invested US $875,000 in the mine, these claims were false. In fact, Brilliante had no mining assets and its only activity was the sale of its own securities. There is no evidence that it had any viable business assets or any legitimate business operations, and there is a great deal of evidence that the Brilliante share issue was designed solely to raise more capital in the fall of 2008 when the York Rio operation reached the point where it began to attract or might be likely to attract regulatory attention.

B. The York Rio and Brilliante Sales Locations

[277] We heard evidence that York Rio securities were sold from five locations during the Material Time:

- 2900 Langstaff Road, in Woodbridge Ontario (the "**Langstaff Location**") from April 2004 to September 2005;
- 181 Eglinton Avenue East in Toronto, Ontario (the "**Eglinton Location**") from the spring of 2005 to the summer of 2006;
- 500 Sheppard Avenue East, in North York, Ontario (the "**Sheppard Location**") from the summer of 2006 to the summer of 2007;
- Yonge and Cummer, in North York, Ontario (the "**Yonge Location**") from January 2007 to July 2008; and
- the Finch Location from August 2008 to October 21, 2008.

[278] We also heard evidence that Brilliante securities were sold from the Finch Location from August 2008 to October 21, 2008.

[279] Staff characterizes York Rio and Brilliante as "boiler room" operations, and relies on *Re Manning*, in which the Commission accepted the following definition of a "boiler room" contained in U.S. jurisprudence:

> "Boiler Room" activity consists essentially of offering to customers securities of certain issuers in large volume by means of an intensive selling campaign through numerous salesmen by telephone or direct mail, without regard to the suitability to the needs of the customer, in such a manner as to induce a hasty decision to buy the security being offered without disclosure of the material facts about the issuer.
>
> *Re E.A. Manning Ltd.* (1995), 18 O.S.C.B. 5317, at page 26, appeal dismissed [1996] O.J. No. 3414 (Ont. Div. Ct.) ("***Re Manning***")

[280] In *Re Manning*, the boiler room operation consisted of a three-level sales force: qualifiers, openers and loaders. Qualifiers cold-called members of the public who were identified using the Yellow Pages of the telephone book, and, using a prepared script, asked the prospect whether he would like to receive the "Manning Letter", a promotional document. If the prospect agreed, the "lead" would be passed on to an "opener", who would attempt to make an initial sale of securities from inventory, using high pressure sales tactics and without any regard to the needs or circumstances of the prospect. After the initial sale, "loaders" made additional calls to persuade investors to buy as many securities as possible and to convince them not to resell the securities already purchased. (*Re Manning*, above, at pages 22-25).

[281] We heard evidence that York Rio and Brilliante securities were sold using a very similar process, which we find was a "boiler room" operation, characterized by the following:

- neither York Rio nor Brilliante had any viable business assets or any legitimate business operations, and their securities were worthless;

- the sole business of York Rio and Brilliante was the sale of their own securities;
- at each location, the sales process followed the pattern described in Re Manning, involving qualifiers, openers (or salespersons) and loaders;
- the administrative assistant and all qualifiers, salespersons and loaders (apart from Robinson), used an alias when communicating with investors by phone or email, and, if involved in the sale of both York Rio and Brilliante securities, most used two different aliases;
- qualifiers cold-called members of the public who were named in contact lists used to sell other securities (for example, Robinson testified that the Euston contact lists were also used to sell York Rio securities) or found in business directories and other resources;
- using a prepared script, the qualifiers attempted to elicit interest in receiving information about York Rio or Brilliante;
- the sales scripts contained many falsehoods and misrepresentations that were intended to effect a sale of securities, including statements that the caller had been involved in the successful IPO of a well-known legitimate mining company and that York Rio was already producing diamonds of 1 to 69 carats;
- if a prospect expressed interest, promotional material would be mailed out, or the prospect would be referred to the York Rio or Brilliante website, where the York Rio Summary Business Plan or Brilliante Summary Business Plan, as well as newsletter updates and other information would be found;
- the York Rio website and the Brilliante website contained many falsehoods and misrepresentations that were intended to effect a sale of securities, including statements that York Rio had purchased 90% ownership of Nova, which owns the mining rights, and had already started the mining and production of diamonds in Brazil and that Brilliante had a mining claim to a 24,000 hectare site and had already invested US $5 million to acquire the property, secure the exploration rights and bring Brilliante to its current status;
- a prospect's contact information would be passed on to the person in charge of the office, who would distribute the lead to a salesperson;
- the salesperson would make repeated calls to the prospect, using a prepared script, to effect a sale of securities;
- scripts contained multiple misrepresentations intended to effect a sale of securities, including statements that York Rio and Brilliante had operating mines, that the salesperson had previously been involved in a successful public offering of a well-known legitimate mining company; and that York Rio was in negotiations with a European mining company that was publicly listed or would be publicly listed on the Frankfurt Exchange, or that York Rio intended to become publicly listed on the Frankfurt Exchange;
- if a prospect expressed interest in buying securities, the salesperson or loader would ask the administrative assistant to send a subscription agreement to the investor, by courier, for the investor's signature, with the investor's contact information and the amount to be invested already filled in;
- the signed subscription agreement and the investor's cheque would be picked up by courier and delivered to a nearby postal box, and from there it would be picked up and delivered to the person in charge of the sales office; and
- the investor's contact information would then be passed on to a "loader", who would call the investor in order to effect additional sales, and several investor witnesses testified that they made subsequent purchases.

[282] The process for selling York Rio and Brilliante securities was similar to the sales process described in *Re Manning*, including the following characteristics:

- use of aliases by York Rio salespersons;
- high pressure sales tactics, including telling prospective investors, for example, that they were being offered York Rio sales at a discounted price because an existing York Rio investor is forced to sell or other special circumstances;

- use of sales scripts that included misrepresentations about York Rio's assets, the status of diamond production, and the qualifications and experience of salespersons and other persons who were represented as having a role in the company;

- misrepresenting the test for qualification as an accredited investor when communicating with prospective investors;

- failure to disclose to prospective investors that the salesperson was compensated by a commission of 20%, and in some cases, a misrepresentation that the salesperson was compensated only in securities of York Rio;

- filing incomplete and misleading Exempt Distribution Reports that relied on the accredited investor exemption, when it was not available, and failed to disclose the 70% fees paid to Schwartz and Runic; and

- prohibited representations about a pending initial public offering and potential merger.

[283] We find that the sale of York Rio securities from the Eglinton, Sheppard, Yonge and Finch Locations, and the sale of Brilliante securities from the Finch Location, bore all the characteristics of a "boiler room" operation.

C. Reliance on the Accredited Investor Exemption

1. Qualification as an Accredited Investor

[284] Once Staff established that York Rio and Brilliante securities were traded without registration and distributed without a prospectus, the evidentiary onus shifted to the Respondents to establish that a registration and prospectus exemption was available in respect of all of the trades of York Rio and Brilliante securities.

[285] We find that at least five of the eight Investor Witnesses, who invested in York Rio securities, were not accredited investors. The York Rio Respondents did not establish that York Rio securities were sold only to accredited investors.

[286] We received no evidence that any of the Brilliante investors was an accredited investor, and accordingly, the Brilliante Respondents also failed to satisfy the onus of establishing the availability of the exemption.

2. The Seller's Responsibility for Compliance

[287] Although the York Rio subscription agreement presented to the Investor Witnesses set out the Net Financial Assets Test and the Net Income Test correctly, at least four of the Investor Witnesses were not asked about their financial circumstances. Several of the Respondents testified that they believed the Net Financial Assets Test included the value of an investor's principal residence; and Schwartz mistakenly continued to assert, throughout the Merits Hearing, that an investor with net assets of $1 million, including their principal residence, was an accredited investor under the Net Financial Assets Test. Similar representations are found in scripts that were seized from the Finch Location. At least one of the Investor Witnesses was told, incorrectly, that an annual income of $60,000 would qualify him as an accredited investor. We find that the qualifying tests for accredited investor status were misrepresented to prospective York Rio investors.

[288] We are also not satisfied that the York Rio Respondents exercised reasonable diligence to ensure that York Rio securities were sold only to accredited investors. Indeed, Schwartz and York cross-examined the Investor Witnesses in an attempt to put the responsibility on them for their losses. In his testimony, Schwartz said, of the investors, "they're the ones who embezzled us because they should not have bought those securities in the first place". Ontario securities law puts the responsibility for compliance on the seller. It is no defence for the Respondents to argue, in effect, "you shouldn't have trusted us." We consider the disregard shown by the Respondents, especially Schwartz and York, for their obligations to investors to be a significant aggravating factor in the hearing of this case.

[289] The Brilliante Respondents presented no evidence that Brilliante securities were sold only to accredited investors or that they exercised reasonable diligence to ensure that Brilliante securities were sold only to accredited investors, and copies of the Brilliante subscription agreement seized from the Finch Location misrepresented the accredited investor test.

3. Market Intermediary

[290] Schwartz submits that York Rio was not a market intermediary and was in the business of mining, not in the business of dealing in securities. (Although Schwartz framed his submissions on this point in relation to the "business trigger test", which was introduced by amendments that took effect in September 2009, after the Material Time, we have considered his submissions in relation to the registration requirements as they existed at the Material Time.)

[291] For the reasons given below, we find that York Rio, through its employees, representatives and agents, was in the business of selling worthless securities in order to raise money for the personal use of the York Rio Respondents and other individuals associated with York Rio. We heard no reliable evidence that York Rio engaged in the mining activity for which it purported to be soliciting investments, and we find that only a minimal amount of the York Rio Proceeds – at most, 2.7%, and likely much less – was used for purported mining purposes. We find that the individuals and companies associated with York Rio were almost exclusively engaged in the business of selling securities. We find that York Rio was a market intermediary and therefore the accredited investor exemption from the registration requirement was not available in relation to the sales of York Rio securities.

[292] Although Schwartz's submissions were focussed entirely on York Rio, we also find, for the same reasons, that Brilliante was a market intermediary which cannot rely on the accredited investor exemption from the registration requirement.

D. Directing Minds

[293] York does not dispute that he was the President and CEO of York Rio and a director of York Rio throughout the Material Time. For the reasons given below, we find that York orchestrated the sale of York Rio securities and authorized the contraventions of the Act by York Rio. We also find, for the reasons given below, that York, not Aidelman, was the directing mind of Brilliante, orchestrated the sale of Brilliante securities, and authorized the contraventions of the Act by Brilliante throughout the Material Time.

[294] Schwartz does not dispute that his company, Debrebud, entered into an agreement with York in March 2005 to provide services for York Rio at the Eglinton Location and the Sheppard Location, in return for 70% of the York Rio Proceeds. His position is that Debrebud was a "paymaster" or "outsourced" agent for York Rio and that neither he nor Debrebud engaged in trades or acts in furtherance of trades. For the reasons given below, we find that Schwartz acted in the capacity of a director or officer of York Rio and engaged in trades or acts in furtherance of trades of York Rio securities from March 2005 to mid-2007.

[295] In January 2007, York entered into an agreement with Runic, who had worked with Schwartz at the Sheppard Location, that Runic would open a new office for the sale of York Rio securities, in return for at least 70% of the York Rio Proceeds. In the summer of 2007, York shifted all sales of York Rio securities from the Sheppard Location to the Yonge Location, controlled by Runic. In August 2008, the sales operation, run by Runic, moved from the Yonge Location to the Finch Location. The sale of York Rio securities continued at the Finch Location until the execution of the Search Warrant at the Finch Location on October 21, 2008.

[296] For the reasons given below, we find that Runic acted in the capacity of a director or officer of York Rio and engaged in trades or acts in furtherance of trades of York Rio securities at the Yonge Location and the Finch Location, and that he acted in the capacity of a director or officer of Brilliante and engaged in trades or acts in furtherance of trades of Brilliante securities at the Finch Location.

E. The Flow of Funds

[297] We accept Staff's evidence about the use of the funds received from York Rio and Brilliante investors.

1. The York Rio and Brilliante Proceeds

[298] From May 10, 2004 to August 2005, York Rio had a Canadian dollar account and a US dollar account at a branch of the Bank of Nova Scotia (the "**York Rio Scotiabank Accounts**"). York and Jbeily were the signing officers. The Account Summaries indicate that $700,140.32 and US $860,275.86 (approximately CDN $1.8 million) was received from investors and deposited into the York Rio Scotiabank Accounts from May 2004 to August, 2005.

[299] The York Rio Scotiabank Accounts were closed or inactive after September 1, 2005, when Jbeily was ousted from the company. York then opened new Canadian dollar and US dollar accounts for York Rio at a branch of TD Canada Trust (the "**York Rio Accounts**"). York and Ungaro were the signing officers. The Account Summaries indicate that $15,931,378.33 and US $431,750.00 was received from investors and deposited into the York Rio Accounts from late August 2005 to May 2009.

[300] York Rio raised approximately $1.8 million from May 2004 to August 2005 and approximately $16 million from September 2005 to October 2008. In total, approximately $18 million was raised from York Rio investors during the Material Time.

[301] The York Rio Proceeds were transferred from the York Rio Accounts and flowed through a number of other accounts controlled by York, Schwartz and Runic during the Material Time. Almost all of the money raised from York Rio investors was used by the York Rio Respondents for their own personal benefit or the benefit of family and friends, and very little was spent on York Rio's purported mining purpose.

[302] All of the $160,000 raised from Brilliante investors in September and October 2008 was deposited into the Brilliante Account. Of this amount, $114,500 (approximately 72%) was transferred to two companies controlled by York. We received no evidence that any money was spent on Brilliante's purported mining purpose.

2. Companies Associated with the Flow of Funds

[303] Vanderlaan and Ciorma testified that, in addition to York Rio, York also controlled the following non-respondent companies and bank accounts during the Material Time (the "**York Companies**"), and York did not dispute this evidence:

- Big Brother and the Holding Company Inc. ("**Big Brother**") was incorporated on July 4, 2007. York was its sole director and the sole signatory on its bank account (the "**Big Brother Account**");
- Dude Productions Inc. ("**Dude**") was incorporated on September 29, 2008. York was its President and sole director, and the sole signatory on its bank account (the "**Dude Account**");
- Evason Productions Inc. ("**Evason**") was incorporated on August 31, 2006. York was its sole director and the sole signatory on its bank account (the "**Evason Account**"); and
- Munket Capital Holdings Inc. ("**Munket**") was incorporated on September 22, 2005. York was its sole director and the sole signatory on its bank account (the "**Munket Account**").

[304] Schwartz did not dispute Staff's evidence that he was the President of Debrebud Capital Corporation ("**Debrebud**") and the sole signatory on its bank account (the "**Debrebud Account**"). Debrebud was incorporated on September 22, 1999 and cancelled on June 7, 2008.

[305] Vanderlaan and Ciorma testified, and, in his compelled examination, Runic admitted, that he was the President and sole director of Superior Home, a British Columbia company that was incorporated on November 27, 1997 as Anyphone. Runic and the late Dorothy Siegel ("**Siegel**"), a friend of Runic's, were listed as signatories on the Superior Home bank account (the "**Superior Home Account**").

[306] Vanderlaan and Ciorma also testified that Runic instructed Koch to incorporate the following companies in British Columbia, which were controlled by Runic at the Material Time:

- 0795624 B.C. Ltd., which was incorporated on June 27, 2007, with Koch as its sole director ("**0795624**");
- Blue Star Consulting (0796249 B.C. Ltd.) ("**Blue Star**"), was incorporated on February 1, 2008. Koch was its sole director, and Koch and Siegel were the signing officers on its bank account (the "**Blue Star Account**"); and
- British Holdings was incorporated on September 26, 2008. Koch was its sole director, and Koch and Runic were the signatories on its bank account, which was opened on October 7, 2008 (the "**British Holdings Account**").

[307] Runic also admitted, in his compelled examination, that he asked Koch to incorporate NatWest for him, as well as 0795624, Blue Star and British Holdings, and that he controlled all these companies, as well as Superior Home (the "**Runic Companies**")

[308] Vanderlaan and Ciorma testified that Georgiadis incorporated two companies in Ontario that were associated with the flow of York Rio and Brilliante funds in September and October 2008:

- 2180353 was incorporated on July 28, 2008. Georgiadis was its sole director and the sole signatory on its bank account (the "**2180353 Account**"); and
- Vision Productions Inc. ("**Vision**") was incorporated on August 29, 2008. Georgiadis was its sole director and the sole signatory on its bank account (the "**Vision Account**") (together, the "**Georgiadis Companies**" and the "**Georgiadis Accounts**").

[309] Staff alleges that York controlled the Georgiadis Accounts.

3. The Flow of Funds during the Schwartz Period

[310] From May 4, 2005 to August 2, 2007 (the "**Schwartz Period**"):

- The York Rio Proceeds were deposited into the York Rio Accounts, which were controlled by York.
- York authorized payment from the York Rio Accounts of $2,750,748.59 (70% of the York Rio Proceeds) to Debrebud, which was controlled by Schwartz.
- The money received by Debrebud was used to pay the salaries and commissions of York Rio qualifiers and salespersons, including $470,781.58 to Superior Home, which was Runic's company. Payments from the Debrebud Account to or for the benefit of Schwartz and his family totalled approximately $889,000.

4. The Flow of Funds during the Runic Period

[311] From January 2007 to October 2008 (the "**Runic Period**"):

- The York Rio Proceeds were deposited into the York Rio Accounts.
- In a number of transactions, York authorized transfers of some of the York Rio Proceeds from the York Rio Accounts to the accounts of each of the other York Companies.
- York authorized transfers from the York Companies of 70% of the York Rio Proceeds to Superior Home. From the York Rio Proceeds, Superior Home received approximately $9,224,325.53, including approximately $470,781.58 from Debrebud and approximately $8,753,543.95 from York Rio and the York Companies.
- Runic authorized the transfer from the Superior Home Account of approximately $3.8 million to the Palkowski Account, and another $2.687 million to the Koch Account.
- Runic instructed Koch to transfer approximately $535,000 from the Koch Account to the trust account of a law firm in Richmond Hill in order to purchase the Aurora Property for Siegel. A lien for $525,000 was placed on the home by 0795624, which was controlled by Runic. Staff obtained a freeze order in relation to the Aurora Property on July 7, 2009.
- Approximately $2 million went to unexplained cash withdrawals, approximately $680,000 was used to pay salaries and commissions for York Rio qualifiers and salespersons, approximately $72,000 was spent on rent, and approximately $22,000 was paid to Runic by cheque.

[312] Runic admitted, with respect to NatWest and British Holdings, that "any monies that were deposited there were monies that were owed to me in respect to commissions that were paid out on behalf of York Rio and/or Brilliante that Jason had owed me from that Finch office and down the road they were to be used for other ventures." (Transcript of compelled examination, May 4, 2011, p. 441, lines 16-22).

[313] With respect to Brilliante, in September and October 2008:

- The $160,000 raised from Brilliante investors was deposited into the Brilliante Account, which was controlled by York, though Aidelman was nominally the President of the company and co-signatory on the account.
- York authorized the transfer of $114,500 (approximately 72% of the Brilliante Proceeds) from the Brilliante Account to the Munket Account ($95,750.00) and the Dude Account ($18,750.00), which he controlled.
- York authorized the further transfer of funds from the Munket Account to the 2180353 Account, which Georgiadis controlled, and the further transfer of funds from the Dude Account to the Vision Account, which Georgiadis controlled. The Brilliante Proceeds and the York Rio Proceeds were commingled in the Munket and Dude Accounts and the Georgiadis Accounts.
- From the 2180353 Account, funds were transferred to the British Holdings Account, and from the Vision Account, funds were transferred to the NatWest Account, both of which were controlled by Runic through Koch.

5. Summary: Disposition of the York Rio Proceeds and the Brilliante Proceeds

[314] Approximately $18 million was raised as a result of the sale of York Rio securities and $160,000 was raised as a result of the sale of Brilliante securities during the Material Time.

[315] During the Schwartz Period, Debrebud received approximately $2.75 million (70% of the York Rio Proceeds). From this amount, Debrebud paid salaries to qualifiers and administrative staff and commissions for salespersons. “Openers” received 20% of the proceeds of an initial sale. The 20% commission for an additional sale to an existing York Rio investor was split between the opener who made the initial sale and the loader who made the subsequent sale. Approximately $889,000 was disbursed from the Debrebud Account to or for the benefit of Schwartz and his family. Another approximately $500,000 went for unexplained payments and cash withdrawals.

[316] During the Runic Period, the York Rio Proceeds were first deposited into the York Rio Account, then approximately 70% was flowed through the accounts of the York Companies (Big Brother, Dude, Evason and Munket), to the Superior Home Account (controlled by Runic). York authorized these transactions.

[317] The sale of Brilliante securities from the Finch Location raised a total of $160,000 from nine investors from September 11, 2008 to October 8, 2008. The Brilliante Proceeds were deposited into the Brilliante Account, and approximately 72% was flowed through the Dude Account and the Munket Account (controlled by York) to the 2180353 Account and the Vision Account (controlled by Georgiadis), and then to the Superior Home Account (controlled by Runic).

[318] Runic and the Runic Companies received approximately $9.2 million during the Runic Period, including approximately $470,781.58 received from the Debrebud Account and approximately $8,753,543.95 received from York Rio and the York Companies (approximately 70% of the York Rio Proceeds during the Runic Period and approximately 72% of the Brilliante Proceeds). From that amount, Runic authorized the transfer of approximately $3.8 million to Palkowski Law and approximately $2.7 million to Koch & Associates. Approximately $2 million went to unexplained cash withdrawals, approximately $680,000 was used to pay salaries and commissions for York Rio sales staff, approximately $72,000 was spent on rent, and approximately $22,000 was paid to Runic by cheque.

[319] Approximately $4.1 million of the York Rio Proceeds and the Brilliante Proceeds was retained by York and used for his personal benefit or the benefit of his friends and family.

[320] In summary, almost all of the approximately $18 million raised from York Rio and Brilliante investors was appropriated by the Respondents for their personal use. Only a minimal amount went to York Rio’s purported mining activity – at most, approximately 2.7% of the York Rio Proceeds, and likely much less. There is no evidence that any of the Brilliante Proceeds was spent on purported mining expenses.

VIII. THE ROLE OF THE RESPONDENTS

A. York Rio

1. The Allegations

[321] Staff alleges that York Rio:

- traded in its securities without registration, where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed its securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[322] We heard evidence that York Rio, which has never been registered with the Commission, traded in its own securities, through its employees, representatives or agents, contrary to subsection 25(1)(a) of the Act, and that York Rio distributed its securities, which had never before been issued, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest. The main points are as follows.

(a) *Section 139 Certificates*

[323] Vanderlaan testified that Staff's Section 139 Certificates for York Rio indicate that York Rio has never been registered with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed a preliminary prospectus or prospectus with the Commission or received a receipt from the Director.

[324] Vanderlaan testified that York Rio filed a number of Exempt Distribution Reports in Ontario and other provinces in which it reported trades of its own previously unissued securities to named investors, purportedly relying on the accredited investor exemption.

(b) *Staff Investigators*

[325] Vanderlaan and Ciorma testified that approximately $18 million was raised from the sale of York Rio securities to investors.

[326] Vanderlaan testified about the contents of the York Rio website, the York Rio Business Plan, and the sales scripts that were used by York Rio qualifiers and salespersons.

[327] Vanderlaan testified that the documents seized from the Finch Location included a document entitled "Accreditation Information", which was a questionnaire to be used when qualifying York Rio investors, which misstated the Net Financial Assets Test, representing that an investor could qualify based on "combined net worth (with a spouse) of $1 million or more, "meaning your home, automobiles and everything", and that other documents found at the Finch Location contained similar misrepresentations.

(c) *Compelled Examinations*

[328] In their compelled examinations, Runic, Demchuk, Oliver and Valde admitted that they sold York Rio securities. Runic admitted that he sold York Rio securities from the Sheppard, Yonge and Finch Locations, and his admission was corroborated by Vanderlaan, Ciorma, Robinson, Sherman, Friedman, Georgiadis, and Hoyme. Demchuk admitted that he sold York Rio securities from the Yonge and Finch Locations, and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Georgiadis and Hoyme. Oliver admitted that he sold York Rio securities from the Yonge and Finch Locations, and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Sherman, Georgiadis, Hoyme, Investor Two and Investor Five. Valde admitted that he sold York Rio securities from the Yonge and Finch Locations, and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Sherman, Georgiadis, Hoyme and Investor Seven.

(d) *Witnesses called by Staff*

[329] Robinson, a former York Rio salesperson, and Friedman, who worked in an administrative role, testified about the sale of York Rio securities at the Eglinton and Sheppard Locations.

[330] Georgiadis testified that he played an administrative role at the Yonge Location, including giving investor cheques to York and receiving cheques from York to be given to Runic. He testified that York Rio securities were sold at the Yonge and Finch Locations.

[331] Sherman, a former York Rio salesperson, testified that he started selling York Rio securities from the Yonge Location in July 2007 and continued to do so from the Finch Location until the execution of the search warrant in October 2008.

[332] Hoyme testified that she started working at the Yonge Location in July 2007, performing receptionist and administrative duties, and continued to do so at the Finch Location until the execution of the search warrant in October 2008. She testified about the sale of York Rio securities from the Yonge and Finch Locations.

[333] Ungaro testified about the administrative role she played, including receiving the signed subscription agreements and investor cheques, sending out letters to investors, sending information to the transfer agent, and keeping the records for York Rio.

[334] McDonald testified that she prepared the York Rio website and materials to be provided to investors, based on instructions and content she received from York.

[335] Brown testified that he did the technical development of the York Rio website, including the Investors' Lounge, based on instructions from York and McDonald.

(e) *Investor Witnesses*

[336] All eight Investor Witnesses testified about their purchases of York Rio securities from York Rio salespersons, including Sherman (Investor One, Investor Three, Investor Four and Investor Seven), Robinson (Investor Three), Oliver (Investor Two and Investor Five) and Valde (Investor Seven).

[337] Of the eight Investor Witnesses, at least five (Investor Two, Investor Four, Investor Six, Investor Seven and Investor Eight) clearly did not qualify as accredited investors. Four of these five (Investor Two, Investor Six, Investor Seven and Investor Eight) testified that they were not asked about their Net Income, Net Financial Assets or Net Assets; and the fifth (Investor Four) testified that he was told that an annual income of $60,000 would qualify him.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[338] York Rio relied on the accredited investor exemption from the registration and prospectus requirements. We find that the accredited investor exemption from the registration and prospectus requirements was not available with respect to trades of York Rio securities.

[339] Based on the evidence set out at paragraphs 323-337 above, we find that York Rio traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[340] As the York Rio securities had not been previously issued, we find that York Rio distributed its securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[341] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[342] The sale of York Rio securities bore the characteristics of a "boiler room" scheme. York Rio and its employees, representatives and agents:

- used aliases when communicating with investors and prospective investors;
- used high pressure sales tactics, including telling investors and prospective investors, for example, that they were being offered York Rio securities at a discounted price because an existing York Rio investor is forced to sell;
- prepared and used sales scripts that included misrepresentations about York Rio's assets, the status of diamond production, and the qualifications and experience of officers, salespersons and other persons who were represented as having a role in the company;
- misrepresented the test for qualification as an accredited investor when communicating with prospective investors;
- posted on the York Rio website many falsehoods and misrepresentations that were intended to effect a sale of securities, including statements that York Rio had purchased 90% ownership of Nova and had already started the mining and production of diamonds in Brazil, and made similar misrepresentations in promotional materials disseminated to investors and prospective investors;
- made misrepresentations in the York Rio Business Plan that were intended to effect a sale of securities, including claims that York Rio had purchased Nova and that an existing investment of US$600,000 had been used to acquire the physical property and exploration rights, and expenditure and net income projections that were identical to those made in the Brilliante Business Plan, and had no basis in reality;
- failed to disclose to investors and prospective investors that the salesperson was compensated by a commission of 20%, and in some cases, misrepresented that salespersons were compensated only in securities of York Rio;

- filed incomplete and misleading Exempt Distribution Reports that relied on the accredited investor exemption, when it was not available, and failed to disclose the 70% fees and commissions paid to Schwartz and Runic; and

- made prohibited representations about a pending initial public offering and potential merger.

[343] We find that York Rio never acquired mining rights in Brazil, had not commenced operations and had not produced any diamonds, contrary to the misrepresentations made in York Rio's promotional materials and misrepresentations made by York Rio salespersons. York Rio never earned any revenue from mining.

[344] We accept the evidence of Vanderlaan and Ciorma that approximately $18 million was raised as a result of the sale of securities of York Rio during the Material Time. Out of this amount, approximately $2.75 million (approximately 70% of the York Rio Proceeds) went to Debrebud during the Schwartz Period, and another approximately $9.2 million (approximately 70% of the York Rio Proceeds and approximately 72% of the Brilliante Proceeds) went to Runic and the Runic Companies during the Runic Period. Approximately $4.1 million went to York or the York Companies.

[345] Contrary to the projected expenditures for mining development costs set out in York Rio's promotional materials, only a minimal amount went to York Rio's purported mining activity – at most, approximately 2.7% of the York Rio Proceeds, and likely much less. Instead, the York Rio Proceeds were used to pay the overhead expenses for the York Rio sales locations, including salaries for qualifiers and 20% commissions for salespersons. Investors were not told about the commission structure, and some of those who asked were told that York Rio salespersons were compensation in York Rio securities only. Several investors testified that they would not have invested had the commission structure been disclosed to them.

[346] After payment of commissions and other overhead expenses, most of the remaining money obtained from York Rio investors was appropriated by York, Runic and Schwartz for their personal use or for the benefit of their families, friends, and other individuals and companies associated with the Respondents.

[347] We find that York Rio perpetrated a fraudulent investment scheme whose purpose was to obtain money for the personal use of the York Rio Respondents and other individuals associated with York Rio and not to raise money to develop a diamond mine, as represented to York Rio investors. We find that York Rio securities were worthless and that the York Rio Investment Scheme was a sham. We find that the conduct of York Rio was contrary to the public interest. We find that York Rio engaged or participated in acts, practices or courses of conduct relating to York Rio securities that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

4. Conclusion

[348] We find that York Rio traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[349] We find that York Rio distributed its securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[350] We also find that York Rio engaged or participated in acts, practices or courses of conduct that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

B. Brilliante

1. The Allegations

[351] Staff alleges that Brilliante:

- traded in its securities without registration, where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

- distributed its securities without filing a prospectus or preliminary prospectus with the Commission and obtaining a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

- engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[352] We heard evidence that Brilliante, which has never been registered with the Commission, traded in its own securities, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act. We also heard evidence that Brilliante distributed its securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(a) *Section 139 Certificates*

[353] Staff provided Section 139 Certificates stating that Brilliante has never been registered with the Commission in any capacity, has never been a reporting issuer as defined by the Act, and has never filed any materials, including a prospectus or preliminary prospectus or received a receipt for a prospectus.

(b) *Staff Investigators*

[354] Vanderlaan testified that Brilliante had been incorporated in July 2007, but appears to have been inactive until August of 2008.

[355] Vanderlaan and Ciorma testified that from September 11, 2008 to October 8, 2008, nine members of the public invested $160,000 in Brilliante.

[356] Vanderlaan testified that the documents seized during the execution of the Search Warrant at the Finch Location indicated that the sale of York Rio securities was being shut down and that the focus of securities sales from the Finch Location was shifting to Brilliante in the summer of 2008.

[357] Vanderlaan and Ciorma testified that the Brilliante Account was opened in January 2007, with an opening deposit of $1,000 payable on the York Rio Account. Two more cheques on the York Rio Account were deposited into the Brilliante Account on December 13, 2007 ($250) and March 6, 2008 ($2,500). Between September 11, 2008 and October 8, 2008, cheques from nine investors, totalling $160,000, were deposited into the Brilliante Account. Investors were the only source of funds into the Brilliante account after September 11, 2008.

[358] Vanderlaan and Ciorma testified that funds flowed from the Brilliante Account to the accounts of the York Companies. From the Brilliante Account, $18,750 was transferred to the Dude Account (two cheques for $9,375 each, both dated October 2, 2008) and $95,750 was transferred to the Munket Account (five cheques issued between September 22 and October 20, 2008). In total, $114,500 (approximately 72% of the Brilliante Proceeds) was transferred from the Brilliante Account to the Dude Account and the Munket Account. From the Dude Account and the Munket Account, money was transferred to the 2180353 Account and the Vision Account, and from there to the British Holdings Account and the NatWest Account.

(c) *Compelled Examinations*

[359] Brilliante securities were sold by salespersons, including Runic, Demchuk and Valde, each of whom admitted in his compelled examination that he sold Brilliante securities. Based on Runic's admissions, we find that he ran the Brilliante sales operation at the Finch Location and engaged in trades or acts in furtherance of trades of Brilliante securities. Demchuk admitted that he sold Brilliante securities to one investor from the Finch Location, using the alias "Sutton", and his admission was corroborated by the testimony of Vanderlaan, Ciorma, Georgiadis and Hoyme. Valde admitted that he sold Brilliante securities from the Finch Location, using the alias "Wade", and his admission was corroborated by the testimony of Vanderlaan, Ciorma, and Georgiadis.

(d) *Witnesses called by Staff*

[360] That the Brilliante investment scheme grew out of the York Rio scheme and was intended to replace it, was supported by the evidence of Georgiadis and Hoyme, who testified about the Brilliante sales operation at the Finch Location, Ungaro, who testified about her administrative role in Brilliante, and McDonald and Brown, who testified about the preparation of the Brilliante website and promotional materials. All these witnesses continued to play a similar role in relation to Brilliante that they had in relation to York Rio and their evidence indicates that the Brilliante sales operation was very similar to that of York Rio.

(e) *Investor Witnesses*

[361] Investor One testified that in June 2008, "Sebrook" (Sherman) called him to solicit an additional purchase of York Rio securities before York Rio went public, and also told him there would be an opportunity to invest in uranium. When Investor One spoke to York, after learning about the Temporary Order, York told him that the only connection between York Rio and Brilliante was that they were sharing office space, and that Brilliante had stolen York Rio's prospectus.

[362] Investor Seven testified that "Sebrook" told him that the Temporary Order related only to Brilliante, with which York Rio shared office space.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[363] We find that the accredited investor exemption from the registration and prospectus requirements was not available with respect to Brilliante.

[364] Based on the evidence set out at paragraphs 353-362 above, we find that Brilliante, which has never been registered with the Commission, traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[365] As the Brilliante securities had not been previously issued, we find that Brilliante distributed its own securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[366] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[367] We find that Brilliante engaged or participated in a course of conduct that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest:

- There is no evidence that any of the $160,000 raised from Brilliante investors was spent for the purported mining purposes of Brilliante. Instead, approximately 72% of the Brilliante Proceeds flowed from the Brilliante Account, in which investor cheques were deposited, to the Munket Account and the Dude Account, which were controlled by York, and from there to the 2180353 Account and the Vision Account, which were controlled by Georgiadis, and from there to the British Holdings Account and the NatWest Account, which were controlled by Runic.

- Vanderlaan testified that much of the content of the Brilliante website was copied from Wikipedia and from a Brazilian government website about a different mine.

- The Brilliante website claimed that Brilliante had a 24,000 hectare mining claim in Brazil containing uranium and that US $5 million had been invested in the mine. There is no evidence that Brilliante engaged in any activity other than the sale and distribution of its own securities. Aidelman testified that the claims on the Brilliante website about his own qualifications and experience were false.

- The Brilliante Business Plan included many false statements, including claims that Brilliante had a mining claim for an 8,500 hectare site and that an initial investment of US $875,000 was used to acquire the physical property and secure the exploration rights. The expenditure and net income projections given in the Brilliante Business Plan are identical to those given in the York Rio Business Plan and had no basis in reality.

- Brilliante securities were sold by the same qualifiers and salespersons who had sold York Rio securities, but using different aliases. The Brilliante sales scripts that were seized from the Finch Location contained numerous misrepresentations that were intended to solicit sales of Brilliante securities, including claims that the caller (salesperson) had previously been involved in the initial public offering of another mining company.

[368] We find that Brilliante perpetrated a fraudulent investment scheme whose purpose was to obtain money for the personal use of the Brilliante Respondents and other individuals associated with Brilliante and not to raise money to develop a uranium mine, as represented to Brilliante investors. We find that Brilliante securities were worthless and that the Brilliante Investment Scheme was a sham.

[369] We find that Brilliante engaged or participated in a course of conduct that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[370] We find that Brilliante traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[371] We find that Brilliante distributed its own securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[372] We also find that Brilliante engaged or participated in acts, practices or courses of conduct that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

C. York

1. The Allegations

[373] Staff alleges that York:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and
- being a director or officer of York Rio and Brilliante, authorized, permitted or acquiesced in the contraventions subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

2. The Evidence: York's role in the York Rio Investment Scheme

[374] Staff's evidence about York's role in the York Rio Investment Scheme came from Vanderlaan and Ciorma, York's compelled examination, witnesses called by Staff (Robinson, Friedman, Georgiadis, Ungaro and McDonald), the five Investor Witnesses who spoke to York by telephone or in person – (Investor One, Investor Two, Investor Three, Investor Six and Investor Eight) and from Schwartz.

(a) *Section 139 Certificate*

[375] Staff provided a Section 139 Certificate stating that York has never been registered with the Commission in any capacity.

(b) *Staff Investigators*

[376] Vanderlaan and Ciorma provided evidence that York was the directing mind of York Rio and that he was actively involved in the sale of York Rio securities, including:

- the Corporation Profile Report for York Rio, shows York as the President and sole director of the company;
- the Exempt Distribution Reports filed by York Rio, and certified as true by York, who signed as the President of York Rio, indicate that York Rio relied on the accredited investor exemption in distributing its securities to investors, and most of the Exempt Distribution Reports indicate that no "Commissions & Finders' Fees" are paid, or that consulting fees only are paid; and

- the York Rio website, York Rio Business Plan and other promotional materials given to prospective York Rio investors with the intent of soliciting investments, and the York Rio subscription agreements, identify York as the President of the company.

[377] The Account Profiles and Account Summaries show that

- during the Schwartz Period, York authorized the transfer of approximately $2.75 million (approximately 70% of the York Rio Proceeds) from the York Rio Account to the Debrebud Account;
- during the Runic Period, York authorized the transfer of approximately $9.2 million, (approximately 70% of the York Rio Proceeds and approximately 72% of the Brilliante Proceeds) from the York Rio Account to the Superior Home Account, either directly or by flowing the money through the accounts of the York Companies and the Georgiadis Companies; and
- approximately $4.1 million of the Proceeds was used by York for his personal benefit or the benefit of his family and friends, including the following payments, from the York Rio Accounts:
    - approximately $2,529,565.03 in credit card payments on York's credit cards;
    - approximately $477,789.08 in cash withdrawals;
    - approximately $344,459.19 for car payments;
    - approximately $170,619.34 paid to stores;
    - approximately $135,630.10 to telecommunications companies, including cell phone expenses;
    - approximately $116,165.75 for personal care;
    - approximately $18,497.23 for veterinary expenses; and
    - approximately US $115,958.60 to York personally.
- the Account Summaries for the York Rio Scotiabank Accounts indicate that another approximately $109,301.16 was disbursed to or for the benefit of York, including:
    - approximately $66,007.62 paid to York personally or in credit card payments on York's credit cards; and
    - approximately $43,293.54 for personal-related expenses, including payments to stores, telecommunications companies and for car payments and life insurance.
- York received additional amounts from the accounts of the other York Companies, including:
    - approximately $32,330.75 from the Dude Account for payments on York's credit cards;
    - approximately $26,868.04 from the Munket Account for car payments; and
    - approximately $22,429.98 from the YRR Holdings Account and $2,400.00 from the Munket Account in rental payments for York.

[378] The Account Summaries indicate that approximately $4.1 million of the York Rio Proceeds was disbursed to or for the benefit of York or his family and friends.

(c) *York's Compelled Examination*

[379] York did not testify at the Merits Hearing. In his compelled examination, which took place on January 5, January 28 and May 15, 2009, he made the following admissions and gave the following evidence about his involvement in the York Rio Investment Scheme:

- he has never been registered to sell securities;
- he has no education or experience in the mining industry;

- he and Jbeily incorporated York Rio in May 2004 to raise money to purchase a company that owned mining rights in Brazil;
- after York Rio moved into the Langstaff Location in mid-May 2004, York and others prepared a presentation package for investors and hired staff, including Ungaro, a friend, who was hired to keep records of the investor cheques and subscription agreements and the communications with the transfer agent, and Ungaro's daughter, McDonald, who was hired to create a website;
- he and others provided information for the York Rio website, which included an Investor Lounge portal on which Investor Updates were posted, and he had input into some of the Investor Updates;
- he believed [incorrectly] that an individual qualified as an accredited investor if he or she owned, alone or with a spouse, $1 million of unencumbered real estate;
- he and others would decide whether a prospective investor qualified;
- he participated in presentations to prospective investors at the Langstaff Location;
- between early spring 2005 and Labour Day 2005, he became aware that $400,000 of the $700,000 he claims he had transferred from the York Rio Accounts to complete the Nova Transaction had not been used for that purpose, and he knew, therefore, that the transaction had not been completed;
- the York Rio website was never corrected to reflect the failure of the Nova Transaction;
- he had final approval of the content on the website after September 2005;
- after September 2005, York Rio moved its bank accounts from the Scotiabank to TD Canada Trust, and he and Ungaro had signing authority on those accounts;
- after September 2005, he and Schwartz entered into an agreement that Schwartz to solicit accredited investors for York Rio in return for a 70% "consulting fee".
- he and Robinson met with Investor Three and his wife over lunch in Toronto;
- he ended the arrangement with Schwartz in July of 2007 and asked Runic, who had worked with Schwartz at the Sheppard Location, to open a sales office, in return for a fee of 70% of the proceeds of the sales;
- Georgiadis acted as his "eyes and ears" during the Runic Period;
- York Rio never obtained the required approvals from the Brazilian government, and did not obtain core samples or a survey;
- contrary to the claims on the York Rio website, York Rio did not do any dredging, and the dredging photographs on the York Rio website depicted Brinton's Rio Paranaiba site, not York Rio's site;
- York Rio "was not a revenue-producing company";
- he visited the Eglinton, Sheppard and Yonge Locations;
- he was aware that some representations made to prospective investors were not true, for example, the claim in a York Rio sales script that York Rio was producing diamonds of 1-69 carats; and
- he was aware that some salespersons were using aliases.

[380] York made the following admissions and gave the following evidence, during his compelled examination, about the disbursement of the York Rio Proceeds.

- he authorized payment of approximately $11 million of the York Rio Proceeds to Schwartz or Runic through Big Brother, Dude, Evason, Munket, and YRR Holdings Inc. (York's Companies) and through 2180353 (Georgiadis's company), including numerous cheques in small amounts flowed through different accounts in the same time period; and

- he authorized payments from York Rio to or for the benefit of Ungaro, McDonald and Aidelman, and to or for his own benefit, as alleged by Staff.

[381] As discussed at paragraphs 418-423 below, York admitted that he authorized the disbursement of approximately $4 million of the York Rio Proceeds to himself or others associated with the York Rio Investment Scheme. Although he claimed that many of these expenses were incurred for York Rio's business, he did not provide any documentation in support of that claim.

(d) *Witnesses called by Staff*

(i) Friedman

[382] Friedman worked as a York Rio salesperson at the Eglinton and Sheppard Locations during the Schwartz Period.

[383] Friedman testified that York did not have an office at the Eglinton Location or the Sheppard Location, but visited 2 or 3 times a week, on average. He testified that he observed cheques changing hands between York and Schwartz "many times", and added that if York did not visit the office in any week, generally it meant that no sales had been made. However, sometimes Friedman would deliver the subscription agreements and investor cheques to York at his home, and York would give him cheques for delivery to Schwartz.

[384] On cross-examination by York, Friedman agreed that he was not employed or paid by York Rio and that York did not hire him, did not hire any salespersons, did not choose the offices and did not write any scripts. He also agreed that York Rio did not have a parking space at the Eglinton Location or the Sheppard Location and did not appear in the lobby or any building directory or on anyone's name tag.

(ii) Robinson

[385] Robinson testified that he first met York at the Eglinton Location. York did not have an office there but he would visit once or twice a week to talk to Schwartz, and he would visit whenever a cheque came in.

[386] Robinson testified that in March or April of 2006, he and York met with Investor Three and his wife, who had flown in from Manitoba for the meeting, to talk about York Rio. Investor Three had already invested approximately $250,000 in York Rio and went on to make additional purchases. Robinson testified that York talked about York Rio at the meeting.

[387] Robinson testified in about June of 2007, York told him to stop selling York Rio securities to new investors from the Sheppard Location. This was at around the time York Rio moved its sales operation to the Yonge Location, run by Runic.

(iii) Georgiadis

[388] Georgiadis testified that in about June of 2007, York introduced him to "Turner" (Runic) who was in charge of the Yonge Location, and suggested that he work for Runic doing "investor relations" for York Rio. Initially, Georgiadis mailed out information packages to prospective investors and picked up the investor packages, including completed subscription agreements and investor cheques ("**Investor Packages**") from a virtual office near the Yonge Location.

[389] Georgiadis testified that he did not observe any transactions between "Turner" and York in the office, and said that York "mostly ... wouldn't come to the office". Eventually, Georgiadis began delivering cheques from "Turner" to York and from York to "Turner", usually visiting York at home or some other location outside of the office. Georgiadis testified that initially he delivered the Investor Packages from "Turner" to York and delivered cheques from York to "Turner", but later he went with Turner to meet with York for this purpose.

[390] Georgiadis appeared to be reluctant to recognize York's role in overseeing the sales operation at the Yonge Location and the Finch Location. He testified that York told him to do whatever "Turner" asked, and could not remember whether York had ever asked him for information about what was going on in the office. After refreshing his memory by reviewing the transcript of his compelled examination, he conceded "I was there sort of helping managing the office, but not really. It was never really a title, but I was there, I guess, as my uncle's eyes and ears." (Hearing Transcript, March 23, 2011, p. 69, ll. 19-22)

(iv) Sherman

[391] Sherman testified that he understood York to be the President of York Rio, and that he saw York in the Yonge Location and the Finch Location about six times over the approximately 14 months when Sherman was involved. He testified that Runic hired him, dictated scripts to him, instructed him, gave him contact lists and paid him, and that he relied on information Runic provided about York Rio's purported mine and about the accredited investor exemption. On cross-examination by York, Sherman testified that York did not hire him, instruct him, pay him or provide him with information about York Rio's business.

(v) Ungaro

[392] Ungaro testified that she performed administrative functions for York Rio at York's direction, including receiving the Investor Packages, sending letters to investors, sending information to Capital Transfer Agency, and keeping records for York Rio.

[393] Ungaro testified that she did not have any kind of employment agreement with York or York Rio, or Schwartz or Debrebud. On an irregular basis, York would pay her rent, her Visa bill, her veterinary and medical expenses, including $25,000 for cosmetic surgery, her cell phone and for family vacations for her McDonald, as well as York's daughter and her children, and she drove York's cars (a Range Rover, a Mercedes and an Audi – she did not drive the Aston Martin). She estimated that York paid her bills of approximately $2,000-2,500 per month.

(vi) McDonald

[394] McDonald testified that York asked her to prepare a brochure, information package, and newsletters for the York Rio website in 2005 or 2006; there was no material available yet at that time. She also designed the Investors' Lounge portal. According to McDonald, it was Jbeily who provided the content in the beginning, though York also contributed. After Jbeily's departure, York instructed her to remove Jbeily's name from the York Rio website. From then on, York was in charge of York Rio, and her instructions came from York or from Runic, approved by York. McDonald identified the brochure, "Beyond Brilliance", which she prepared on instructions from Jbeily and York, and the York Rio Business Plan, which she prepared on instructions from York and Runic.

[395] McDonald testified that York paid her, on a project basis, by cheques payable on the York Rio Account, and she agreed with Staff's estimate that she received approximately $30,000 in total between 2005 and 2008. She testified that she also had the use of a Volvo that York leased for about $750 per month, which he paid for, and that York paid for her gas, rent, veterinary bills and vacations.

(vii) Brown

[396] Brown, who is a freelance web developer, testified that McDonald hired him to do the technical work involved in creating the York Rio website, based on content she provided. McDonald and York would email him with instructions for changes or updates to the York Rio website, and he created 300-400 usernames and passwords to allow new investors to access the Investor Lounge. Brown testified that he was paid approximately $10,000 for his work, paid by cheque on the York Rio Account.

(e) The Investor Witnesses

[397] Five of the Investor Witnesses spoke to York in relation to their purchases of York Rio securities. Although York cross-examined most of the Investor Witnesses, he did not challenge their evidence about what he had said to them, but instead focused on their reasons for signing the Certificate of Investor Accreditation.

(i) Investor One

[398] When Investor One and Investor Four called York Rio after the Temporary Order was issued, York returned their calls to reassure them that York Rio had a mine in Brazil and that it was, or would be, producing diamonds.

[399] Investor One asked why York Rio was still raising money if the mine was producing diamonds; he testified that York's response was "not yet, but soon". When Investor One asked if dividends were a possibility, as was stated in the newsletters, York said, "yes, they're a possibility". According to Investor One, York also told him that the Commission's allegations overlooked the cost of raising capital (20% of each dollar raised) and operational costs (50%); York claimed that the 70% commission paid on York Rio sales was not excessive. Investor One testified that he did not agree, and would not have invested if he had known that 70% was coming "off the top" for these costs. Finally, York also told Investor One that the only relationship between York Rio and Brilliante was that they were sharing office space, and that Brilliante had stolen York Rio's prospectus.

(ii) Investor Two

[400] Investor Two testified that York told him, in the summer of 2008, that York Rio was producing 30% gem quality and 70% industrial quality diamonds, that they were raising money in order to buy equipment to bring the mine to production level, that they had turned down a buy-out offer because they had discovered uranium deposits on the property and had decided to purchase nearby property where they had a uranium operation, and that they were going to take the company public themselves. Investor Two invested another $100,000 in York Rio following this conversation with York. Investor Two testified that neither York nor "Roberts" (who had initially contacted him) told him that 70% of the York Rio Proceeds went in

commissions to Debrebud and Superior Home, and if they had, he would not have invested because that would not have been a "reasonable use of the money".

(iii) Investor Three

[401] Investor Three, who invested approximately $800,000 in York Rio between 2005 and 2008, testified that York told him in October 2008 that he would be flying to Germany the following month to arrange for York Rio to be listed on the Frankfurt Exchange, and tried, unsuccessfully, to convince him to invest another $18,000.

(iv) Investor Six

[402] Investor Six called York to complain that her new share certificate, following the share-split, wrongly listed her intended beneficiaries as the owners of the shares. He told her to return the share certificate to he could resolve the problem. She did so, but did not receive a corrected share certificate.

3. Analysis: York's role in the York Rio Investment Scheme

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[403] We heard evidence that York engaged in numerous acts in furtherance of trades in York Rio securities:

- he incorporated York Rio;
- he authorized McDonald to create the York Rio website;
- he instructed McDonald and Brown with respect to the content of the York Rio website and the creation of Investor Lounge accounts for new York Rio investors;
- he authorized the preparation of the York Rio subscription agreement and its dissemination to prospective investors;
- he authorized Debrebud (during the Schwartz Period) and Runic (during the Runic Period) to pay the qualifiers and salespersons who sold York Rio securities at the Eglinton Location, the Sheppard Location, the Yonge Location and the Finch Location and to pay for other expenses of the sales operation;
- he visited the Eglinton Location, the Sheppard Location and the Yonge Location on a regular basis;
- he received the Investor Packages from Schwartz or Friedman (during the Schwartz Period) and from Georgiadis (during the Runic Period);
- he participated in decisions about whether a prospective investor was an accredited investor;
- with Robinson, he met with Investor Three, a York Rio investor who went on to make additional purchases after the meeting;
- he spoke to Investor Two, who made additional investments in York Rio after speaking to him;
- he spoke to three other Investor Witnesses (Investor One, Investor Four and Investor Six) who called him after making their investment or learning about the Temporary Order;
- he deposited investors' cheques into the York Rio Accounts, or authorized Georgiadis or others to do so;
- he authorized the payment from the York Rio Accounts of approximately $2.75 million (approximately 70% of the York Rio Proceeds) to Debrebud during the Schwartz Period, some of which went to pay for expenses of the sales operation, including office rent, courier and telecommunications fees, salaries for qualifiers and commissions for salespersons;
- he authorized the payment from the York Rio Accounts of approximately $9.2 million (approximately 70% of the York Rio Proceeds and approximately 72% of the Brilliante Proceeds) to the Runic Companies during the Runic Period, by authorizing its flow to Superior Home either directly from the York Rio Accounts or indirectly through the accounts of the York Companies and the Georgiadis Companies and eventually to the Runic Companies, including Superior Home and British Holdings;

- he caused various form letters to be sent to York Rio investors over his facsimile signature, including a letter enclosing a share certificate, which also bore his facsimile signature, a letter giving instructions for signing on to the York Rio Investor Lounge, a letter advising investors about a share split, and a letter dated August 1, 2007 describing the steps York Rio was taking to be listed on a stock exchange; and

- he received consideration for the sale of York Rio securities by retaining approximately $4.1 million of the York Rio Proceeds for his own use or to or for the benefit of friends and family.

[404] As stated in *Re Limelight*, "In determining whether a person or company has engaged or participated in acts in furtherance of a trade, the Commission has taken 'a contextual approach' that examines "the totality of the conduct and the setting in which the acts have occurred.' The primary consideration is, however, the effect of the acts on investors and potential investors." (*Re Limelight*, above, at paragraph 131) The Commission's decisions have established that "acts directly or indirectly in furtherance of a trade" include preparing and disseminating promotional materials to investors or posting promotional materials on a website intended to solicit investors, conducting information sessions for groups of investors, meeting with investors, issuing and signing share certificates and receiving consideration for the sale of securities. York was engaged in all of those activities.

[405] Although we heard no evidence that York cold-called prospective investors, we find that he met with or spoke to existing investors who went on to make additional investments, and, when contacted by existing investors who were concerned about their investments, attempted to reassure them. We find that that such "after-sales support" communications, intended to solicit additional investments, discourage investors from attempting to sell their securities, or discourage complaints to securities regulators, are acts directly or indirectly in furtherance of trades.

[406] We are not satisfied that the accredited investor exemption from the registration and prospectus requirements was available in respect of the trades and distribution of York Rio securities. We find that York traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[407] We also find that York distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[408] We find that York made prohibited representations that York Rio would be applying to be listed on a stock exchange, contrary to subsection 38(3) of the Act.

[409] At least two of the Investor Witnesses (Investor Seven and Investor Eight) received a letter dated August 1, 2007, signed by York, which started out by saying "We have very good news! In the last newsletter, we indicated that York-Rio would be applying for a listing on the Frankfurt stock exchange" and describing steps the company had purportedly taken to move forward. The letter also enclosed a US share certificate, which would replace the no longer valid Canadian certificate, and would be "the only certificate recognized once we receive the listing at the Frankfurt exchange."

[410] In addition, based on the evidence described in paragraphs 400-401 above, we find York made verbal representations to two other Investor Witnesses (Investor Two and Investor Three) that York Rio would be going public.

[411] We find that York made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[412] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[413] In his compelled examination, York admitted that he was aware, by September 2005, when Jbeily was ousted, that York Rio had never completed the Nova Transaction. He admitted that, despite representations and photographs showing dredge-mining on the Rio Paranaiba, which remained on the York Rio website in February 2008, York Rio was not, in fact, involved in dredging, and the site depicted was the site of Brinton's claim, not the site that York Rio planned to mine. He admitted that York Rio was not a revenue-producing company, never had a working mine, never obtained the required approvals from the Brazilian government, and did not obtain core samples or a survey. He admitted that he was unaware of the whereabouts of any mining licences or geologists' reports, or any other documents that would support his testimony about steps taken by York Rio to develop a mine in Brazil, and he could not say how much money was sent to Brazil to develop the mine.

[414] York admitted that he was aware of the contents of the York Rio website, the York Rio Business Plan and other promotional materials, and that he authorized, permitted or acquiesced in their preparation and ongoing distribution to investors and prospective investors. However, although York knew that York Rio was a worthless company, this was not disclosed in the content York authorized for the website or promotional materials, or in York's letters and conversations with investors.

[415] For example, some two years after he realized that the Nova Transaction had not been completed, York authorized the August 1, 2007 letter that promised "very good news" about York Rio's purported application for a listing on the Frankfurt stock exchange.

[416] In July 2008, York told Investor Two that York Rio needed to raise more money to invest in mining equipment to bring the mine to production level. According to Investor Two, York told him the diamonds coming out of the mine were 30 percent gem grade and 70 percent commercial/industrial grade, and that York Rio was looking for cutters to cut the gem quality diamonds. As a result of this conversation, Investor Two invested another $100,000 in York Rio. In fact, by July 2008, York had taken steps to wind down the sale of York Rio securities and begin selling Brilliante securities. Nor did York disclose to Investor Two that 70% of the York Rio Proceeds went in commissions to Debrebud and Superior Home. And, when York Rio investors contacted York after the Temporary Order was issued in October 2008, York reassured them that York Rio had a mine in Brazil that was, or would be, producing diamonds.

[417] Between September 2005 and June 2008, York signed and certified to be true a number of Exempt Distribution Reports that were filed with the Commission and other securities regulators which indicated that no commissions or finder's fees were charged to York Rio investors. In his compelled examination, York characterized the 70% fees York Rio paid to Debrebud and Runic's Companies as "consulting fees" paid to "consulting companies" (Transcript of Compelled Examination, May 15, 2009, pp. 217-225). We find that York knew that the 70% fee he paid to Debrebud during the Schwartz Period, and to the Runic Companies during the Runic Period, was used to pay the commissions of York Rio salespersons. We also find that he knew or reasonably ought to have known that York Rio was not entitled to rely on the accredited investor exemption. We find that he knowingly misrepresented the facts to encourage prospective investors who viewed York Rio's public filings.

[418] York profited personally from the sale of York Rio securities. Of the approximately $16 million that York Rio and Brilliante raised from investors from September 2005 to October 2008, approximately $12 million (approximately 70%) was paid either to Debrebud (during the Schwartz Period) or the Runic Companies (during the Runic Period). When questioned about the disbursement of approximately $4 million during his compelled examination, York did not, for the most part, challenge Staff's figures, but repeatedly noted that the expenditures had been made over a period of approximately three years. He also claimed that certain expenditures were made for York Rio business purposes, but he provided no documentation in support of those claims.

[419] York admitted that the York Rio Proceeds were used to pay his credit card balances of approximately $2.4 million, though he claimed, without support, that these were mostly York Rio business expenses. He also admitted paying off the credit card balances of Ungaro, McDonald and Aidelman, which he claimed was part of their remuneration; the York Rio Account Summary indicates that these payments totalled $119,024.05.

[420] York admitted that York Rio spent approximately $350,000 for six vehicles: (i) the lease and eventual purchase of his 2000 Mercedes CL; (ii) the lease of a Land Rover; (iii) the lease of a Volvo that was used by McDonald; (iv) the lease of an Audi that was used by Ungaro; (v) the down payment on a lease of an Aston Martin ($75,000 paid in July 2007); and (vi) the purchase of a Saturn for Aidelman. Although York claimed that these expenses were all for York Rio business purposes, taken as income (in the case of McDonald, Ungaro and York himself) or owed to the company (in the case of Aidelman), he provided no documentary support for these claims.

[421] York admitted that York Rio made payments totalling approximately $175,000 to various stores, including Staples, Canadian Tire, Sporting Life, Walmart, Loblaws, Costco, Dominion, LCBO, Bass Pro Shops, Henry's Camera, and Pottery Barn. Though he claimed that at least 80% of these expenses were business-related, he stated that he no longer had supporting invoices.

[422] He also admitted that an April 2008 payment of $84,575.29 to the CRA represented his own taxes owing for the 2007 tax year. He explained that he borrowed this amount from the company because he did not have the funds available. He claimed to have signed a note in York Rio's minute book indicating that he owed the company that money, but stated he did not have the documents available.

[423] York also admitted that personal expenses totalling $115,516.06 were paid out of the York Rio Account for friends and family members, including $25,000 for cosmetic surgery, regular payments to a diet doctor, pet care expenses totalling $18,497.23 for five dogs, and $5,400 for laser eye surgery.

[424] We accept Staff's evidence that York misappropriated approximately $4.1 million from York Rio investors for his personal use and for the use of his family and friends.

[425] We find that York orchestrated and perpetrated a fraudulent investment scheme whose purpose was to obtain money for his own personal benefit and the personal benefit of his friends and family, the other York Rio Respondents, and other individuals and companies associated with the York Rio Respondents, and not to raise money to develop a diamond mine, as represented to York Rio investors.

[426] We find that York knowingly deceived York Rio investors and prospective investors with the aim of soliciting their investments in what he knew to be a sham, and as a result, investors lost approximately $18 million.

[427] We also find that during the Runic Period, York authorized the transfer of approximately 72% of the York Rio Proceeds to Runic through the accounts of the York Companies and the Georgiadis Companies in an attempt to conceal the source and use of the York Rio Proceeds.

[428] We find that York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(d) *Directors and Officers: section 129.2 of the Act*

[429] Staff alleges that York, being a director and officer of York Rio, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1), 53(1) and 38(3) and section 126.1(b) of the Act, contrary to section 129.2 of the Act and contrary to the public interest.

[430] There is no dispute that York was a co-founder of York Rio, its President and CEO and the sole director of York Rio throughout the Material Time. York admitted this. As there is no dispute that York was a director and officer of York Rio throughout the Material Time, the remaining question is whether he authorized, permitted or acquiesced in York Rio's non-compliance.

[431] York's position was that he was not involved in the sale of York Rio securities, did not employ the York Rio salespersons, and had no part in any wrongdoing that gave rise to Staff's allegations.

[432] We are not persuaded of York's position on the facts, the evidence and on a balance of probabilities. In his compelled examination, York admitted that he had overall responsibility for York Rio. We heard overwhelming evidence that he orchestrated the York Rio Investment Scheme and authorized, permitted or acquiesced in all of the activities of the employees, representatives and agents of York Rio. York authorized the preparation of the York Rio website and promotional materials intended to solicit sales of York Rio securities, and failed to correct them despite knowing that the Nova Transaction had never been completed. He entered into an arrangement with Schwartz in March 2005 to sell York Rio securities from the Sheppard Location, and entered into an arrangement with Runic in July 2007 to sell York Rio securities from the Yonge Location, while arranging with Georgiadis to act as his "eyes and ears" during the Runic Period. In July 2008, he ordered that sales of York Rio securities be shut down and sales of Brilliante securities begin. Throughout the Material Time, he played a central and controlling role in the flow of funds. He authorized the transfer of the York Rio Proceeds from the York Rio Accounts to the accounts of the York Companies, Debrebud and the Runic Companies, while retaining approximately $4.1 million for his own use.

[433] We find that York was a director and officer of York Rio, and the directing mind of York Rio throughout the Material Time, and that he authorized, permitted or acquiesced in York Rio's non-compliance with Ontario securities law, contrary to section 129.2 of the Act and contrary to the public interest.

4. The Evidence: York's role in the Brilliante Investment Scheme

[434] Staff's evidence about York's role in the Brilliante Investment Scheme came from Vanderlaan and Ciorma, York's compelled examination, and witnesses called by Staff (Aidelman, Georgiadis, McDonald, Brown and Ungaro). Staff alleges that York was the directing and controlling mind of Brilliante, and that Aidelman was only nominally the President and director of the company.

[435] York submits that his role in Brilliante was limited to putting in some "seed money" to help Aidelman start up a business, and that he did not foresee and could not have foreseen the wrongdoing that led to Staff's allegations.

(a) The Conflicting Evidence given by York and Aidelman

[436] In his compelled examination, York denied acting as a director or officer of Brilliante and denied that he was its directing and controlling mind. He testified that Brilliante was owned by Aidelman, his former son-in-law. York told Staff that he helped Aidelman, who was unemployed, incorporate the company, showed him how to register the business and open up a bank account, then "I left it to him" (Transcript of Compelled Examination, January 18, 2009, p. 46, l. 13); basically Brilliante was Aidelman's company, and York didn't get involved.

[437] Aidelman testified at the Merits Hearing that York approached him in late 2006 about setting up a company relating to mining. Aidelman testified that on January 19, 2007, he was with York in York's apartment when York incorporated Brilliante online, listing Aidelman as the sole director and giving Aidelman's then home address as the registered office address for the company. Aidelman testified that York paid for the incorporation.

[438] Aidelman and York then visited a branch of the TD Canada Trust together and opened up Canadian and USD bank accounts for Brilliante. York made the initial deposit of $1,000 by cheque dated January 22, 2007 from the York Rio Account. The bank provided some cheques for the Brilliante account, and Aidelman signed a number of blank cheques and gave them to York, along with the client card and personal identification number. Aidelman received account statements at his home address, but gave them to York. He later added York as a signatory on the account.

[439] York also accompanied Aidelman to the offices of the Capital Transfer Agency, where Aidelman signed some documents and a cheque for $1,500, marked "Initial Retainer". Aidelman forwarded later invoices to Brilliante from Capital Transfer Agency to York for his attention.

[440] Aidelman testified that he had no involvement in setting up Brilliante's virtual office. The documents obtained by Vanderlaan bear this out. The invoice from Rostie lists York as the contact for Brilliante, and gives York's Email Address and a phone number and residential address that Aidelman identified as belonging to York. Aidelman testified he was not aware that his name had been used as a contact person on a second invoice from Rostie (though the address and email address information remained those of York).

[441] Aidelman testified that he had no involvement in creating Brilliante newsletters or promotional materials or the Brilliante website, had no involvement in creating the Brilliante Business Plan, and was not aware that it described him as having "extensive background and knowledge" in uranium mining, a claim that he described as a "lofty crock" (Hearing Transcript, June 6, 2011, p. 183, l. 21).

[442] Aidelman testified that he performed no work and had no involvement in Brilliante after incorporating the company and setting up the bank accounts and virtual office. He never communicated with prospective investors and never visited the Finch Location, of which he was unaware.

[443] Aidelman testified that he had no knowledge of five cheques from Alberta investors, totalling $95,000.00, that had been deposited into the Brilliante Account in September 2008 and obtained by Staff. The memo line on one $12,500 cheque reads "Common Share Purchase," while the memo line on a $50,000 cheque reads "Rio York". Aidelman testified that the signature on the deposit slips was not his own. Aidelman testified that a $37,500 cheque payable by Brilliante to Munket was one of the blank cheques he had signed and given to York when they opened the Brilliante Account; he did not make out the cheque, and was unaware of Munket.

[444] According to Aidelman, York was in charge of Brilliante and did not ask for his advice in making decisions. They had no agreement about how the company was to be run.

[445] Consistent with Aidelman's testimony, York admitted, in his compelled examination, that:

- he "may have" paid the fee to incorporate Brilliante (Transcript of Compelled Examination, January 28, 2009, p. 71, l. 23);
- he "may have" advanced money to Aidelman now and again, including money to set up a virtual office (Transcript of Compelled Examination, January 28, 2009, p. 79, ll. 6-13);
- he used York Rio Proceeds to purchase a vehicle for Aidelman;
- he also used York Rio Proceeds to pay off the credit card balances of Aidelman, Ungaro and McDonald;
- he introduced Aidelman to Runic, McDonald and people at the Capital Transfer Agency;
- the Brilliante Proceeds were first deposited into the Brilliante Account, then cheques were written on that account payable to Munket, of which he was the sole director;
- York wrote cheques on the Munket Account payable to 2180353, including, on one day, multiple cheques in amounts between $9,000 and $10,000;
- cheques drawn on the 2180353 Account payable to British Holdings (one of the Runic Companies);
- Brilliante raised $160,000 from nine investors;

- Runic retained approximately 72% of the Brilliante Proceeds; and
- Munket retained a percentage of the investor funds it received from Brilliante as a consulting fee or commission.

[446] Vanderlaan testified that emails were recovered from a computer that was seized during the execution of the search warrant on October 21, 2008, including an email from York's Email Address to McDonald, dated March 26, 2007, with the subject line, "Start putting everything together for the Brilliante company so we can have it on the web". The body of the email is as follows: "Denise, Further to our ongoing discussions and the previous info would you formulate the foundation info (logo, history etc.) for the website and come back to me as to the particulars for names, etc. as needed. I'd like to have this put together as soon as is practical given your schedule and the need for the website to be in place for potential investors. Liaise with Richard at investorrelations@yrrresources.com... . Thanks, Victor York". Vanderlaan testified he found no such emails from Aidelman to McDonald.

[447] York attempted to explain this in his compelled examination by saying that he allowed Aidelman to use his computer, and any emails from his computer would appear to be from him. Aidelman admitted having access to York's computer but denied using it for Brilliante purposes. McDonald acknowledged receiving the email from York's email address.

(b) *Georgiadis and the Flow of Funds*

[448] Georgiadis testified that his role in the Brilliante Investment Scheme was similar to the role he played in the York Rio Investment Scheme: he worked for Runic, and received his instructions from Runic. He understood Aidelman to be the President of Brilliante and believed that Aidelman received 25 percent of the money raised after Runic took 75 percent.

[449] Approximately 72% of the Brilliante Proceeds ($114,500) was transferred from the Brilliante Account to the accounts of Dude and Munket which were York Companies, and from there, funds were transferred to, amongst others, the accounts of 2180353 and Vision, which were Georgiadis Companies, and from there to the accounts of British Holdings and NatWest, which were Runic Companies.

[450] Georgiadis's evidence at the Merits Hearing about 2180353 was consistent with York's testimony in his compelled examination. Georgiadis testified that he incorporated 2180353 and opened a bank account for it because Runic told him he would pay him half of one percent of all the money going into the account if he did so. Georgiadis claimed he did not tell York that he owned the 2180353 because Runic told him not to. According to Georgiadis, York would give him the cheques with the instruction to give them to Runic; instead, on Runic's instructions, and unbeknownst to York, Georgiadis deposited the cheques he received from York into the 2180353 Account before writing cheques on that account to British Holdings.

[451] We do not believe that York did not know that 2180353 was Georgiadis's company or that the cheques he was giving to Georgiadis were being deposited into the 2180353 Account. We find that York and Georgiadis attempted to emphasize the roles played by Aidelman and Runic while minimizing the role played by York in the Brilliante Investments Scheme. In our view, the most telling of York's admissions is that he was aware that Brilliante Proceeds flowed from Brilliante, which was purportedly Aidelman's company, through Munket to British Holdings. Consistent with that admission is Georgiadis's testimony at the Merits Hearing, when presented with an excerpt from the transcript of his compelled examination, that he was there, in the office, as his uncle's "eyes and ears" (Hearing transcript, March 23, 2011, p. 69, ll. 21-22).

(c) *Witnesses called by Staff*

[452] The evidence of Ungaro, McDonald and Brown was that their work for Brilliante was similar to and grew out of their work for York Rio. They also testified about Aidelman's involvement.

(i) McDonald

[453] McDonald testified that she first heard about Brilliante when Aidelman called her some time in 2007 or 2008 and asked her to put together a website for the company. She received instructions for the content of the website from email addresses belonging to Aidelman and York, though she testified that she understood the content came from Aidelman.

(ii) Ungaro

[454] Ungaro's testimony about Brilliante was consistent with McDonald's. She testified that she found out about the company through York and Aidelman and performed the same tasks for Brilliante that she did for York Rio.

(iii) Brown

[455] Brown testified that in doing the technical work in developing the Brilliante website, his only contact was with McDonald, who provided the content, although he believes Aidelman and York may have been copied on some of his emails from McDonald.

(d) *Findings on the Conflicting Evidence*

[456] Although the evidence about the roles played by Aidelman and York in the Brilliante Investment Scheme was not entirely consistent, we find that the evidence discussed at paragraphs 436-455 above provides compelling support for Staff's allegation that York orchestrated the Brilliante Investment Scheme and was the directing and controlling mind of Brilliante who authorized, permitted or acquiesced in the contraventions of Ontario securities law by Brilliante.

5. Analysis: York's role in the Brilliante Investment Scheme

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[457] We heard evidence that York, who was not registered with the Commission, engaged in numerous acts in furtherance of trades of Brilliante securities, including the following:

- he incorporated Brilliante or caused Aidelman to do so;
- he authorized McDonald and Brown to prepare the Brilliante website, and authorized the content to be posted on it, either directly or through Aidelman, who was only nominally in charge of Brilliante;
- he applied for a mailbox account for Brilliante at Rostie;
- he opened the Brilliante Account in Aidelman's name;
- he authorized Runic to pay the salespersons who sold Brilliante securities at the Finch Location and to pay for other expenses of the sales operation;
- he received the subscription agreements that had been completed by investors and returned to Brilliante, along with the investors' cheques, from Georgiadis;
- he caused the transfer of approximately 72% of the proceeds of the sale of Brilliante securities from the Brilliante Account, which he controlled, to the accounts of Dude and Munket, his companies, and wrote cheques on the Dude and Munket Accounts to the 2180353 Account, for subsequent transfer to accounts controlled by Runic; and
- he received consideration for the sale of Brilliante securities.

[458] We find that the accredited investor exemption from the registration and prospectus requirements was not available in respect of the trades and distribution of Brilliante securities.

[459] We find that York traded in Brilliante securities, without registration, in circumstances where no exemption from the registration requirement was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[460] We also find that York distributed Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[461] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[462] We find that York orchestrated the fraudulent Brilliante Investment Scheme as the successor to the York Rio Investment Scheme and that little changed, apart from the name of the company, the mineral purportedly being mined, and the aliases used by the salespersons. We find that York engaged or participated in a course of conduct that he knew or reasonably ought to have known perpetrated a fraud on Brilliante investors. York, directly or with the assistance of Aidelman, acting under his authority, incorporated Brilliante, applied for a mailbox account at Rostie, and opened the Brilliante Account. York instructed McDonald to "start putting everything together for the Brilliante company so we can have it on the web", and approved the

fraudulent content of the Brilliante website and promotional materials. He authorized the flow of funds from the Brilliante Account through the Dude Account and the Munket Account, to the 2180353 Account and the Vision Account, and further authorized Georgiadis to flow these funds to the accounts of the Runic Companies. York benefitted from the Brilliante Investment Scheme, as it appears he obtained approximately 28% of the proceeds that remained after the approximately 72% was flowed through to Runic.

[463] We find that from York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(c) *Directors and Officers: section 129.2 of the Act*

[464] Staff alleges that York, being a *de facto* director or officer of Brilliante, authorized, permitted or acquiesced in Brilliante's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act, contrary to section 129.2 of the Act and contrary to the public interest.

[465] For the reasons given at paragraphs 436-455 above, we find that York was the directing and controlling mind of Brilliante and that he authorized, permitted or acquiesced in Brilliante's non-compliance with Ontario securities law, contrary to section 129.2 of the Act and contrary to the public interest.

6. Conclusion

(a) *York Rio*

[466] We find that York traded in securities of York Rio, without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[467] We find that York distributed securities of York Rio without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[468] We find that York made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

[469] We find that York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest

[470] We also find that York, being a director and officer of York Rio, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest.

(b) *Brilliante*

[471] We find that York traded in securities of Brilliante, without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[472] We find that York distributed securities of Brilliante without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[473] We find that York engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[474] We also find that York, being a *de facto* director or officer of Brilliante, authorized, permitted or acquiesced in the contraventions subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

D. Schwartz

1. The Allegations

[475] Staff alleges that Schwartz:

- traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest;
- being a director or officer of York Rio, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio, contrary to section 129.2 of the Act and contrary to the public interest.
- traded in securities while he was prohibited from doing so by order of the Commission, contrary to subsection 122(1)(c) of the Act and contrary to the public interest.

2. The Evidence

(a) *Section 139 Certificates*

[476] Staff provided a Section 139 Certificate stating that Schwartz has never been registered under the Act. Schwartz admitted this when he testified at the Merits Hearing.

[477] Staff also provided a Section 139 Certificate stating that Debrebud has never been registered under the Act.

(b) *Schwartz and Debrebud*

[478] Staff obtained a Corporation Profile Report for Debrebud, which indicates that Debrebud was incorporated on September 22, 1999 and cancelled on June 7, 2008. Schwartz was listed as its sole director and President.

[479] Schwartz testified at the Merits Hearing. He made a number of substantial admissions of fact, and the focus of his defence was his submission that his activities did not implicate him in any non-compliance with Ontario securities law by York Rio. On cross-examination, Schwartz did not agree with Staff's suggestion that he was the directing and controlling mind of Debrebud. However, he admitted that he was the sole director, officer and shareholder of Debrebud, that Debrebud had no employees, that he was the only signatory on the Debrebud Account, and that no one else ever signed a cheque on the Debrebud Account.

[480] We accept that Schwartz was a director and officer of Debrebud, and we find that he was its directing and controlling mind.

[481] Staff alleges that Schwartz, acting through Debrebud, acted in the capacity of a director or officer of York Rio and authorized, permitted or acquiesced in York Rio's non-compliance with Ontario securities law. Schwartz disputes that allegation, and characterizes his, and Debrebud's role, as that of "paymaster" for York Rio. Whether Schwartz, through Debrebud, was a third-party service provider for York Rio (like the entities that provided telephone or courier services, for example) or engaged in trades or acts in furtherance of trades in York Rio securities was the main dispute between Schwartz and Staff.

[482] Staff's evidence about the role that Schwartz and Debrebud played in the sale of York Rio securities came from Vanderlaan and Ciorma, who testified about the flow of York Rio investor funds through Debrebud, and from Friedman and Robinson, who testified about their observations of Schwartz's role in the York Rio office.

(c) *Schwartz's Evidence at the Merits Hearing*

(i) The sale of York Rio securities at the Eglinton and Sheppard Locations

[483] In his testimony at the Merits Hearing, Schwartz denied that he was a directing and controlling mind of York Rio. He testified that he did not make decisions for York Rio, did not have financial control of York Rio, did not have a management or operating role, and did not participate in any attempts by York Rio to acquire new property.

[484] On cross-examination by Staff counsel at the Merits Hearing, Schwartz made the following admissions:

- he admitted that York Rio securities were sold from the Eglinton and Sheppard Locations and that the vast majority of activity at both offices related to the sale of York Rio securities;
- he admitted that he and York had a verbal agreement that Debrebud would receive 70% of the money raised by York Rio, which he described as an "outsourcing fee"; from this amount, all York Rio expenses would be paid;
- he admitted that Debrebud received approximately $2.75 million from York Rio from March 8, 2005 to August 2, 2007, as shown on the Debrebud Account Summary, and that this amount is approximately 70% of $4 million, indicating that York Rio raised approximately $4 million during the Schwartz Period;
- he admitted that out of the 70% that he received, he paid all of York Rio expenses, including salaries and sales commissions, the rent at the Eglinton and Sheppard Locations, and the mailbox rent, at least 15 telephones (including long-distance charges), courier expenses, photocopy expenses and furniture;
- he stated that he believed 70% was a reasonable fee "in this day and age";
- he confirmed the evidence of Friedman and Robinson, that York Rio salespersons at the Eglinton and Sheppard Locations were paid a commission of 20% of the gross amount invested in York Rio;
- he admitted that, as shown in the Debrebud Account Summary, Debrebud paid $470,781.58 to Superior Home (Runic's company), and that these payments represented Runic's 20% commission on his sales of York Rio securities during the Schwartz Period, when Runic worked as a salesperson at the Sheppard Location; and
- he admitted that Debrebud paid $454,145.49 to Robinson and his company, and $174,906.16 to Friedman and his company during the Schwartz Period.

(ii) Amounts paid to or for the benefit of Schwartz and his family

[485] Schwartz admitted that money was paid out of the Debrebud Account to or for the benefit of himself or his family:

- he admitted that from March 9, 2005 to May 20, 2007, $143,900.48 was paid out of the Debrebud Account to himself or companies of which he is the officer and director, or was used to pay his credit card balances;
- he admitted that $456,000 was paid out of the Debrebud Account to his wife, $20,605 was used to or for the benefit of his son, and $30,300 was used to or for the benefit of his daughter;
- he admitted that another $131,930.91 was paid out of the Debrebud Account towards his wife's credit card balances; although he suggested that she may have been using her credit card to pay York Rio expenses or lending it to someone to pay York Rio expenses, he admitted she did no work for York Rio, he was unable to provide any details and he could not recall seeing any record of such expenses; and
- he admitted that $106,118.39 was paid out of the Debrebud Account in cash, but claimed he could not recall the purpose of those payments. He admitted that the only debit cards on that account belonged to himself, his wife and his daughter, and he had no knowledge that the account had been compromised.

[486] Schwartz claimed that some of the payments made by Debrebud to or for the benefit of himself or his family were loan payments or an untaxable deemed dividend. At several points in the Merits Hearing, he undertook to provide supporting documents, but none were provided.

[487] We find that the payments from the Debrebud Account described above, which totalled approximately $889,000, were made to or for the benefit of Schwartz and his family.

[488] The Debrebud Account Summary also indicates that Debrebud spent $556,188.79 for miscellaneous expenses from January 4, 2005 to October 1, 2008. Schwartz suggested, on cross-examination, that $400,000 of this amount was for telephone charges payable to Bell Canada, but this was not supported by the evidence. Schwartz confirmed that Bell Canada was York Rio's only telephone service provider, and the list of miscellaneous expenses includes only seven payments to Bell Canada, totalling $27,690.96. The miscellaneous expenses list, which covers 24 single-spaced pages of the Debrebud Account Summary, includes many entries for restaurants (for example, Swiss Chalet and the Unicorn Pub, which Schwartz testified were virtually next door to the Eglinton Location, the Golden Griddle, Cora's and Pizza Pizza), stores (Bayview Village, the Bay, Shoppers Drug Mart, Future Shop and Radio Shack, for example), gas, utilities (Bell Canada and Enbridge); financial services (Canada Life), as well as numerous service charges that appear to be ATM or other banking fees. The list also includes unattributed cheques and, on many days, there are multiple (usually 5 or 6) cash withdrawals in odd amounts, usually in the $400-600 range, consistent with salary payments.

(iii) Investors' responsibility

[489] Schwartz testified that the York Rio subscription agreement used during the Schwartz Period stated that the investment was for accredited investors, and that the York Rio qualifiers asked prospective investors whether they were accredited.

[490] Schwartz submits that "financial assets" include real estate, and he cross-examined the Investor Witnesses about their net assets, including their principal residence. He submitted that Investor Three, who he described as the only Investor Witness who invested during the Schwartz Period, was an accredited investor. We are not satisfied that Investor Three was an accredited investor. We also find that the accredited investor exemption from the registration requirement was not available with respect to trades of York Rio securities because York Rio was a market intermediary.

[491] Schwartz cross-examined the Investor Witnesses as to whether they had read the subscription agreement, and in general about their experience entering into contracts. He relied, in particular, on the subscription agreement signed by Investor Three on June 20, 2006, which, under "Representations, Warranties and Covenants of Subscriber", states that the Subscriber "represents, warrants and covenants to [York Rio] (and acknowledges that [York Rio], and its counsel, are relying thereon)" that, amongst other things, the subscriber had been independently advised as to restrictions on trading the shares imposed by applicable securities legislation, he has not requested and does need an offering memorandum, he relies solely on available published information relation to York Rio and not on any oral or written representation as to fact or otherwise made by York Rio, he is purchasing the shares under the accredited investor exemption, no securities regulator has reviewed or passed on the merits of the shares, there is no government or other insurance covering the shares, and there are risks associated with purchasing the shares.

[492] Schwartz stated, in his testimony, that if the York Rio investors had read the subscription agreement and the risk disclosure statement, they would not have invested "and I would not have walked away with these hundreds of thousands of dollars" (Hearing Transcript, August, 12, 2011, p. 35, ll. 8-10).

[493] Schwartz's attitude towards investors is best captured in the following exchange about the York Rio subscription agreement, which followed Staff counsel's suggestion that Schwartz's conduct amounted to misappropriation:

> A. Basically, if you want to get to the, you know, to the ugly mudslinging here, as I reviewed each one of these people up here, all the witness [*sic*], they're the ones who embezzled us because they should not have bought those securities in the first place.
>
> Q. You're blaming the investors?
>
> A. I'm blaming the investors that they didn't do their homework and they shouldn't have been involved in that exercise in the first place.
>
> Q. So what you're saying is, let me get this straight, everything is okay if you can separate somebody from their money. Is that correct?
>
> A. No, no, I didn't say that.
>
> ... .
>
> A. What I said is that the investors were supposed to have read the package and stick to what they represented and warranted that they're going to do, and had that happened, nobody would have been out of money and I wouldn't have made these hundreds of thousands of dollars and I wouldn't be sitting here for the last 25 days. That's what I said.
>
> Q. Looking at page 150 --

CHAIR: Did you say that it was the investors who embezzled you?

THE WITNESS: No, I did not say that, Commissioner.

CHAIR: Then I must have misheard it. We'll check the transcript.

THE WITNESS: I just said that from my point of view, I would not have made this fantastic amount of money through what is called pillaging and misappropriation had the investors done their proper homework and read a very simple four-page letter. It was not a twenty-five-page or a fifty-page form that you would expect from a Bay Street law firm. So it wasn't heavy reading for them. It's very plain, ordinary language, no legalese. It asked them to review this thing. Are you an accredited investor? Are you – you're not going to rely on any phone business. You're just going to read the material. You undertake that you don't need any further information. You don't need any extra disclosure by an offering memorandum.

CHAIR: Yes. Yes.

THE WITNESS: And so I'm not saying that's their fault and it's okay to separate people from their money if they don't have to read something. I'm just saying that this extravagant wealth that I was supposed to have received, okay, was -- would not have been there had people done their proper homework. So it wasn't that I was out to slip one past them and hoping that they wouldn't read, you know, the representations and warranties.

CHAIR: That's the part I want you to explain a little bit more clearly. If they had read these documents and risk disclosure statements that you have described, you say you would not have made the extravagant money?

THE WITNESS: Yeah.

CHAIR: Why would you not have made the extravagant money?

THE WITNESS: Because then most of these witnesses that we saw and others, probably, you know, on the law of probabilities, they would have just hung up and say, you know, I can't see that in the material that you sent me, sir. You know, if there's going to be a takeover, how come – if there's going to be such a large takeover, how come it's not in the form? Why isn't it disclosed? Why is there no press release for that?

CHAIR: As I understand what you're saying, is had they read the risk disclosure statement, they would not have invested?

THE WITNESS: Exactly, and I would not have walked away with these hundreds of thousands of dollars.

(Hearing Transcript, Aug. 12: 31-35)

[494] We consider Schwartz's disregard of his obligations towards York Rio investors to be egregious conduct.

(iv) Summary of Schwartz's Testimony

[495] In summary, Schwartz admitted that he entered into an agreement with York that Debrebud would sell York Rio securities in return for approximately 70% of the proceeds; that York Rio paid Debrebud approximately $2.75 million out of the proceeds of the sale of York Rio securities during the Schwartz Period, out of which amount Debrebud paid the expenses of the Eglinton and Sheppard Locations, including salaries and commissions to the salespersons selling York Rio securities, as well as payments of approximately $889,000 to or for the benefit of himself and his family.

[496] The dispute between Schwartz and Staff relates to the legal consequences of these admissions. Schwartz submits that he was a "payroll master" or "agent" of York Rio or performed an "outsourced" sales function for York Rio. He submits that Friedman, Robinson, Ungaro and McDonald supported his evidence on this point.

(d) *Witnesses called by Staff*

(i) Friedman

[497] Friedman testified that he has known Schwartz and his family for well over 25 years.

[498] Friedman testified that he worked with Schwartz in relation to the sale of Euston securities at the Eglinton Location. According to Friedman, he performed an administrative and clerical role at Euston, sending out promotional material to potential investors.

[499] In late 2005, Schwartz told him that the Euston project was no longer proceeding and that they would be involved in a new project, York Rio, which was involved in alluvial diamond mining in Brazil. York Rio operated out of the same office (the Eglinton Location) and Friedman performed the same administrative function.

[500] Friedman described himself as administrative assistant to Schwartz. He testified that he never spoke to investors. His role was to send out the subscription agreements to prospective investors who had been identified by the salespersons, and to receive the signed subscription agreements and investor cheques (Investor Packages), which he would pass on to Schwartz, after making note of the amount invested. Friedman kept records of sales on a week-by-week basis, so that Schwartz would know what to pay each salesperson.

[501] Friedman testified that Schwartz did not call investors. Friedman testified that he observed Schwartz giving the Investor Packages to York, and he understood that York would then pay 70% of the amounts raised to Schwartz, keeping 30% for himself. He testified that he saw York pass cheques to Schwartz in the office many times. From the 70%, Schwartz paid the qualifiers and salespersons, as well as the rent and all other office expenses. Schwartz paid the salespersons by cheque for 20% of the amount invested. Friedman was also paid by cheque, signed by Schwartz, on the Debrebud Account. He testified that he received a salary of approximately $300 per week plus a bonus (or “override”) of 2 or 3% of the amounts raised at the Eglinton Location.

[502] Friedman testified that he had no power to hire or fire anyone. Schwartz was in charge of staffing the office. It was Schwartz who ran the sales operation at the Eglinton Location.

[503] Friedman testified that when the Eglinton lease came to an end, Schwartz found the Sheppard Location, though Friedman visited it to see if it was suitable and arranged the logistics of the move, and Robinson signed the lease. Again, it was Schwartz who was in charge of the sales operation at the Sheppard Location. He was the boss, and did not report to anyone else on a day-to-day basis. He dealt with any questions or concerns, and he was “the authoritative person in the office”.

[504] Friedman testified that after York Rio ceased operating, Schwartz told him that it was no longer necessary to retain the computer records of York Rio sales, since York had the originals. Friedman removed the files on those instructions.

[505] To summarize, Friedman testified that Schwartz:

- recruited him for the York Rio operation;
- was in charge of staffing the office;
- received Investor Packages and passed them on to York;
- received 70% of the proceeds back from York, from which amount he paid Friedman and the qualifiers and salespersons at the Eglinton Location, as well as the office expenses;
- dealt with any questions or concerns; and
- instructed him to destroy the computer records of York Rio sales.

[506] On cross-examination, Schwartz questioned Friedman about his 25 years of experience in sales and marketing, suggesting that Friedman was not an administrative assistant but a sales manager at the Eglinton and Sheppard Locations. In response, Friedman insisted “It was your office. They were your salespeople. They were your responsibility” (Hearing Transcript, June 6, 2011, p. 77, ll. 10-11).

[507] Schwartz also challenged Friedman on his testimony that it was Schwartz who hired the salespersons for the Eglinton Location, suggesting instead that the Euston staff had simply switched offices, moving from the Euston sales office on St. Clair Avenue, in Toronto, to the Eglinton Location. Friedman insisted that it was Schwartz who selected the salesmen who would come with him from Euston.

[508] Though Schwartz questioned Friedman at length in an attempt to secure a retraction, Friedman repeatedly insisted that Schwartz was "not just paying people cheques" but was "in charge of the office", had the accountability for the office, and provided and paid for the office space, desks, telephones, couriers, promotional material and other tools for use by the salespersons. He rejected Schwartz's suggestion that he, Friedman, kept track of the office expenses, and stated that he would pass bills onto Schwartz.

[509] Schwartz submitted that Friedman's evidence at the Merits Hearing was inconsistent with his compelled testimony, which included statements, for example, that he did not know how Schwartz filled his day.

[510] Schwartz also argued that Friedman's evidence about his role and his remuneration is inconsistent with the Debrebud Account Summary, which shows that Debrebud paid Friedman and his company $174,906.16 from March 21, 2005 to June 21, 2007.

[511] We are not persuaded that the amount Friedman received, paid over approximately 28 months, is inconsistent with his testimony that he received a salary of approximately $300 per week plus an "over-ride" of 2-3% of the proceeds of the sales made by York Rio salespersons at the Eglinton and Sheppard Locations. In contrast, we find that Debrebud paid approximately $889,000 to or for the benefit of Schwartz or his family over about the same period, which strongly suggests, in our view, that Schwartz had a much more central and directing role in the York Rio operation.

[512] Although Friedman may have minimized his role in the York Rio Investment Scheme, we find that his evidence, considered as a whole, supports Staff's allegation that Schwartz was the ultimate authority at the Eglinton and Sheppard Locations during the Schwartz Period.

(ii) Robinson

[513] Robinson testified that he was introduced to Schwartz in around 2002, and he went to work for him two to three months later in marketing a company called Alliance Explorations. He later worked for Schwartz, Friedman and others in selling shares of Euston. In around November 2005, Schwartz hired him to sell York Rio securities from the Eglinton Location, and he continued to work as a York Rio salesperson when the operation moved to the Sheppard Location in late 2005 or early 2006. He testified that he stopped selling York Rio securities in June 2007, on York's instructions.

[514] Robinson testified that he was paid a commission of 20% of the amount invested, if he had "opened" the account (made the first sale), 10% if someone else had opened the account. He was paid by cheque, generally written on the Debrebud Account, and handed to him by Schwartz, and occasionally by Friedman. He testified that he received approximately $454,000 from the Debrebud Account, and kept about $250,000 for his own purposes. Some of the money he received was for qualifiers who asked him to cash their cheques for them, and he owed some money to Schwartz.

[515] Robinson testified about the roles played by Friedman, Schwartz, York and Runic. He testified that Friedman generally ran the office, interviewed job applicants, provided the contact lists that Robinson and the other salespeople would use in calling prospective investors, and authorized anything going out of the office to prospective investors. Friedman prepared a script, together with Robinson. Friedman also provided the weekly sales records for Schwartz, who would use them to make out the commission cheques for the salespersons.

[516] However, Robinson testified that Friedman reported to Schwartz. Schwartz had an office at the Eglinton and Sheppard Locations, and it was Schwartz who was probably ultimately in charge, although it wasn't always clear. Schwartz answered the salespersons' questions about York Rio. In late 2006, Schwartz, along with Runic, asked Robinson to sign the lease for the Yonge Location.

[517] Robinson described Schwartz's role as paying the salespeople, and agreed with Schwartz's description of his role as "payroll contractor", a firm that acts as a third party for paying salaries and expenses. He agreed with Schwartz's suggestion that York had "outsourced" the sales function.

[518] Robinson attempted neither to minimize his own or Friedman's role in the sale of York Rio securities nor to maximize Schwartz's. In cross-examination, he agreed with Schwartz's characterization of Schwartz's role as "payroll contractor", but this did not detract from the main point he made in his evidence in chief – that it was Schwartz who was ultimately in charge of the York Rio sales operation at the Eglinton and Sheppard Locations. We accept Robinson's evidence.

(iii) Ungaro

[519] Ungaro testified that Schwartz ran the sales operation at the Eglinton Location and later the Sheppard Location. She acted as a liaison between York and Schwartz. She did not have an office at either location, but occasionally visited Schwartz at the Eglinton Location and may have visited him at the Sheppard Location to deliver messages on York's behalf. In particular,

she testified that when Schwartz wanted to receive more shares of York Rio for his own purposes, she relayed York's refusal to him.

[520] On cross-examination, Schwartz suggested to Ungaro that his request for 10 million shares of York Rio was related to the expulsion of Jbeily, but Ungaro testified that she was unable to recall.

[521] Ungaro's evidence does not assist Schwartz, and indeed, supports Staff's submission that Schwartz played an integral role in the York Rio Investment Scheme during the Schwartz Period.

(iv) McDonald

[522] McDonald testified that she met Schwartz once and understood him to be "the sales arm of York Rio". However, on cross-examination by Schwartz, she admitted that she had no direct knowledge about his role, and that it was Friedman she communicated with when setting up investor access to the Investor Lounge pages of the York Rio website.

[523] McDonald's evidence does not assist Schwartz.

(v) Jbeily

[524] Jbeily testified that in mid-2005, York took him to an office on Eglinton and introduced him to Schwartz, who York described as someone they might have to use to raise money for York Rio.

[525] Jbeily's evidence supports Staff's submission that Schwartz played an integral role in the York Rio Investment Scheme during the Schwartz Period.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[526] Staff does not allege and we received no evidence that Schwartz communicated directly with investors or prospective investors to solicit or complete sales of York Rio securities. There is no evidence that Schwartz had any role in preparing the York Rio Business Plan or any other promotional documents given to investors and posted on the website. There is also no evidence that he hired, trained or supervised York Rio qualifiers or salespersons.

[527] Schwartz submits that, through Debrebud, he acted as an "outsourced" payroll administrator, and he compares his role to that of a third-party service provider. He also submits that he did not receive or deposit monies from York Rio investors but only received and deposited monies from York Rio, the issuer of the securities. He submits that his activities did not require registration, and, that he worked behind a "firewall" in order to avoid engaging in registrable activities.

[528] We find that Schwartz's evidence, when considered as a whole, makes a compelling case for his having played an integral role in the York Rio Investment Scheme during the Schwartz Period. For example:

- he testified that he relied on what he understood to be a bona fide conveyance of mineral rights, pursuant to the July 2004 Contract between York Rio and Nova, which he had been given by York;
- he admitted that he hired Friedman, who had worked with him previously, and testified that Friedman was in charge of the office;
- he admitted that he had seen the York Rio subscription agreement that was sent out to prospective investors, and he admitted that he relied on the completed subscription agreements that were received from investors;
- he admitted relying on the private issuer exemptions, stating: "I was confident and [sic] still confident to this day that I made use of the private exemptions, and every deed and act done in Debrebud was within the confines of the law." (Hearing Transcript, August 12, 2011, p. 72, ll. 5-8);
- he admitted that "we were engaged in raising money for York Rio" (Hearing Transcript, August 11, 2011, p. 101, ll. 10-11); and
- he admitted that Debrebud "could be construed as an agent" in connection with the sale of the securities through the outsourcing by York Rio (Hearing Transcript, August 12, 2011, p. 73, ll. 20-21).

[529] In addition, the evidence of Friedman, Robinson, Ungaro and Jbeily supports Staff's submission that Schwartz played an integral role in the York Rio Investment Scheme during the Schwartz Period.

[530] We place particular importance on Staff's evidence as to the flow of funds, which Schwartz admitted. Schwartz admitted that Debrebud received 70% of the proceeds of the sale of York Rio securities – approximately $2.75 million – during the Schwartz Period. Of this amount, we find that approximately $889,000 (approximately 22% of the York Rio Proceeds during the Schwartz Period) was paid to or for the benefit of Schwartz or his family. These amounts are inconsistent with Schwartz's characterization of Debrebud's role as merely that of "payroll contractor" or "paymaster" and provide compelling evidence that Debrebud, and Schwartz, played an integral role in the York Rio Investment Scheme.

[531] Considering the evidence as a whole, including Staff's evidence as to the flow of funds, Schwartz's admissions, and the evidence of Friedman, Robinson, Ungaro and Jbeily, we find that Schwartz played an integral role in the York Rio Investment Scheme. We do not accept Schwartz's submission that he avoided personal responsibility by operating through Debrebud (of which he is the sole owner, director and officer) or by receiving monies from York Rio, rather than directly from investors. We find that Schwartz had overall authority for the sales of York Rio securities at the Eglinton and Sheppard Locations during the Schwartz Period, and we find that he did this acting in concert with York. We find that he has made a deliberate attempt to circumvent the provisions of the Act, and has failed to do so. We find that Schwartz engaged in numerous acts in furtherance of trades of York Rio securities during the Schwartz Period.

[532] Although we received insufficient evidence to determine whether Investor Three was an accredited investor, this does not assist Schwartz, who failed to establish that the approximately $4 million of York Rio securities that were sold during the Schwartz Period were sold only to accredited investors. We find that the accredited investor exemption from the registration and prospectus requirements was not available with respect to the trades of York Rio securities.

[533] We find that Schwartz traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest. We also find that Schwartz distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission, and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Fraud: section 126.1(b) of the Act*

[534] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[535] Staff alleges that Schwartz engaged or participated in securities fraud, contrary to section 126.1(b) of the Act and contrary to the public interest, by participating in the York Rio Investment Scheme during the Schwartz Period.

[536] Schwartz submits, with respect to the *actus reus* of fraud, that, during the Schwartz Period:

- There was no reasonable expectation of York Rio's demise at that time. York Rio engaged sufficient expertise in mining personnel, and produced viable plans and reports of the property.
- York Rio did not claim that it owned an operating mine or was extracting diamonds but claimed that it owned mineral rights, and was in exploration mode with a seven-stage plan of development. It issued forecasts and budgets, clearly marked as such.
- The funding needs of York Rio's start-up operation, known to the investors through the published plans, were met, so that their investment was not at any greater risk than the normal industry risk that was disclosed by York Rio.
- Prospective investors were cautioned in writing to rely only on documented information from York Rio and not to rely on representations from anyone else.
- There was no detriment to or deprivation of investors. The mining rights were acquired with the investors' money, as represented.
- All payments to Debrebud were properly authorized by York Rio. There was no unauthorized use or diversion of investors' funds.
- There is no legal restriction on the amount of fees or commissions that may be charged, and there is no evidence that the 70% fee paid to Debrebud put investors' funds at risk. York Rio had sufficient money to fulfill its phased plans, and Debrebud's 70% fee was partially spent on bona fide York Rio corporate expenses.

[537] With respect to the *mens rea* of fraud, Schwartz submits that there is no evidence that he was aware of any risk to the interests of York Rio investors or that he was wilfully blind or reckless as to his conduct and the truth or falsity of any statements

made to York Rio investors. He also submits: "Knowledge of any risk would have required a clear reading of the proverbial crystal ball, that is that with foreknowledge and malice, I knew the mining project was doomed. If it is indeed doomed then it was not by any one's [sic] design. The Commission's intervention was the termination of the mining project."

[538] We find that Schwartz played an integral role in perpetrating the York Rio Investment Scheme fraud during the Schwartz Period. In making this finding, we give significant weight to the evidence that Debrebud received and disbursed approximately 70% of the York Rio Proceeds during the Schwartz Period, that Debrebud disbursed approximately $889,000 to or for the benefit of Schwartz and his family during the Schwartz Period, and that Schwartz was unable to explain the over $500,000 of miscellaneous disbursements out of the Debrebud Account, which included numerous payments at restaurants and retail stores. We find that these are not the business practices of a legitimate third-party service provider.

[539] Although we find that the flow of funds evidence is sufficient to establish Schwartz's direct and knowing participation in the York Rio Investment Scheme, this conclusion is also supported by Schwartz's admissions about his ongoing involvement in the direction and control of the sale of York Rio securities, and by the evidence of Robinson and Friedman about Schwartz's directing role at the Eglinton and Sheppard Locations during the Schwartz Period.

[540] The Commission's fraud cases have affirmed that in considering the mental element of fraud, a respondent's state of mind may be inferred from the totality of the circumstances (*Re Lehman Cohort*, above, at paragraphs 93-94; *Re Goldpoint*, above, at paragraphs 140-141; and *Re Maple Leaf*, above, at paragraph 319). Despite Schwartz's careful attempts to characterize his and Debrebud's role as that of "payroll contractor", we find that the evidence as to the flow of York Rio investor funds through Debrebud is entirely inconsistent with the role of a legitimate third-party service provider and provides compelling evidence that Schwartz knowingly played a direct and central role in the fraudulent scheme. In any event, the best evidence of Schwartz's state of mind may come from Schwartz himself (see paragraphs 492-493 above).

[541] We find that Schwartz engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(c) *Directors and Officers: section 129.2 of the Act*

[542] Schwartz was not a director or officer of York Rio, and he denies that he acted in the capacity of a director or officer of York Rio. He testified that he did not make decisions for York Rio, did not have financial control of York Rio, did not have a management or operating role, and did not participate in any attempts by York Rio to acquire new property. He submits that he was not a directing and controlling mind of York Rio and did not exercise any delegated executive authority with respect to York Rio.

[543] We find that during the Schwartz Period, Schwartz was a *de facto* officer of York Rio, as defined in the Act, because he performed functions similar to those of an officer, such as a general manager, chief operating officer or comptroller at various times. We find that Schwartz, who had an office at the Eglinton and Sheppard Locations and attended every day, was far more than a "paymaster" or service-provider. He hired Friedman and Robinson, amongst others. He was aware of the sales activity at the Eglinton and Sheppard Locations during the Schwartz Period, and he was ultimately in charge of the sales operation. He relayed Investor Packages to York, and received 70% of the York Rio Proceeds during the Schwartz Period, from which he authorized payment of York Rio's expenses, including commissions for York Rio salespersons, and approximately $889,000 to or for the benefit of himself and his family. We find that Schwartz played a central and integral role in the York Rio Investment Scheme during the Schwartz Period.

[544] For all the reasons given, we find that Schwartz, being a *de facto* officer of York Rio, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Schwartz Period, contrary to section 129.2 of the Act and contrary to the public interest.

4. Breach of the Euston Order: subsection 122(1)(c) of the Act

(a) *The Allegations*

[545] Staff alleges that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act, by trading in York Rio securities at a time when he was prohibited from trading in any securities as a result of the Euston Order.

[546] The Euston Order was issued on May 1, 2006 and was continued on May 11, 2006, June 9, 2006, October 17, 2006, December 4, 2006, March 20, 2009 and April 1, 2009. It prohibited all trading in securities of Euston, prohibited Schwartz and Euston from trading in any securities, and made any exemptions contained in Ontario securities law inapplicable to Euston and Schwartz. On July 29, 2009, the Commission prohibited trading in any securities by or of Euston or Schwartz for ten years, prohibited the acquisition of any securities by Euston or Schwartz, and made any exemptions contained in Ontario securities

laws inapplicable to Euston and Schwartz for ten years, ordered Schwartz to resign any position he holds as a director or officer of an issuer, and prohibited Schwartz from becoming or acting as a director or officer of any issuer for a period of ten years.

(b) *Schwartz's Submissions*

[547] Schwartz submits that the Euston Order expired precisely at the commencement of the temporary order hearing on June 9, 2006 at 10:00 a.m. and, once expired, could not be continued by the Commission. He submits that because the May 11, 2006 order continued the Euston Order until June 9, 2006 and set a return date for the same day, there was a lapse in coverage that could not be remedied because of subsection 127(6) of the Act, which states: "The temporary order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by the Commission." Schwartz does not accept that the Commission had the authority to continue the Euston Order at the conclusion of the June 9, 2006 hearing.

(c) *The Evidence*

[548] In his testimony at the Merits Hearing, Schwartz admitted that:

- he was aware that the Euston Order was issued on May 1, 2006 (Hearing Transcript, August 11, 2011, p. 113, ll. 16-19);
- he was aware that the Euston Order was continued on May 11, 2006 (Hearing Transcript, August 11, 2011, p. 113, ll. 20-24);
- he was aware that on June 9, 2006, the Commission made a further order against him, continuing the Euston Order until October 17, 2006 (Hearing Transcript, August 11, 2011, p. 113, l. 25- p. 114, l. 17);
- he "may have consented" to the continuation of the Euston Order on June 9, 2006, as is stated in a recital in the order (Hearing Transcript, August 11, 2011, p. 71, ll. 6-9);
- he was aware that on October 17, 2006, at a time when he was represented by counsel, the Commission made a further order continuing the Euston Order in writing, which order states, in a recital, that it was made on consent (Hearing Transcript, August 11, 2011, p. 116, l. 24 - p. 117, l. 6);
- he was aware that on December 4, 2006, the Commission made a further order against him continuing the Euston Order, at the conclusion of a hearing that was attended by his counsel, who told the Commission that the continuation of the Euston Order had been consented to until that time (Hearing Transcript, August 11, 2011, p. 121, l. 23 – p. 122, l. 5, p. 194, ll. 18-22; Exhibit 18);
- the Euston Order prohibited him from trading in any securities, and none of the exemptions available in the Act were to apply to him (Hearing Transcript, August 11, 2011, p. 114, l. 18 – p. 115, l. 4);
- he did not contact the Commission or seek legal advice as to whether the Euston Order remained in place after June 9, 2006 (Hearing Transcript, August 11, 2011, p. 116, ll. 8-20, p. 123, l. 24 – p. 124, l. 7); and
- he did not apply for a variation of the Euston Order pursuant to section 144 of the Act (Hearing Transcript, August 11, 2011, p. 123, l. 24 – p. 124, l. 7).

[549] Schwartz does not dispute that the Euston Order was in place from May 1, 2006 to June 9, 2006 (the "**Undisputed Period**"), and that York Rio securities were traded during the Undisputed Period:

> Q. ... So you have no issue with respect to the fact that the order was in place on May the 1st, 2006 and June the 9th, 2006. At least we agree on that, correct?
>
> A. Yes, we do.
>
> Q. Did Debrebud or York Rio participate in the sale of any securities during that period of time?
>
> A. Debrebud? Yes.
>
> Q. All right. So in other words, Debrebud was involved in raising capital for York Rio during the period of time that you do not dispute. Correct?
>
> A. During the time that I do not dispute?

Q. That being May the 1st, 2006 to 6 June the 9th, 2006 at 9:59 a.m.

A. Yes.

(Hearing Transcript, August 11, 2011, p. 122, l. 15 – p. 123, l. 8)

[550] Questioned about an entry in the York Rio Account Summary showing a deposit of $30,000 from an Alberta investor on May 24, 2006, Schwartz responded by saying "Yes, but Debrebud was not cease traded at that point, only I was, and I dispute that I was trading" (Hearing Transcript, August 11, 2011, p. 126). This was one of ten deposits into the York Rio Account between May 1, 2006 and June 9, 2006, and money flowed from that account to Debrebud during that same period.

[551] The Debrebud Account Summary indicates that approximately $77,573.92 was transferred from the York Rio Account to the Debrebud Account during the Undisputed Period in eight transactions from May 3, 2006 to June 8, 2006. It also shows that Debrebud made payments to Friedman and Robinson and to or for the benefit of Schwartz and his family during the Undisputed Period.

[552] For the reasons given above, we find that Schwartz was the directing and controlling mind of Debrebud and engaged in numerous acts in furtherance of trades in York Rio securities during the Schwartz Period. We do not accept Schwartz's submission that his activities through Debrebud were immune from the effect of the Euston Order.

(d) Analysis

[553] We do not accept Schwartz's interpretation of the temporary order provisions of the Act. We find that subsection 127(6) of the Act must be read together with subsection 127(5), which authorizes the Commission to make certain temporary orders without a hearing (*ex parte*) if, in the opinion of the Commission, the length of time required to conclude a hearing could be prejudicial to the public interest. In these circumstances, subsection 127(6) requires that the *ex parte* order, which takes effect immediately, shall expire on the fifteenth day unless extended by the Commission, and subsection 127(7) authorizes the Commission to extend the temporary order until the hearing is concluded if a hearing is commenced within the fifteen-day period.

[554] Applying those provisions to this case, the Euston Order was issued *ex parte* on May 1, 2006, pursuant to subsection 127(5) of the Act, and a Notice of Hearing was issued on May 2, 2006, setting a return date of May 11, 2006, which was within the 15 days set out in subsection 127(6) of the Act. At the May 11, 2006 hearing, the order was continued "until the June 9, 2006 hearing or until further order of the Commission." The 15-day rule set out in subsection 127(6) of the Act had no further application in this case after May 11, 2006.

[555] We note that the May 11, 2006 order did not say that the order was continued "until June 9, 2006, at 10:00 a.m." or "until the start of the June 9, 2006 hearing" but "until the June 9, 2006 hearing or until further order of the Commission." In our view, the May 11, 2006 order was intended to remain in place until the Commission made a further order at the conclusion of the hearing on June 9, 2006, which the Commission did.

[556] We find that Schwartz engaged in numerous acts in furtherance of trades in York Rio securities, contrary to the Euston Order, during and after the Undisputed Period. With respect to Schwartz's submission that because the Euston Order prohibited him from trading but not from acquiring securities, it would not apply to a reverse takeover, it is sufficient to note that Debrebud received 70% of the proceeds of *sales* of York Rio securities during the Undisputed Period, and at no time did York Rio embark on a reverse takeover. Nor do we accept Schwartz's submission that any change in the Commission's general approach to temporary orders practice reflects a view that a temporary order expires at 12:01 a.m. on the day of the hearing, or that it expires at the start of any temporary order hearing.

[557] We find that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading in York Rio securities at a time when the Euston Order prohibited him from trading in any securities.

5. Conclusion

[558] We find that Schwartz traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[559] We find that Schwartz distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[560] We find that Schwartz engaged or participated in a course of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[561] We also find that Schwartz, being a *de facto* officer of York Rio during the Schwartz Period, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Schwartz Period, contrary to section 129.2 of the Act and contrary to the public interest.

[562] Finally, we find that Schwartz contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading in York Rio securities at a time when the Euston Order prohibited him from trading in any securities.

E. Runic

1. The Allegations

[563] Staff alleges that Runic:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and
- being a director or officer of York Rio and Brilliante, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

2. The Evidence

(a) *Identification of Runic as "Richard Turner", "Richard Taylor" and "John Taylor"*

[564] The photograph from Runic's driver's licence was shown to Georgiadis and Hoyme, who testified during the first week of the Merits Hearing. Georgiadis testified that he knew the person in the photograph as "Richard Turner" or "Richard Taylor". Hoyme testified that she knew the person in the photograph as "Richard Turner".

[565] During his compelled examination, Runic admitted that he used the name "Richard Turner" when he spoke to "clients" of York Rio at the Sheppard, Yonge and Finch Locations, that he used "John Taylor" when he signed the application for the mailbox rental in April 2008 and that he used "Richard Taylor" when he signed the lease for the Finch Location in June 2008.

[566] Based on this evidence, we are satisfied that "Richard Turner", "Richard Taylor" and "John Taylor" were aliases used by Runic while he worked at the Sheppard, Yonge and Finch Locations.

(b) *Section 139 Certificate*

[567] Staff provided a Section 139 Certificate stating that Runic has never been registered under the Act.

(c) *Staff Investigators*

[568] Vanderlaan and Ciorma gave the following evidence about the flow of funds from York Rio and Brilliante securities to Runic and individuals and companies associated with Runic.

(i) The Superior Home Account

[569] From Oct. 7, 2004 to Oct. 30, 2008, $9,224,325.53 was deposited into the Superior Home Account, including:

- $470,781.18 from Debrebud; and
- $8,753,544.35 from companies controlled by York – $7,123,276.15 from Evason, $1,478,932.30 from Big Brother, $105,139.78 from Munket, and $46,196.12 from YRR Holdings Inc.

[570] The registered address of Superior Home is the office of Koch Inc. From June 4, 2007 to October 22, 2008, approximately $2,687,000 was transferred from the Superior Home Account to the trust account of Koch Inc. (the "**Koch Account**"), which was controlled by Koch.

[571] Another $3,800,000 was transferred from the Superior Home Account to the account of Palkowski Law (the "**Palkowski Account**"), in three transactions in September and October 2008 (September 30, October 3 and October 20, 2008). The Palkowski Account also received $1 million which was transferred from the Koch Account in two transactions (October 6 and October 22, 2008).

[572] The Superior Home Account was also used as a York Rio payroll account, including payments to Bassingdale, Demchuk, Oliver (Hekmati) and Valde. Over $2 million was taken out of the Superior Home Account in cash, and $21,974.50 went to Runic.

(ii) The Koch Account

[573] Approximately $2,687,000 was transferred from the Superior Home Account to the Koch Account from June 4, 2007 to October 22, 2008. Transfers out of the Koch account included $1 million to the Palkowski Account in two transactions ($900,000 on October 6, 2008 and $100,000 on October 22, 2008), $893,328.20 to the Blue Star Account between January 18 and September 16, 2008, and, $581,858.14 to or for the benefit of Siegel in the summer of 2007.

(iii) The Palkowski Account

[574] Approximately $4.8 million was transferred from the Superior Home Account to the Palkowski Account in September and October 2008. In early 2009, these funds were frozen by order of the BCSC.

(iv) The Blue Star Account

[575] Koch is registered as the director of the numbered company (0796249 B.C. Ltd.) carrying on business as Blue Star, which was incorporated on February 1, 2008. Koch (as President) and Siegel are the signing officers on the Blue Star Account. A total of $893,328.20 was transferred from the Koch Account to the Blue Star Account from January 18 to September 16, 2008. The Blue Star Account was used as a payroll account, with payments going to Bassingdale ($67,658.42), Demchuk ($201,833.74), Oliver (Hekmati) ($53,543.54) and Valde ($75,585.03), as well as to Siegel ($6,100) and Palkowski ($5,700), amongst others.

(v) The British Holdings Account

[576] Money from investors was deposited into the Brilliante Account, and was then transferred to the Munket Account (controlled by York), and from there to the 2180353 Account (controlled by Georgiadis). From the 2180353 Account, $56,000 was transferred to the British Holdings Account. British Holdings was incorporated in B.C. on September 26, 2008, with Koch as director. Koch, as President and Secretary of British Holdings, and Runic, are the signing officers on the British Holdings Account, which was opened on October 7, 2008.

(vi) Siegel and the 0795624 Account

[577] Siegel appears to have been associated with the flow of funds. She was listed as a signing officer on the Superior Home Account and the Blue Star Account and received money from both accounts. In July 2007, the Aurora Property was purchased in her name with $534,875 sent from the Koch Account to a Richmond Hill law firm. A numbered B.C. company (0795624) of which Koch is the sole director placed a lien of $525,000 on the Aurora Property immediately after it was purchased. Staff registered a certificate of direction to the Land Registry office in respect of the Aurora Property on July 7, 2009.

(d) *Runic's Compelled Examination*

[578] Staff was unsuccessful in its attempts to serve Runic before the Merits Hearing began. On April 5, 2011, at the beginning of the sixth day of the Merits Hearing, Staff advised that Runic had recently been located and been served with a summons to attend at the Commission for examination under section 13 of the Act. Runic attended for compelled examination, with counsel, on April 20 and May 4, 2011, and the transcript was admitted in evidence. Runic did not attend or testify at the Merits Hearing.

[579] In his compelled examination, Runic made the following admissions and gave the following testimony about his involvement in the sale of York Rio securities:

- He has never been registered with the Commission. He did not finish high school and his previous work involved multi-level marketing.
- In 1999, he moved to Vancouver and incorporated Anyphone, which later became Superior Home, to sell prepaid long distance phone cards from vending machines. He continued the business until about 2003, but then returned to multi-level marketing. He moved back to Toronto in 2005.
- In October 2006, he answered an ad in the newspaper for Debrebud, which he described as the marketing arm for York Rio. After meeting with Friedman and Schwartz at the Sheppard Location, he was hired as a salesman to sell York Rio securities. He started the following week.
- He identified himself as "Richard Turner" when he interviewed for the job because he did not know whether this was a legitimate company and he knew there were a lot of unregistered and unscrupulous investment companies in Toronto. He also used the named "Richard Turner" when he contacted clients of York Rio.
- He called investors across Canada, but not in Ontario. He was told that there was a limit of 29 investors for a private placement in Ontario and that York Rio had reached that limit.
- He was not involved in determining whether a prospective investor was an accredited investor – this was the job of the qualifiers, who worked in a different room. The qualifiers would fill out lead cards, which would be given to Friedman and handed on to Runic and the other salesmen ("openers") to make the initial sale; "loaders" would later contact investors to solicit additional sales.
- When he started selling York Rio securities, he was given several scripts, as well as marketing materials, newsletters and other print-outs from the York Rio website. He relied on the materials provided. He had no direct knowledge about whether any of this information was true.
- He told prospective investors that York Rio had a diamond mine, and in late 2006, he was told that the mine was in production, which he passed on to prospective investors.
- He was also told that York Rio was negotiating for a buyout or merger. He was aware that a March 2007 York Rio newsletter stated that York Rio had completed negotiations for the purchase of additional land and had been approached with a merger offer.
- He had nothing to do with any mining operations for York Rio. He told Staff: "The only thing I did for York Rio was raise money, hire other salesmen to raise money, period, and pay out commissions to those salesmen, give them a home to work in, period." (Transcript of Compelled Examination, May 4, 2011, p. 337, ll. 2-5) Nor was any part of the money he received for selling York Rio securities used to develop the mining operation, and there was no discussion of this.
- He identified a number of York Rio scripts that were used by York Rio salesmen. He agreed with Staff's suggestion that the scripts were "full of lies", including the following:
    - "I am a venture capitalist."
    - "We look at about 80 to 100 proposals every year from companies all over the globe."
    - "So naturally they come to people like us who have thousands of clients in our portfolio, hundreds of millions under management and a ROCK-SOLID track record."
    - "I only get shares as payment for my services."
    - "Phase Two: The Production Phase: Currently in production and selling Diamonds to generate revenues."
    - various claims that the salesperson was previously involved in successful private placements in the past – Diamond Fields International Ltd. ("**Diamond Field**s") Resources, Petrolifera Petroleum Limited ("**Petrolifera**") or Aurelian.

  (Transcript of Compelled Examination, April 20, 2011, p. 131, ll. 12-15)

- Runic claimed he did not personally use the scripts, but knew that the salesmen did. Some created their own scripts. He admitted he was condoning people lying to investors. He also admitted personally telling prospective investors that he had been involved in taking Aurelian public, which was not true.

- During the Schwartz Period, Runic was paid a commission of 20% of the proceeds of his sales of York Rio securities. He was paid by cheque payable to Anyphone. Every Friday, Schwartz would hand him a cheque on the Debrebud Account. The amount was based on sales information provided by Friedman. Runic admitted that prospective investors were not told about the commission structure.

- Runic admitted that he was the most successful York Rio salesman at the Sheppard Location.

- By the end of 2006, he didn't want to work at the Sheppard Location anymore. He met with York and Schwartz, and it was agreed that Runic would open a satellite office in partnership with Schwartz. Runic found the new office at the Yonge Location. According to Runic, Schwartz had Robinson sign the lease so that Schwartz could control the Yonge Location.

- Starting in January 2007, he ran the Yonge Location on a 50/50 partnership with Schwartz. York paid Debrebud 70% of the proceeds of the York Rio sales from the Yonge Location, from which commissions and other expenses were paid. Schwartz and Runic split the net profit on a 50/50 basis.

- At the Yonge Location, Runic hired salesmen and provided them with the scripts, promotional materials and website materials from the Sheppard Location. He told the salesmen that York Rio had a diamond mine in Brazil that was producing diamonds.

- From October 18, 2006 to late spring 2007, he received approximately $450,000 from Debrebud in commission payments and profit sharing. He agreed with the Superior Home Account Summary, shown to him by Staff, which indicated that he received $470,781.18 from Debrebud. He explained that approximately $40,000 of this was his commission for selling York Rio shares while he was a salesman for Debrebud, and the remainder was net profits from his partnership with Schwartz.

- According to Runic, in early 2007, York told him that they were planning to take York Rio public and were considering a buyout or merger. Runic admitted that he passed this on to the salesmen, who would "automatically" pass it on to prospective investors.

- York Rio sales "took off" after the move to the Yonge Location, and soon outstripped the sales at the Sheppard Location. In late 2007, he hired more qualifiers and salespersons, and hired Hoyme.

- According to Runic, all the people he hired used false names (or "phone names") as a matter of course, and didn't need to be told to do so. Runic passed on what he had been told about York Rio and the registration requirement – that the only requirement was for York Rio to file an Exempt Distribution Report in any province.

- Runic stated that Hoyme and the qualifiers were paid in cash, which he withdrew from the Superior Home Account at a nearby RBC branch that he attended daily. Anyone who asked was paid in cash. Runic admitted paying some salesmen by the following process. Runic would write a cheque payable to a nominee, then have someone endorse the cheque in that name. He would return to the bank, cash the cheque, and buy a bank draft in the same amount payable to the nominee, then return to the bank later, redeem the bank draft as its purchaser, and pay that amount to the salesman involved. Initially, Runic was reluctant to admit that he had done this on multiple occasions and said he did not understand this as creating a false paper trail. When Staff suggested to him that approximately $1.2 million of such transactions had been traced to the Superior Home Account, he admitted that this was "probably a good figure", with 80% of this amount going to a single nominee for sales commissions (Transcript of Compelled Examination, April 20, 2011, p. 117, ll. 1-4). Ultimately, when Staff asked him whether this was "a deceitful paper trail", he admitted "Yes, I guess it is" (Transcript of Compelled Examination, April 20, 2011, p. 124, l. 5).

- Runic was also unable to explain the numerous transactions for $9,900 recorded in the Superior Home Account, other than by saying he had been advised to do this by an unidentified person.

- In April or May 2007, his partnership with Schwartz came to an end. From then on, he ran the Yonge Location himself and received 70% of York Rio Proceeds from the Yonge Location.

[580] Runic made the following admissions and gave the following testimony, during his compelled examination, about the flow of the York Rio Proceeds through the Superior Home Account:

- He admitted, as set out in the Superior Home Account Summary, that his commission and profit-sharing payments in relation to the sale of York Rio securities did not come directly from York Rio, but came from the York Companies, including Evason, Big Brother, Munket and YRR Holdings Inc., and from Debrebud.

- He did not dispute Staff's calculation that in total, he received approximately $9,393,513.18 from October 7, 2004 to October 30, 2008 in relation to sales of York Rio securities, including the $470,781.18 he received from Debrebud.

[581] Runic also confirmed Staff's analysis of his disbursement of York Rio Proceeds that were deposited into the Superior Home Account.

[582] He admitted that he instructed Koch set up several companies in British Columbia for him, including British Holdings, NatWest, Blue Star and 0795624.

[583] He admitted that he transferred approximately $2.687 million from the Superior Home Account to the Koch Account. From the Koch Account, he authorized the transfer of monies to the Blue Star Account, which he used as a payroll account for York Rio.

[584] He admitted that approximately $1 million of the monies that were transferred from the Superior Home Account to the Koch Account were transferred on to the Palkowski Account in October 2008, and that another $3.8 million of York Rio investor funds was transferred from the Superior Home Account to the Palkowski Account in September and October 2008. He admitted that all the money that was transferred from the Superior Home Account to the Koch Account and the Palkowski Account came from the York Rio Proceeds.

[585] Runic told Staff that on October 15, 2008, he signed an agreement, on behalf of Superior Home, to purchase 1,000 shares of New World Timbers Limited, a timber company in Belize ("**New World**"), for $8.5 million, which was to be paid in nine instalments from October 31, 2008 to April 15, 2009. New World was purportedly in the business of recovering logs from a river. According to Runic, the first $5 million of the purchase price was to be paid from the Palkowski Account, and the remainder would be paid later. The agreement included a clause that stated that all funds would be forfeited if any of the payments was not made on time and in strict compliance with the agreement. In fact, this transaction did not go forward because the funds in the Palkowski Account were frozen by order of the BCSC.

[586] Questioned about the New World agreement during his compelled examination, Runic claimed not to have known who the owners of the company were or that the company had no assets. He could not explain how he planned to obtain the remaining $3.5 million. He denied Staff's suggestion that the contract was backdated and was actually prepared in March 2009. He could not recall what documents he was shown before making the investment. He could not explain why $4.2 million was transferred from the Superior Home Account to the Palkowski Account before the agreement was purportedly executed on October 15, 2008.

[587] We find that the purported Belize transactions provide compelling evidence of an attempt to conceal the source and ultimate use of money raised from York Rio and Brilliante investors.

[588] Runic also admitted that he gave Siegel approximately $500,000, which she used to buy the Aurora Property. He claimed that the money was consideration for a list of leads of high net worth accredited investors, which he no longer has. He admitted that he sent the money to Koch and instructed Koch to fund the purchase. He also admitted that a numbered B.C. company that he controlled has a registered mortgage on the property, but claimed he did not know why this was done. He agreed that the money used to purchase the Aurora Property is directly traceable to York Rio investors. Runic also admitted he bought an Audi A8 for Siegel using investor funds.

[589] Runic made the following admissions and gave the following testimony in relation to his involvement in Brilliante during his compelled examination:

- York Rio "loaders" continued to sell York Rio securities at the Finch Location, but most of the York Rio sales staff switched to selling Brilliante securities. They used a different alias from the one they used when selling York Rio securities.

- Runic did not sell any Brilliante securities himself. He claimed he was not involved in Brilliante, but continued to oversee York Rio when Brilliante securities were being sold. He used the alias "Richard Taylor" after the move to the Finch Location.

- The documents used for promoting Brilliante were very similar to the York Rio materials. The Brilliante Business Plan is almost identical to the York Rio Business Plan except for the name of the company and the resource being mined – uranium rather than diamonds. The summaries of projected expenditures are exactly

identical, and Runic agreed "there is no excuse for that" (Transcript of Compelled Examination, April 20, 2011, p. 185, ll. 16-17). In addition, Brilliante scripts were modified versions of York Rio scripts, and in general, the materials were commingled.

- The Brilliante Proceeds were deposited into the Brilliante Account, then transferred to the Munket Account, and from there to the 2180353 Account. From the 2180353 Account, Georgiadis wrote a cheque for $56,000 to British Holdings, an account belonging to Palkowski (Runic's accountant) because Georgiadis owed Runic money for office expenses and commissions for both companies. Runic admitted that he would have benefitted from this money if the British Holdings Account had not been frozen.

(e) *Witnesses called by Staff*

(i) Robinson

[590] Robinson testified that he first met Runic at the Sheppard Location, when both worked as salesmen. He knew Runic as "Richard Taylor" but understood this was not his real name. Robinson testified that in November 2006, Runic and Schwartz asked him to sign the lease for the new location (the Yonge Location) and Runic left the Sheppard Location to run the Yonge Location in December 2006 or January 2007.

(ii) Friedman

[591] Friedman testified that he met "Richard Turner" for the first time in the fall of 2006 at the Sheppard Location. Friedman testified that "Turner" was "very actively" selling York Rio securities and had "very good" sales ability.

(iii) Sherman

[592] Sherman testified that he has known Runic since childhood. He testified that he learned about York Rio in the summer of 2007, when Runic offered him a job at the Yonge Location updating the client base and raising capital for a diamond mining company. According to Sherman, he asked Runic whether you had to be a broker to do this and was repeatedly told "no". Sherman testified that Runic ran the Yonge Location and hired him to call existing investors to solicit additional investments.

[593] Sherman testified that he shared an office with Runic for the first couple of months so that he could observe Runic calling investors. Runic gave Sherman contact sheets and instructions, and dictated a script for Sherman to read verbatim. Sherman testified that apart from viewing the York Rio website, he relied on Runic and scripts dictated by Runic for all the information he passed on to investors, including a claim that a 69 carat diamond had been found, that the caller had been involved in previous successful private placements (Diamond Fields Resources, Petrolifera and Aurelian Resources), and that York Rio was talking about a merger with a large global mining firm that was listed on the Frankfurt Stock Exchange. Runic also told him about the accredited investor exemption, and Sherman relied on Runic's explanation.

[594] According to Sherman, Runic told him to use a "phone name" so that investors could not contact him at home if their investment did not do well. Runic used the phone name "Richard Turner" and asked him to refer to him by that name in the office; most people, Sherman said, called Runic "Richard" or "Rob".

[595] Sherman testified that a total of 20% commission was paid for the sale of York Rio securities: 10% to the "tier 1" salesperson, who made the initial sale, and 10% to the "tier 2" salesperson who sold the additional investments, but this was shared with anyone else who helped to make the sale. Runic paid everyone in cash every Friday. However, on Runic's instructions, Sherman told investors he was compensated in York Rio shares, a statement that Sherman admitted was not true.

(iv) Hoyme

[596] Hoyme testified that in July 2007, "Richard Turner" hired her to perform administrative tasks at the Yonge Location and paid her $650 cash per week. According to Hoyme, "Turner" told her to use a false name because investors might get upset if they lost their money (she used the name "Vanessa"). He also told her that York owned York Rio, which was doing alluvial mining for diamonds in Brazil.

[597] Hoyme testified that "Turner" was the office manager. He provided a directory for use by the qualifiers and handed out the call lists to the qualifiers and salespeople. Once Georgiadis picked up the Investor Packages from the post office box, he would leave them for "Turner". Hoyme testified that "Turner" told her that he gave the Investor Packages to York, but she did not observe this happening. It was Hoyme who arranged for the courier pickups, and on that basis, she estimated that about 15 cheques were received every week.

[598] Hoyme testified that it was "Turner" who decided to move to the Finch Location. According to Hoyme, "Turner" told her that they had completed the fund-raising for York Rio, which was going to go public on the Frankfurt Exchange, and they would

now begin fund-raising for Brilliante. Hoyme understood that York owned Brilliante as well as York Rio. "Turner" continued to run the office, and most of the York Rio qualifiers and salespersons stayed on to sell Brilliante securities.

(v) Georgiadis

[599] Georgiadis testified that York introduced him to "Richard Turner" (Runic) in the summer of 2007 and suggested he work for "Turner" at the Yonge Location. Georgiadis testified that he did administrative work for "Turner", who ran the office, and that "Turner" paid him a salary of $650 per week, in cash. He testified that "Turner" paid the qualifiers an hourly rate, plus a bonus for sales, in cash, and paid the salespeople a 20% commission by cash or cheque. Georgiadis also testified that if an investor called in with a question – for example, about when York Rio was going to go public – he would refer the question to "Turner".

[600] Georgiadis also testified that "Turner" chose the location for the Finch Location, but asked him to co-sign the lease to ensure it would be approved. "Turner" signed as "Richard Taylor". This was the first time Georgiadis had seen him use that name, though he had given his name as "John Taylor" on the mailbox application form.

[601] Georgiadis testified that he did not observe any transactions between "Turner" and York at the office, and said that York "mostly ... wouldn't come to the office". Georgiadis delivered cheques from "Turner" to York and from York to "Turner", usually visiting York at home or some other location outside of the office. Georgiadis testified that initially he delivered the Investor Packages from "Turner" to York and delivered cheques from York to "Turner", but later he went with Turner to meet with York for this purpose.

[602] We do not believe Georgiadis's evidence that Runic asked him to incorporate 2180353 and not to tell his uncle about it. We find that York asked Georgiadis to incorporate 2180353 for the purpose of flowing the proceeds of the sale of York Rio securities (and later, Brilliante securities) from York's companies to Runic's companies. Georgiadis admitted that he acted as his uncle's "eyes and ears" and that he reported back to York, though "Richard was my boss". However, although York was ultimately in charge of the York Rio Investment Scheme, we accept Georgiadis's testimony that he reported to Runic, who ran the Yonge and Finch Locations, which was consistent with the weight of the evidence we heard.

(f) Schwartz

[603] Schwartz testified that he knew Runic as "Richard Taylor". He confirmed that Debrebud paid out $470,781.58 to Superior Home, and that this represented Runic's 20% commission on sales of York Rio securities. He testified that Runic earned the highest commission of any of the York Rio salespersons at the Sheppard Location.

[604] Schwartz testified that he and Runic parted ways when Runic entered into an arrangement with York to set up his own sales office (the Yonge Location), which led to the termination of Schwartz's arrangement with York.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[605] We find that Runic traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest, based on the following evidence, which we accept:

- Runic admitted that, as stated in Staff's Section 139 Certificate, he has never been registered with the Commission.
- Runic admitted that he was hired as a York Rio salesperson in October 2006, that he sold York Rio securities to investors across Canada (but not in Ontario), and that he was the most successful salesperson at the Sheppard Location. He admitted that he was paid a commission of 20% of the proceeds of his sales of York Rio securities during the Schwartz Period, and that the payment was made to the Superior Home Account, which he controlled, from the Debrebud Account.
- Runic admitted that in January 2007, he entered into a 50/50 partnership with Schwartz in relation to York Rio sales at a new sales office (the Yonge Location). Confirming evidence about Runic's direct involvement in York Rio sales came from Schwartz, Robinson and Friedman, and from Sherman, who observed Runic making sales calls while they shared an office.
- Runic admitted that in April or May 2007, his partnership with Schwartz came to an end, and that he ran the Yonge Location thereafter, receiving 70% of the York Rio Proceeds.

[606] We find, based on Runic's admissions in his compelled examination, Staff's evidence about the flow of funds, and the evidence of Sherman, Hoyme and Georgiadis, that during the Runic Period, Runic engaged in a number of acts in furtherance of trades in York Rio securities apart from his direct sales activities, including:

- hiring qualifiers and salespersons;
- training salespersons, including Sherman;
- writing scripts and providing scripts to qualifiers and salespersons;
- providing qualifiers and salespersons with York Rio promotional materials, including newsletters and other print-outs from the York Rio website, and information provided by York, knowing that this information would be used to sell York Rio securities; and
- giving the Investor Packages to York, or arranging for this to be done;
- receiving 70% of the York Rio Proceeds from the accounts of the York Companies; and
- from this amount, paying the expenses of the York Rio sales operation, including the salaries and commissions of the York Rio qualifiers and salespersons.

[607] Though Runic denied selling Brilliante securities directly, he admitted that he received approximately 72% of the Brilliante Proceeds. He admitted that Brilliante and York Rio promotional materials were commingled, that Brilliante scripts and promotional materials were modified versions of York Rio materials, and that Brilliante securities were sold by the same salespersons who sold York Rio securities, although under a different alias. Runic's admissions are supported by the evidence of Georgiadis and Hoyme that Runic managed the sales of Brilliante securities at the Finch Location, just as he had managed the sales of York Rio securities. We find that Runic engaged in a number of acts in furtherance of trades in Brilliante securities, as he had in relation to York Rio securities.

[608] The evidence of Vanderlaan and Ciorma shows that Runic received $470,781.18 from Debrebud between October 2006 and late spring 2007. Runic admitted this, and stated that this represented a 20% commission on his own York Rio sales and his 50% share of the net profits of the Yonge Location. Staff's evidence shows that Runic also received $8,753,544.35 from the York Companies from October 7, 2004 to October 30, 2008, and Runic admitted that he received these amounts. We find that Runic received $9,224,325.53 (approximately $9.2 million) from the sale of York Rio and Brilliante securities during the Material Time.

[609] We find that Runic traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[610] We also find that Runic distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[611] We are not satisfied that Staff has proven, on a balance of probabilities, that Runic made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act. However, for the reasons given at paragraph 621 below, we find that Runic, being a *de facto* director and officer of York Rio, authorized, permitted or acquiesced in York Rio's non-compliance with subsection 38(3) of the Act.

(c) *Fraud: section 126.1(b) of the Act*

[612] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[613] We find that Runic engaged or participated in acts, practices or courses of conduct that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest, based on the following.

[614] Runic admitted that he used the alias, "Richard Turner" when he sold York Rio and Brilliante securities, he used the alias "John Taylor" when he signed the application for the mailbox rental in April 2008 and he used "Richard Taylor" when he signed the lease for the Finch Location in June 2008. We find that Runic knew or reasonably ought to have known that using an alias while engaging in acts in furtherance of trades in securities was a badge of fraud.

[615] Runic admitted that he told prospective investors that York Rio had a diamond mine and that the mine was in production. He claimed that he relied on the materials provided to him, including scripts, newsletters, promotional material and print-outs from the York Rio website. He admitted that he had no knowledge as to whether any of these statements were true. We find that Runic knew or reasonably ought to have known that these representations had no basis in fact. Runic admitted that the York Rio scripts that were used to sell York Rio securities contained a number of lies, including claims that the caller had previously been involved in successful private placements and was paid only in shares, and that he had been involved in taking Aurelian public, which was not true.

[616] Runic admitted that none of the money he receiving for selling York Rio securities was used to develop the mining operation, and that this information was not disclosed to investors. Instead, most of the York Rio Proceeds was used to compensate the York Rio Respondents and others associated with the York Rio Investment Scheme. Runic admitted that prospective investors were not told about the commission structure.

[617] We find that Runic attempted to conceal the use of the York Rio Proceeds and the Brilliante Proceeds by authorizing the transfer of the funds from the Superior Home Account through the accounts of the other Runic Companies and from there to the Koch Account and the Palkowski Account. We did not receive sufficient evidence to determine the nature and purpose of the New World agreement, and we accept Staff's submission that we do not need to do so for our purposes. We are satisfied that none of the approximately $9.2 million that flowed through the accounts of the Runic Companies was used for the purported mining operations of York Rio and Brilliante.

[618] We find that Runic played a crucial role in the operation of the York Rio and Brilliante Investment Schemes. From April or May 2007, he took over the running of the Yonge Location, and later ran the Finch Location, working with York, to sell worthless securities to investors across Canada. He was the person who hired qualifiers and salespersons, told them to use aliases when contacting investors, trained them, provided them with scripts and promotional materials that were "full of lies". Of the approximately $18 million of York Rio securities sold during the Material Time, approximately $9.2 million passed through accounts controlled by or associated with Runic, in an obvious attempt to conceal the source and ultimate use of investors' money.

[619] We find that Runic engaged or participated in acts, practices or courses of conduct that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(d) *Directors and Officers: section 129.2 of the Act*

[620] We find that Runic was a *de facto* officer of York Rio, and that he authorized, permitted or acquiesced in York Rio's non-compliance with Ontario securities law during the Runic Period (from January 2007 to October 21, 2008), based on the following:

- Runic admitted that he opened the Yonge Location in January 2007, after a meeting with York and Schwartz. Rather than receiving the 20% sales commission he had received in his first months at the Sheppard Location, he was now Schwartz's partner and entitled to a 50% share of the net profit.

- At the Yonge Location, Runic admitted that he hired and paid York Rio qualifiers and salesmen, including Bassingdale, Oliver, Sherman and Valde. In April or May 2007, Runic ended his partnership with Schwartz and took over the management of the Yonge Location. From that point on, Runic received a commission of approximately 72% of the York Rio Proceeds. Runic admitted these arrangements during his compelled examination, but stated that Georgiadis, who started working at the Yonge Location at about that time, was "overseeing everything" on York's behalf. We accept that York continued to have ultimate oversight of the York Rio Investment Scheme, as evidenced by the commission structure and the flow of funds. However, this does not affect our finding that Runic performed functions similar to those normally performed by an officer and played an important role in executing the York Rio Investment Scheme during the Runic Period.

- In the summer of 2008, Runic, with Georgiadis, signed the lease for the Finch Location. Again, Runic's evidence that he took this step at York's direction does not affect our finding that Runic was a directing mind of York Rio at this time.

- Runic admitted that at the Yonge and Finch Locations, he passed on information he received about York Rio, knowing the qualifiers and salespersons would pass it onto investors. He admitted that he knew that York Rio salespersons were using scripts that were "full of lies" to sell York Rio securities, and he admitted he condoned people lying to investors. He also admitted telling York Rio salespersons that York Rio was planning to take the company public, knowing that they would "automatically" pass the information on to prospective investors.

[621] We also find that Runic authorized, permitted or acquiesced in York Rio making prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest, based on the following evidence:

- Runic admitted that a March 2007 York Rio newsletter stated that York Rio had been approached with a merger offer from a UK oil, gas and mineral company, and he stated that he was also advised by York in early 2007 that they were planning on taking the company public and were considering a buyout or merger. He admitted that he passed on this information to qualifiers and salespersons, who used it to sell York Rio securities.

- Sherman testified that in speaking to prospective investors, he relied on the information provided by Runic and the scripts that Runic dictated for his verbatim use, which included the representation that York Rio was talking about a merger with a large global mining firm that was listed on the Frankfurt Exchange, and he and other York Rio salespersons would pass this on to prospective investors.

- Hoyme testified that Runic told her, in the context of the planned move to the Finch Location, in the summer of 2008, that they had completed the fund-raising for York Rio, which was going to go public on the Frankfurt Exchange, and were about to begin raising funds for Brilliante.

[622] We find that Runic was a *de facto* officer of Brilliante and that he authorized, permitted or acquiesced in Brilliante's non-compliance with Ontario securities during the Runic Period from the summer of 2008, when the Brilliante Investment Scheme was started up, to October 21, 2008, based on the following evidence.

- Although Runic claimed he was not involved in the Brilliante Investment Scheme, he admitted that Brilliante securities were sold at the Finch Location that he managed, often by salespersons who also sold York Rio securities, and using promotional materials that were modified versions of the York Rio promotional materials.

- Hoyme testified that Runic told her they would now begin fund-raising for Brilliante, that Runic continued to run the Finch Location, and that most of the York Rio and Brilliante salespersons stayed on.

- In our view, the best evidence of Runic's central role in the Brilliante Investment Scheme is the evidence, which he admitted, that he received approximately 72% of the proceeds of the sale of Brilliante securities, an amount that is inconsistent with anything but a role as a *de facto* officer of Brilliante.

[623] Of the approximately $16 million raised from York Rio and Brilliante investors from September 2005 to October 2008, approximately $9.2 million passed through the Superior Home Account, and from that amount, significant amounts were then transferred into other accounts controlled by Runic. In our view, the flow of funds provides compelling evidence that Runic was a *de facto* officer of York Rio and Brilliante during the Runic Period and that he authorized, permitted or acquiesced in the contraventions of Ontario securities law by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

4. Conclusion

[624] We find that Runic traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) and contrary to the public interest.

[625] We find that Runic distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[626] We find that Runic engaged or participated in acts, practices or courses of conduct that he knew or should have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[627] We also find that Runic, being a *de facto* officer of York Rio during the Runic Period, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Runic Period, contrary to section 129.2 of the Act and contrary to the public interest.

[628] We also find that Runic, being a *de facto* officer of Brilliante during the Runic Period, authorized, permitted or acquiesced in Brilliante's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Runic Period, contrary to section 129.2 of the Act and contrary to the public interest.

F. Demchuk

1. The Allegations

[629] Staff alleges that Demchuk:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[630] Demchuk did not testify at the Merits Hearing. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan and Ciorma, Sherman, Georgiadis and Hoyme. Through Vanderlaan, Staff introduced into evidence excerpts from Demchuk's compelled examination, which took place on December 16, 2008.

(a) *Identification of Demchuk as "Simon McKay" and "Andrew Sutton"*

[631] Vanderlaan identified the photograph of Demchuk that Staff obtained from the Ministry of Transportation and showed to Sherman, Georgiadis and Hoyme during the Merits Hearing (the "**Demchuk Photograph**"). Georgiadis and Hoyme testified that the person in the Demchuk Photograph sold York Rio securities using the name "Simon McKay", and sold Brilliante securities as "Andrew Sutton". Georgiadis knew his first name to be "Ryan". Hoyme could not recall his real name at the Merits Hearing but refreshed her memory by reviewing the transcript of her compelled examination, when she had identified him as "Ryan".

(b) *Section 139 Certificate*

[632] Staff provided a Section 139 Certificate stating that Demchuk has never been registered under the Act.

(c) *Documents seized from the Finch Location*

[633] Vanderlaan identified various documents found at the Finch Location on October 21, 2008: a file folder marked "Simon McKay/Andrew Sutton", an August 22, 2008 email from "Simon McKay" to a York Rio investor enclosing York Rio newsletters and the York Rio Business Plan; two handwritten lead cards for "Simon McKay", and, with respect to Brilliante, three sales order logs, Brilliante subscription agreements and covering emails.

(d) *Demchuk's Compelled Examination*

[634] In his compelled examination, Demchuk made the following admissions and gave the following evidence about his involvement in selling York Rio securities:

- He has never been registered with the Commission and has no background in securities. After finishing high school, he worked in telemarketing and insurance sales, and at one time, he was a registered insurance broker.
- In December 2007, he found out about York Rio from someone who had been a colleague at an insurance company. Demchuk was interviewed by "Richard Turner" (Runic) at the Yonge Location. He started working at York Rio in mid-December 2007.
- He used the alias "Simon MacKay" when selling York Rio securities and "Andrew Sutton" when selling Brilliante securities because he was told it was company policy for everyone to use a false name. Demchuk claimed he questioned this policy.

- Demchuk was initially hired as a qualifier at $12 per hour, but "Turner" asked him to become a salesman after one week.

- As a qualifier, Demchuk was provided with a script to read to prospective investors. He identified several York Rio scripts as scripts he had seen, but stated that he used only parts of them. He said that the use of scripts is standard in the telemarketing industry.

- The York Rio script that Demchuk used included a claim that the caller had spoken to the prospective investor about another company, and solicited interest in receiving information about York Rio. Qualifiers would also qualify prospective investors as accredited investors. "Turner" or Hoyme provided the call list, which consisted of names in the western provinces, not Ontario.

- Demchuk was told that an accredited investor was an individual with a net worth of $1 million or a combined net worth of $2 million with a spouse, or an individual with an annual pre-tax income of $200,000 or, combined with a spouse, $300,000, for the last two years. This was the definition Demchuk passed on to prospective investors. If a prospective investor told Demchuk they qualified as an accredited investor, he would fill out a lead card and give it to Hoyme.

- As a salesman, Demchuk received a 20% commission on his York Rio sales plus an additional 10% commission on subsequent sales made to the same investor ("loads"). His commission was paid by cheque on the Blue Star Account. He kept a sales log and admitted that he earned commissions of approximately $200,000 for sales and another approximately $20,000 for loads while selling York Rio securities.

- Initially, Demchuk deposited his commission cheques into his own bank account, then incorporated his company, Demchuk Marketing Inc. (of which he is the sole director and President, Secretary and Treasurer) on March 19, 2008, and afterwards deposited most of his cheques into the company account.

- As a salesman, he called the names on the lead cards provided to him. The sales script he used was different from the qualifier sales script. He told prospective investors that York Rio had a diamond mine in Brazil, and that the mine was in production and had recovered diamonds. He denied saying anything about the quality or size of the diamonds being produced.

- He admitting reading from a script that "My average investor comes on board at the $50,000 to 75,000 level", although in fact the average investment he sold was a little more than $10,000.

- He told prospective investors that York Rio would be going public, and that traditionally a company went public in 10-12 months, although he knew nothing about the process of taking a company public. He denied giving any figures, even estimates, about what the share price would be when York Rio went public or how much profit investors might make. When a prospective investor asked about this, Demchuk would say that the company had called them previously about Aurelian, which had gone from $2.75 to $35 per share.

[635] In his compelled examination, Demchuk made the following admissions and gave the following evidence about his role in the sale of Brilliante securities:

- He stopped selling York Rio securities at the end of August and started selling Brilliante securities in mid-September. He used the alias, "Andrew Sutton" when selling Brilliante securities. He called investors in Alberta, not in Ontario. The share price was $1 per share.

- He was told that Brilliante was a uranium mine in Brazil, and that Brilliante owned a reserve of uranium or had rights to it. He was given a script and was told to read it, as he had done when selling York Rio securities. He identified a Brilliante script that he used when selling Brilliante shares.

- He read what was in the script. He told prospective investors that it was a good time to invest in uranium, which was an energy source good for the environment. He also read the part of the script that included a representation that the company had offered the prospective investor a deal two years before.

- He admitted reading to prospective investors the claim, from the script, that "I brought you Thompson Creek 2 years ago when it was at 60 cents/share, and my investors who we're [*sic*] on board at that time were layered out between $18-$20", although this was not true. However, he denied telling prospective investors that Brilliante was going public or that their shares were going to go up.

- He admitted reading, from the script, "my experience in the venture capital arena dates back over 12 years spanning three highly successful ventures", though this was not true: he has no experience in venture capital.

- He admitted reading, from the script, "As an independent contractor of Brilliante, I am not provided a salary nor am I paid any commissions. My interest here is solely in shares of the company", although this was not true: he was paid in commissions and owns no shares in Brilliante.

- He admitted writing the handwritten note at the bottom of the typed script saying "we are essentially bringing the world's third largest reserve of uranium into production". Demchuk explained that someone told him "it was the third largest or Brazil is the third largest reserve for uranium. There's – I looked on the internet and read about uranium." (Transcript of Compelled Examination, December 16, 2008, p. 112, ll. 1-4)

- He initially told Staff that he understood, based on the Brilliante website and on what he had been told, that Brilliante was mining uranium, but later admitted that they had a mine but the mine was not "in production, "so I don't know whether that means they're mining uranium or not." (Transcript of Compelled Examination, December 16, 2008, p. 114, ll. 5-7)

- He admitted that he had read the Brilliante Business Plan and understood that the company was not yet in production, and he could not explain the year 1 projection of US $28.9 million set out in the Brilliante Business Plan.

- He admitting selling $25,000 of Brilliante securities to a single investor in Alberta in late September 2008, but stated that he never received the commission he was owed on the sale. He had also sent out Brilliante subscription agreements to two other prospective investors, but they were never returned.

(e) *Amounts obtained by Demchuk*

[636] The Superior Home Account Summary prepared by Ciorma indicates that Demchuk received $17,000 in cheques from the Superior Home Account from January 4, 2008 to February 20, 2008. The Blue Star Account Summary indicates that Demchuk and Demchuk Marketing Inc. received $201,833.74 in cheques from the Blue Star Account from March 3, 2008 to October 8, 2008. Staff presented no evidence that would allow us to break these figures down into York Rio and Brilliante commissions.

[637] We note that Demchuk's estimate that he received approximately $220,000 in York Rio commissions is consistent with Ciorma's evidence that he received $218,833.74 from January 4, 2008 to October 8, 2008, and we accept Ciorma's evidence on this point.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[638] Based on the evidence of Vanderlaan, Georgiadis and Hoyme, and based on Demchuk's admissions, made in his compelled examination, we find that Demchuk sold York Rio securities at the Yonge and Finch Locations using the alias "Simon McKay", and that he sold Brilliante securities at the Finch Location using the alias "Andrew Sutton". Although Demchuk admitted to making only one sale of Brilliante securities, he also admitted to sending Brilliante subscription agreements to two other prospective investors who did not go ahead with their purchases. By admittedly making sales calls to these investors and sending them subscription agreements, Demchuk engaged in acts in furtherance of trades in Brilliante securities, and therefore also engaged in unregistered trading with respect to these investors.

[639] We accept the evidence of Staff's Section 139 Certificate that Demchuk has never been registered under the Act, which was admitted by Demchuk.

[640] We find that Demchuk misrepresented the Net Financial Assets Test for the accredited investor exemption by telling prospective investors that an individual with a net worth of $1 million, including real property and personal property, was an accredited investor. We find that the accredited investor exemption to the registration and prospectus requirements was not available for sales of York Rio or Brilliante securities.

[641] We find that Demchuk traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[642] We find that Demchuk distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[643] Based on Demchuk's admission that he told prospective investors that York Rio would go public, which traditionally happened within 10-12 months, we find that he made a prohibited representation that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act, and contrary to the public interest.

[644] Demchuk denied telling prospective investors that Brilliante would be going public, and we heard no evidence that he did so. We find that Staff has not satisfied its burden of proving, on a balance of probabilities, that Demchuk made prohibited representations that Brilliante securities would be listed on a stock exchange, and accordingly Staff's allegation that Demchuk contravened subsection 38(3) of the Act with respect to Brilliante is dismissed.

(c) *Fraud: section 126.1(b) of the Act*

[645] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[646] emchuk admitted that he sold York Rio and Brilliante securities using an alias and that he knowingly misrepresented to investors that he or the company had contacted the investor previously, that he had been involved in taking Thompson Creek public, which had resulted in the share price increasing from $0.60 to $18-20 per share, that the York Rio diamond mine was already in production, that the average York Rio investor invested at the $50,000-75,000 level, and that that he was not paid commission. Although he claimed that he relied on what he was told by others and on information obtained from the York Rio and Brilliante websites and Business Plans, we find that he knew or reasonably ought to have known that his sales pitch included numerous misrepresentations. For example, he was unable to explain how Brilliante, which he knew not to be in production, could project revenues of US $28.9 million in the first year, as stated in the Brilliante Business Plan.

[647] We accept Ciorma's evidence that Demchuk obtained $218,833.74 as a result of his non-compliance with Ontario securities law in relation to the sale of York Rio and Brilliante securities. Based on a 20% commission rate, this suggests that York Rio and Brilliante investors were deprived of approximately $1.1 million as a result of Demchuk's non-compliance with the Act.

[648] We find that Demchuk engaged in dishonest acts which he knew or reasonably ought to have known would result in York Rio and Brilliante investors being deprived of their investments.

[649] We find that Demchuk engaged or participated in acts, practices or courses of conduct that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[650] We find that Demchuk traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[651] We find that Demchuk distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[652] We find that Demchuk made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act, and contrary to the public interest. We are not satisfied he contravened subsection 38(3) in respect of Brilliante securities.

[653] We find that Demchuk engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

G. Oliver

1. The Allegations

[654] Staff alleges that Oliver:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and

- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[655] Oliver did not testify at the Merits Hearing. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan, Ciorma, Sherman, Georgiadis and Hoyme. Through Vanderlaan, Staff introduced into evidence excerpts from Oliver's compelled examination, which took place on July 6, 2009.

(a) *Identification of Oliver as "Mark Roberts" and "Bill Hastings"*

[656] Vanderlaan testified that Oliver was present during the search of the Finch Location on October 21, 2008, and provided his name and date of birth at that time. Vanderlaan could not recall whether Oliver provided his driver's licence number but in any event, his car, which was parked outside, carried personalized plates. Based on that information, Vanderlaan obtained from the Ministry of Transportation the photograph of Oliver that Staff showed to Sherman, Georgiadis and Hoyme at the Merits Hearing (the "**Oliver Photograph**"). Sherman testified that the person in the Oliver Photograph sold York Rio securities using the name "Mark Roberts". Georgiadis testified that "Roberts" sold York Rio securities only, not Brilliante securities. Hoyme identified the person in the Oliver Photograph as "Matt".

(b) *Section 139 Certificate*

[657] Staff provided a Section 139 Certificate stating that Oliver has never been registered under the Act.

(c) *Documents Seized from the Finch Location*

[658] Vanderlaan testified that the documents seized from the Finch Location included a file folder, labelled "Mark Roberts", which contained and email correspondence from September and October 2008 between "Mark Roberts" and nine York Rio investors, the cover page of the subscription agreement that the investor was asked to sign, and the sales order log for each of the sales.

(d) *Oliver's Compelled Examination*

[659] In his compelled examination, Oliver made the following admissions and gave the following evidence about his involvement in selling York Rio securities:

- He has never been registered with the Commission. He did not finish high school and has no background in securities. Before getting involved in selling York Rio securities, he was involved in telemarketing of pens, precious stones, voice-over-internet protocol ("**VOIP**") services, and selling securities in a tech company.

- He is married to Azita Hekmati ("**Hekmati**").

- He met Runic when he was selling VOIP for his own company, which was not doing well. In May 2007, Runic called Oliver, told him about York Rio and suggested he check the York Rio website. Runic called again about two months later, and as a result, Oliver met him twice in the York Rio office on Yonge. Runic offered him a job selling York Rio securities.

- He began selling York Rio securities from the Yonge Location in July 2007, made the move to the Finch Location in August 2008, continued to sell York Rio securities from the Finch Location until the Search Warrant was executed on October 21, 2008, and was present at the Finch Location at that time.

- He made "quite a number of sales".

- He used the name "Mark Roberts" when selling York Rio securities. According to Oliver, he asked why he had to use a "pseudonym" and was told it was because if an investment doesn't go quite as planned, some investors can be vengeful.

- According to Oliver, Runic gave him a script, and he read the script to prospective investors. He was not concerned whether statements in the script were untrue because he believed that the company as it was represented to him and over the internet was legitimate, and he was interested in making some money. He stated "I did what I was asked to do and I got paid... . So whether or not I believed it to be truthful or not truthful, if that's what you're asking, I never questioned. I just did what was asked." (Transcript of compelled examination, July 6, 2009, p. 85, ll. 18-24)

- He told prospective investors that York Rio was producing 1 to 69 carat diamonds, that 80% of the diamonds were gem quality and 20% industrial quality, and that York Rio had outbid De Beers and others in a successful bid for another 38,000 hectares of land.

- He told prospective investors that York Rio was in negotiations about a possible merger with a company trading in double digit Euros on the Deutsche Börse, and that York Rio was at the 90 to 95% stage of completion for a merger with a global mining firm, which would result in returns of 6 or 7 to one. He admitted telling prospective investors that he could see York Rio valued easily at 4 to 7 times its earnings at $1.25 per share, although he claimed he never made any promises as far as dollar amounts.

- He told prospective investors that he had been involved in taking Aurelian and Petrolifera public, although this was not true.

- He was paid commission of 10% on sales of York Rio securities. He was paid in cash and by cheque, and he asked Runic to make his cheques payable to his wife, Hekmati; for personal reasons, Oliver does not have a bank account or credit card.

- He did not tell prospective investors how he was compensated.

[660] With respect to Brilliante, Oliver stated, during his compelled examination, that he never sold any Brilliante securities, although he admitting talking about Brilliante to one client who called in looking for a share certificate. He used the name "Bill Hastings" when speaking to this client. Oliver stated that he was handed fewer than a dozen Brilliante accounts for "updating" just five or six days before the raid, but he did nothing because he had no direction beyond "do the same thing".

(e) Investor Two

[661] Investor Two testified that "Roberts" called him in April 2008 to solicit an investment in a diamond mine, at $0.55 per share, before it went public. "Roberts" described himself as a broker or stock promoter and said he was contracted by York Rio to sell the securities. Investor Two testified that "Roberts" told him the mine was in preliminary production, and was producing 30% gem quality and 70% industrial quality diamonds, and that York Rio was in negotiation with another company that was likely going to make an offer in the $4-10 range by the end of 2008. Investor Two also testified that "Roberts" urged him to make a commitment right away, on the basis that the share offering was closing. Each time "Roberts" called, he tried to convince Investor Two to "bump up" the number of shares he purchased to make the share count an even "block" – 50,000 shares at the time of this first purchase. Eventually, Investor Two invested $27,500.

[662] In June 2008, "Roberts" called again, offering shares at $0.375 per share. Investor Two invested another $120,000 to obtain approximately 320,000 additional shares.

[663] "Roberts" called again in July 2008, offering additional shares at $0.25 per share. Again, he urged Investor Two to "bump up" his purchases to bring his total number of shares to 1 million. He explained that he knew some Hong Kong investors who were keen on getting in on this but couldn't do so until it went public, and when that happened, "Roberts" had arranged to sell them blocks of shares. Investor Two was unwilling to invest that much money.

[664] "Roberts" also told Investor Two that a partner in York Rio was not well and was trying to sell his shares quickly to clean up his estate. Investor Two thought that sounded unusual, and insisted on seeing some financial documents before investing any more money. "Roberts" suggested he speak to York, and Investor Two did so, before investing another $100,000 in York Rio.

[665] Investor Two testified that neither "Roberts" nor "York" told him that 70% of the York Rio Proceeds went in commissions to Debrebud and Superior Home, and if they had, he would not have invested because that would not have been a reasonable use of the money.

(e) Investor Five

[666] Investor Five initially bought York Rio securities from "Jack Baker". "Mark Roberts" called him in January 2008 to solicit an additional investment, and, as a result, in February 2008, Investor Five invested another $25,000 in York Rio. To induce him

to buy more York Rio shares, "Roberts" told him that York Rio was pulling diamonds out of the ground, 70-80% of which were high grade gem diamonds and 20-30% industrial diamonds, that the diamonds ranged from 1 to 69 carats, and that uranium and traces of gold had been found. "Roberts" also told Investor Five that York Rio was raising money to buy another 38,000 hectares of land, that a geologist, Daniel Pasin, was involved, that they were getting close to listing on the Frankfurt exchange and that a German company was interested in buying 85% of the company.

[667] nvestor Five testified that neither "Roberts" nor "Baker" told him they were paid a 20% commission, and if they had, he "would have thought more about" his investment, because it would mean they were selling the security "because they were putting money in their own pocket", not "because it was a good stock".

(f) *Amounts obtained by Oliver*

[668] The Superior Home Account Summary prepared by Ciorma indicates that Oliver received $65,071.97 from that account from August 2007 to February 2008 by cheques made payable to Hekmati. The Blue Star Account Summary indicates that Oliver received $53,543.94 from that account from February 2008 to June 2008 by cheques made payable to Hekmati. We accept Ciorma's evidence that Oliver, through cheques made payable to Hekmati, received $118,615.91 from the Superior Home Account and the Blue Star Account from August 2007 to June 2008.

[669] Although Oliver admitted that he received some commission payments in cash, and we heard some evidence that some of his commission cheques were made out to a cheque-cashing service, Staff does not rely on these payments, which cannot be ascertained with reasonable certainty, and relies only on the payments by cheques payable to Hekmati.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[670] Based on the evidence of Vanderlaan, Sherman, Georgiadis and Hoyme, and based on Oliver's admissions, made in his compelled examination, we find that Oliver sold York Rio securities at the Yonge and Finch Locations, using the alias "Mark Roberts".

[671] We accept the evidence of Staff's Section 139 Certificate that Oliver has never been registered under the Act, which he admitted.

[672] We find that Oliver sold York Rio securities to at least one investor who was not an accredited investor (Investor Two). We also find that the accredited investor exemption from the registration and prospectus requirements was not available in relation to York Rio securities.

[673] We find that Oliver received at least $118,615.91 from August 2007 to June 2008 in relation to the sale of York Rio securities. Based on a 10% commission rate, this suggests that Oliver sold at least $1.18 million of York Rio securities in a little less than a year.

[674] Based on Oliver's admission, during his compelled examination, we find that Oliver spoke to one investor about Brilliante, using the name "Bill Hastings". However, Oliver denied having sold any Brilliante securities, stating that he was handed fewer than a dozen Brilliante accounts for "updating" just five or six days before the raid, but he did not follow up because he had receiving little direction. We note that the documents seized from the Finch Location indicate that Oliver was still soliciting sales of York Rio securities in September and October 2008, just before the execution of the Search Warrant. Georgiadis testified that Oliver sold only York Rio securities, not Brilliante. Staff presented no other evidence as to Oliver's involvement in selling Brilliante securities. We find, in the circumstances of this case, that we have insufficient evidence to find that Oliver engaged in trades or acts in furtherance of trades in Brilliante securities.

[675] We find that Oliver traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[676] We find that Oliver distributed York Rio securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[677] Staff's allegations that Oliver contravened subsection 25(1)(a) and 53(1) of the Act with respect to Brilliante securities are dismissed.

(b) *Prohibited representations: subsection 38(3) of the Act*

[678] Based on Oliver's admission during his compelled examination and based on the evidence of Investor Two and Investor Five, we find that Oliver made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[679] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[680] Oliver admitted that he sold York Rio securities using an alias and that he read a number of representations from a script without exercising any diligence to determine whether they were true, including claims that York Rio had a mine that was producing diamonds of 1-69 carats, 70-80% of which were gem quality diamonds, that York Rio had outbid De Beers to acquire rights to another 38,000 hectares of land, and that York Rio was about to complete a merger with a global mining firm. He also admitted telling investors that he had been involved in taking Aurelian and Petrolifera public, though he knew this to be untrue. He did not tell prospective investors how he was compensated. As a result of his misrepresentations, Oliver earned commission of at least $118,615.91 from August 2007 to June 2008 in relation to his sales of York Rio securities. As a result of his non-compliance with Ontario securities law, York Rio investors lost at least $1.18 million. We find that Oliver engaged in dishonest acts which he knew or reasonably ought to have known would result in York Rio investors being deprived of their investments.

[681] We find that Oliver engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[682] We find that Oliver traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[683] We find that Oliver distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[684] We find that Oliver made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

[685] We find that Oliver engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[686] We are not satisfied that Staff has satisfied its burden of proving its allegations against Oliver with respect to the Brilliante Investment Scheme on a balance of probabilities, and accordingly those allegations are dismissed.

H. Valde

1. The Allegations

[687] Staff alleges that Valde:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[688] Valde did not testify at the Merits Hearing. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan, Ciorma, Sherman, Georgiadis and Hoyme. Through Vanderlaan, Staff introduced into evidence excerpts from Valde's compelled examination, which took place on January 13, 2009.

(a) *Identification of Valde as "Doug Bennett" and "Don Wade"*

[689] Vanderlaan identified the photograph of Valde that Staff obtained from the Ministry of Transportation and showed Sherman, Hoyme and Georgiadis at the Merits Hearing (the "**Valde Photograph**"). Hoyme and Sherman identified the person in the Valde Photograph as "Doug Bennett", a York Rio salesman. Georgiadis testified that the person in the Valde Photograph was known to him as "Don Wade", who had an office at the Finch Location.

(b) *Section 139 Certificate*

[690] Staff provided a Section 139 Certificate stating that Valde has never been registered under the Act.

(c) *Documents Seized from the Finch Location*

[691] Vanderlaan testified that several May 2007 emails between "Doug Bennett" and two York Rio investors were seized from the Finch Location. Amongst the other things seized from the Finch Location were a file folder, labelled "Don Wade", which contained email correspondence between "Don Wade" and four Brilliante investors, the cover page of the subscription agreement which the investor was asked to sign, and the sales order log for each of the four sales.

(d) *Valde's Compelled Examination*

[692] In his compelled examination, Valde made the following admissions and gave the following evidence about his involvement in selling York Rio securities:

- He has never been registered with the Commission. He has no background in securities. Before getting involved in selling securities, he worked mainly in non-securities sales.
- He worked as a salesman for Maitland Capital from July to October 2005.
- "Richard Turner" (Runic) called him in early 2007 about York Rio. He met with "Turner" and York, and as a result, "Turner" hired him.
- He started working as a salesman for York Rio at the Yonge Location in March or April 2007 and continued for a year or a year and a half, until at least August or September of 2008. He worked three or four days a week on an irregular basis, and worked fewer hours in the summertime. He made sales calls to investors all over Canada, except in Ontario and Quebec.
- Because of his experience with Maitland, he understood that a private placement could only be sold to accredited investors. He understood that all York Rio investors were pre-screened as accredited investors and had to sign a form saying so.
- He understood that York Rio was raising funds for a diamond mine in Brazil, and hoped to take it public. He understood the mine had limited production by late 2007. He read the York Rio Business Plan, which was sent out to prospective investors, but did not review the material on the York Rio website.
- According to Valde, "Turner" told him that no one at the office used their real name. He admitted using the alias "Doug Bennett", when selling York Rio securities.
- When calling a prospective investor, Valde told them about the York Rio project and ask if they were interested in receiving information on it; if so, the information would usually be emailed. He also told prospective investors that the investment was for accredited investors, which he understood to be someone with a net worth of $1 million, including the value of any business or real estate, or an annual income of $200,000.
- He was given a script to use when selling York Rio securities, and used the same script throughout his time there. He admitted telling prospective investors that York Rio hoped to go public within 12 to 18 months, and that he thought it would do very well. York Rio shares cost $0.75 per share at the time; he would tell prospects that although he could not guarantee what the stock would do, it was expected to go up, and York had been

successful in the past. Towards the end of the Material Time, he would say that the mine was in limited production, which is a good base for going public, and the mandate was to go public six months to a year from the start of production.

- The script also included the statement that York had brought Aurelian public, and that it had done very well. Sometimes Valde read this part of the script. He also sometimes told investors he had been in the business a few years. He did not tell investors about the commission structure, and no one ever asked.

- In August 2008, Valde made the move to the Finch Location with York Rio. He continued to sell York Rio securities "a little bit" but he believed that York was winding it down to start his new venture, Brilliante.

- He was paid a commission of 20% of the proceeds of his York Rio sales, and, if another salesperson made an additional sale to the same investor, he would also receive a 10% commission on that sale. According to Valde, he sold about $200,000 worth of York Rio securities to 20-30 people, his largest sale was approximately $20,000 and his sales averaged approximately $7,500. He was paid by cheque payable on a company whose name he was unable to remember (not York Rio), and later received cheques from Blue Star. He was paid in cash sometimes, and he estimated that he received one cash payment of $1,200 in addition to the cheques. He did not receive any T4s in relation to his York Rio income and claimed he was unable to estimate how much he received in York Rio commissions in 2007-2008. He declined to provide income tax or other supporting income documentation.

[693] In his compelled examination ,Valde made the following admissions and gave the following evidence about his involvement in selling Brilliante securities:

- He read the Brilliante Business Plan. He understood that Brilliante was a uranium mine in Brazil, and that it was scheduled to begin production in 2011 or 2012.

- He phoned people to try to sell them shares of Brilliante, using the alias "Don Wade". He sold Brilliante securities to only two or three people because the fall of 2008 was a bad time in the stock market. Again, he earned 20% commissions, "maybe $5,000." He was paid by cheque from the Blue Star Account.

- He would tell prospective investors that Brilliante was raising funds to take the company public, and that the price of uranium had gone up 200% in the past three years. Shares were selling at a dollar per share. He would tell prospective investors that he could not guarantee what the shares would come out at, but quite often on private placements "it comes out higher". He claimed he also told prospective investors that more than half of private placements never hit the market.

- He used a script when soliciting sales of Brilliante securities, but would vary it to make it shorter. Included in the script was the claim that York or Aidelman had been involved with Thompson Creek, and Valde admitted talking about Thompson Creek in his sales calls.

[694] Valde admitted he took no steps to confirm or deny the information he was given about York Rio or Brilliante.

(e) *Amounts Obtained by Valde*

[695] The Superior Home Account Summary prepared by Ciorma indicates that Valde received $117,850.23 from that account between February 2007 and February 2008. The Blue Star Account Summary indicates that Valde received $75,585.03 from that account between February 2008 and October 2008.

(f) *Investor Seven*

[696] Investor Seven testified that he invested $10,000 in York Rio through "Bennett" in May 2007. "Bennett" told Investor Seven, amongst other things, that York Rio had out-bid DeBeers on some land in Brazil.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[697] Based on the evidence of Vanderlaan, Sherman, Hoyme and Investor Seven, and based on Valde's admissions, made in his compelled examination, we find that Valde sold York Rio securities at the Yonge and Finch Locations using the alias "Doug Bennett". Based on the evidence of Vanderlaan and Georgiadis, and based on Valde's admissions, made in his compelled examination, we find that Valde sold Brilliante securities at the Finch Location using the alias "Don Wade".

[698] We accept the evidence of Staff's Section 139 Certificate that Valde has never been registered under the Act, which he admitted.

[699] Although Valde stated, in his compelled examination, that he always told prospective investors that the investment was only available for "accredited investors", we find that Valde misunderstood or misstated the "accredited investor" definition as including someone with a net worth of $1 million, including the value of any business or real estate, or an annual income of $200,000. We find that Valde sold York Rio securities to at least one investor who was not an "accredited investor" (Investor Seven). We find that the accredited investor exemption from the registration and prospectus requirements was not available in relation to the sale of York Rio and Brilliante securities.

[700] Valde estimated that he sold about $200,000 of York Rio securities, which would result in a commission of $40,000, based on a 20% commission. He estimated that he received only about $5,000 in commission for his Brilliante sales. He provided no supporting documentation. In the absence of reliable evidence from Valde about his income from selling York Rio and Brilliante securities, we accept Ciorma's evidence that Valde received commission of at least $193,435.26 between February 2007 and October 2008 in relation to his sales of York Rio and Brilliante securities. Based on a 20% commission rate, this suggests that Valde sold at least $967,176.30 or York Rio and Brilliante securities between February 2007 and October 2008.

[701] We find that Valde traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest. We find that Valde distributed York Rio and Brilliante securities, without filing a prospectus or preliminary prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[702] Based on Valde's admission that he told prospective investors that York Rio and Brilliante were intended to go public, we find that he made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[703] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[704] Valde admitted that he sold York Rio and Brilliante securities using an alias, misrepresented the accredited investor exemption, falsely claimed that York had been involved in taking Aurelian public, that York Rio's diamond mine was in limited production and that York Rio planned to go public, and failed to tell prospective investors that he would receive 20% of their investment as his sales commission. He did not exercise any diligence to confirm the information he was given. As a result of his misrepresentations, Valde earned commission of at least $193,435.26 between February 2007 and October 2008 in relation to his sales of York Rio and Brilliante securities, and York Rio and Brilliante investors lost at least $967,176.30. We find that Valde engaged or participated in dishonest acts which he knew or reasonably ought to have known would result in York Rio and Brilliante investors being deprived of their investments.

[705] We find that Valde engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[706] We find that Valde traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[707] We find that Valde distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[708] We find that Valde made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

[709] We find that Valde engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

I. Bassingdale

1. The Allegations

[710] Staff alleges that Bassingdale:

- traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;
- distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;
- made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and
- engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

2. The Evidence

[711] Bassingdale did not testify at the Merits Hearing. Staff attempted to summons him for a compelled examination under section 13 of the Act, but could not locate him. Evidence about his role in the York Rio and Brilliante Investment Schemes came from Vanderlaan, Ciorma, Georgiadis, Sherman and Hoyme.

(a) *Identification of Bassingdale as "Gavin Myles" and "Brent Gordon"*

[712] The photograph from Bassingdale's driver's licence, which Vanderlaan obtained from the Ministry of Transportation, was shown to three witnesses at the Merits Hearing (the "**Bassingdale Photograp**h"). Georgiadis identified the person in the Bassingdale Photograph as "Scott", and testified that "Scott" sold York Rio securities using the name "Gavin Myles" and sold Brilliante securities using the name "Brent Gordon". Hoyme identified the person in the Bassingdale Photograph as "Gavin Myles". Sherman identified him as "Scott", but said that he only knew him by his "phone name" ("Gavin Myles"), until the Commission became involved. Sherman testified that "Gavin Myles" sold York Rio shares.

(b) *Section 139 Certificate*

[713] Staff provided a Section 139 Certificate stating that Bassingdale has never been registered under the Act.

(c) *Documents Seized from the Finch Location*

[714] Vanderlaan testified that the handwritten names "Gavin Myles" and "Brent Gordon" were found on file folders, sales scripts, subscription agreements, lead cards, sales order logs, email correspondence and other documents that were seized from the Finch Location at the time of the execution of the search warrant, including scripts using the name "Brent Gordon" and a lead chart with "Brent Gordon" written on it.

[715] Amongst the documents seized was an October 15, 2008 memo from "Brent Gordon" to an investor, Investor A, stating "As discussed, the attached is your subscription agreement for 5,000 shares of Brilliante Brasilcan Resources Corp. Please sign all copies and enclose with your cheque for $5,000 payable to Brilliante Brasilcan Resources Corp.". The first page of the subscription agreement for Investor A was also seized, as well as an October 16, 2008 sales order log identifying "Brent Gordon" as the salesperson who made the sale. In an October 15, 2008 email, Investor A declined to proceed with the transaction.

[716] Also seized from the Finch Location was a September 29, 2008 sales order log sheet listing "Brent Gordon" as the salesperson and another investor, Investor B as the "contact", indicating a sale of 10,000 shares at $1 per share.

(d) *Investor C*

[717] Vanderlaan testified that Investor C, an Alberta investor whose name appeared on a courier slip for a Brilliante pick-up, stated that he had invested $50,000 in Brilliante in September 2008 after receiving a sales call from a person who called himself "Brent Gordon". Investor C's statement was admitted into evidence through Vanderlaan. Investor C stated that he had received several earlier calls about Brilliante in August and September 2008, and he had told those callers to send him information about Brilliante. "Brent Gordon" called him on September 10, 2008 to follow up.

[718] According to Investor C, "Brent Gordon" told him he had called him two years earlier and the stock he was recommending at that time did very well. He said he was now working for Brilliante, and they had a group of directors with "very good credentials". "Brent Gordon" "said it was for a uranium mine in Brazil, all of the information I had seen was for York Rio which is diamonds. I thought it was odd that the website that I was directed to did not mention anything about uranium or Brilliante."

[719] According to Investor C, "Brent Gordon" asked if he could invest for one block at $1 per share of 50,000 shares. "He then said there would be an opportunity once the company went public for additional shares at $0.75 (up to 35,000 shares). He said he expected the price to list at a minimum of $1.25 when the company was listed. He also mentioned that it would be a minimum of three months before the listing and that the price should do as well as the last offer ($20). He said he was investing his money in this opportunity and was committed for the next two years to this one stock."

[720] Investor C stated that "Brent Gordon" asked him if he was an accredited investor, and said that would send a contract by email for him to sign and return. Vanderlaan testified that Investor C was an accredited investor.

(e) *Amounts Obtained by Bassingdale*

[721] The Brilliante Account Summary prepared by Ciorma indicates that Brilliante received $10,000 from Investor A and $50,000 from Investor C.

[722] The Superior Home Account Summary indicates that Bassingdale received $87,936.98 from the Superior Home Account from August 2007 to February 2008. The Blue Star Account Summary indicates that Bassingdale or 2182130 Ont. Inc. ("2182130"), of which Bassingdale is an officer and director, received $67,658.42 from the Blue Star Account from March to October 2008.

3. Analysis

(a) *Trading without registration and distribution without a prospectus: subsections 25(1)(a) and 53(1) of the Act*

[723] Based on the evidence of Vanderlaan and Ciorma, Georgiadis, Hoyme and Sherman, we find that Bassingdale sold York Rio securities at the Finch Location, using the alias "Gavin Myles". Based on the evidence of Vanderlaan and Ciorma, Investor C and Georgiadis, we find that Bassingdale sold Brilliante securities at the Finch Location using the alias "Brent Gordon".

[724] Based on the Brilliante Account Summary and the Superior Home Account Summary, we find that Bassingdale or his company received $155,595.40 from August 2007 to October 2008 from the Superior Home Account and the Blue Star Account, which were accounts used by Runic to pay the commissions of York Rio and Brilliante salespersons. We find that that Bassingdale received $155,595.40 from these accounts, representing his commission for sales of York Rio and Brilliante securities. This suggests Bassingdale's non-compliance with Ontario securities law resulted in York Rio and Brilliante investors being deprived of approximately $777,977.00, if Bassingdale was paid a 20% commission, like the other York Rio and Brilliante salespersons.

[725] We accept the evidence of Staff's Section 139 Certificate that Bassingdale has never been registered under the Act. Staff acknowledged at the Merits Hearing that Investor C was an accredited investor. However, we find that the accredited investor exemption from the registration and prospectus requirements was not available in relation to the sale of York Rio and Brilliante securities.

[726] We find that Bassingdale traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[727] We find that Bassingdale distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

(b) *Prohibited representations: subsection 38(3) of the Act*

[728] We received no evidence that Bassingdale made prohibited representations that York Rio securities would be listed on a stock exchange.

[729] We find that Staff has satisfied its burden of proof, on a balance of probabilities, with respect to the allegation that Bassingdale made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act. Investor C's evidence about what "Brent Gordon" said to him, is hearsay evidence. Hearsay evidence is admissible in Commission proceedings, subject to weight. We accept Investor C's evidence, which was

uncontroverted and consistent with the evidence we heard about the sales practices adopted by the York Rio and Brilliante Respondents. We find that Bassingdale made a prohibited representation that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest.

(c) *Fraud: section 126.1(b) of the Act*

[730] Our reasons and findings with respect to Staff's fraud allegations pertain only to the period from January 1, 2006 to October 21, 2008.

[731] Bassingdale sold York Rio and Brilliante securities using an alias, falsely claimed that Brilliante had a uranium mine in Brazil, that Brilliante had a group of directors with "very good credentials" and that Brilliante was expected to be listed on a stock exchange at a minimum of $1.25 per share and increase to $20 per share, and, as a result, he received commission payments of $155,595.40 in relation to his sales of York Rio and Brilliante securities. We are satisfied that Staff has satisfied its burden of proving, on a balance of probabilities, that Bassingdale engaged or participated in dishonest acts which he knew or reasonably ought to have known would result in York Rio and Brilliante investors being deprived of their investments.

[732] We find that Bassingdale engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

4. Conclusion

[733] We find that Bassingdale traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest.

[734] We find that Bassingdale distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest.

[735] We find that Bassingdale made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) and contrary to the public interest.

[736] We find that Bassingdale engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud, on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

IX. CONCLUSION

[737] For the reasons given, we make the following findings against each of the Respondents:

(a) We find that York Rio:

(i) traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed its securities without filing a prospectus or a preliminary prospectus with the Commission and obtaining receipts for them from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

(iii) engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

(b) We find that Brilliante:

(i) traded in its own securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed its own securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no

prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest; and

(iii) engaged or participated in acts, practices or courses of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on Brilliante investors, contrary to section 126.1(b) of the Act, contrary to the public interest.

(c) We find that York:

(i) traded in securities of York Rio and Brilliante, without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed securities of York Rio and Brilliante without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and

(v) being a director and officer of York Rio and Brilliante, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante, contrary to section 129.2 of the Act and contrary to the public interest.

(d) We find that Runic:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) engaged or participated in acts, practices or courses of conduct that he knew or should have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest; and

(iv) being an officer of York Rio and Brilliante, during the Runic Period, authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act by York Rio and Brilliante during the Runic Period, contrary to section 129.2 of the Act and contrary to the public interest.

(e) We find that Schwartz:

(i) traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) engaged or participated in a course of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest;

(iv) being a *de facto* officer of York Rio during the Schwartz Period, authorized, permitted or acquiesced in York Rio's non-compliance with subsections 25(1)(a) and 53(1), subsection 38(3), and section 126.1(b) of the Act during the Schwartz Period, contrary to section 129.2 of the Act and contrary to the public interest; and

(v) contravened Ontario securities law, contrary to subsection 122(1)(c) of the Act and contrary to the public interest, by trading in York Rio securities at a time when the Euston Order prohibited him from trading in any securities.

(f) We find that Demchuk:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act, and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(g) We find that Oliver:

(i) traded in York Rio securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known perpetrated a fraud on York Rio investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(h) We find that Valde:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities, without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that York Rio and Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

(i) We find that Bassingdale:

(i) traded in York Rio and Brilliante securities without registration, in circumstances where no registration exemption was available, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(ii) distributed York Rio and Brilliante securities without filing a preliminary prospectus or prospectus with the Commission and receiving a receipt for it from the Director, in circumstances where no prospectus exemption was available, contrary to subsection 53(1) of the Act and contrary to the public interest;

(iii) made prohibited representations that Brilliante securities would be listed on a stock exchange, contrary to subsection 38(3) and contrary to the public interest; and

(iv) engaged or participated in acts, practices or courses of conduct relating to securities that he knew or ought to have known perpetrated a fraud on York Rio and Brilliante investors, contrary to section 126.1(b) of the Act and contrary to the public interest.

[738] An order will be issued as follows:

(i) Staff shall file and serve written submissions on sanctions and costs by April 15, 2013;

(ii) each Respondent shall file and serve written submissions on sanctions and costs by April 29, 2013; and

(iii) Staff shall file and serve reply submissions on sanctions and costs by May 6, 2013.

(iv) the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, on May 14, 2013, 2013, 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

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

DATED at Toronto this 25th day of March, 2013.

"Vern Krishna"

"Edward P. Kerwin"

3.1.2 Frederick Johnathon Nielsen previously known as Frederick John Gilliland – ss. 127(1), (10)

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

AND

IN THE MATTER OF
FREDERICK JOHNATHON NIELSEN,
previously known as FREDERICK JOHN GILLILAND

REASONS AND DECISION ON SANCTIONS
(Subsections 127(1) and 127(10) of the Act)

Decision: March 27, 2013

Panel: James E. A. Turner – Vice-Chair

Counsel: Sylvia Schumacher – For Staff of the Commission

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REASONS FOR DECISION ON SANCTIONS

I. OVERVIEW

[1] This was a hearing (the "**Hearing**") conducted in writing before the Ontario Securities Commission (the "**Commission**") pursuant to subsections 127(1) and 127(10) 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 imposing sanctions against Frederick Johnathon Nielsen, previously known as Frederick John Gilliland ("**Nielsen**").

[2] A Notice of Hearing in this matter was issued by the Commission on November 23, 2012 and a Statement of Allegations was filed by Staff of the Commission ("**Staff**") on November 22, 2012.

[3] On December 14, 2012, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. Nielsen did not appear at the application hearing.

[4] The Commission granted Staff's application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. Nielsen did not appear and did not file any responding materials.

[6] On March 25, 2011, the British Columbia Securities Commission (the "**BCSC**") issued an order (the "**BC Order**") approving a settlement agreement dated March 25, 2011 (the "**Settlement Agreement**") between Nielsen and the BCSC. The

BC Order imposed sanctions on Nielsen. In the Settlement Agreement, Nielsen consented to any securities regulator in Canada relying on the facts admitted in the Settlement Agreement for the purpose of making a similar order.

[7] The conduct for which Nielsen was sanctioned occurred between late March 2009 and early May 2009.

[8] Staff relies on subsection 127(10) of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (subsection 127(10)4) of the Act).

[9] These are my reasons for sanctions imposed pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE BRITISH COLUMBIA SECURITIES COMMISSION

Misconduct: Cold Calling and Trading Without Registration

[10] In the Settlement Agreement, Nielsen admitted the following:

(a) Nielsen has never been registered with the BCSC in any capacity;

(b) between late March and early May 2009, Nielsen organized and operated a "telephone room" in Surrey, British Columbia, for the purpose of marketing and selling shares in Green Farms International Inc. ("**Green Farms**"), a private U.S. company;

(c) during that time, Nielsen hired, supervised and instructed four salespeople who placed hundreds of phone calls per day to U.S. residents in an attempt to sell shares in Green Farms;

(d) as a direct result of the calls, two U.S. residents invested a total of $4,500 in shares of Green Farms;

(e) Nielsen convinced another U.S. resident by other means to invest $10,000 in shares of Green Farms;

(f) by engaging in the conduct described above, Nielsen:

(i) contravened section 49 of the Securities Act, RSBC 1996, c. 418 (the "**BC Act**") by having salespeople telephone residences on his behalf from within British Columbia for the purpose of trading in securities; and

(ii) contravened section 34 of the BC Act by engaging in acts in furtherance of a trade in securities without being registered.

Aggravating Factors: Past Securities Misconduct and Sanctions

[11] In the Settlement Agreement, Nielsen admitted the following aggravating factors:

(a) while residing in Florida in the late 1990s, Nielsen, then known as Frederick John Gilliland ("**Gilliland**"), was involved in a Ponzi scheme (the "**Ponzi Scheme**") carried out throughout the United States, Canada and the United Kingdom, fraudulently soliciting more than $20 million from over 200 investors;

(b) In March, 2002, the United States Securities and Exchange Commission (the "**SEC**") filed a civil complaint against Gilliland in relation to the Ponzi Scheme. The SEC was granted final judgment against Gilliland in October, 2004 for $10,141,179;

(c) In June, 2005, Gilliland pleaded guilty to conspiracy to commit wire fraud and securities fraud, and conspiracy to commit money laundering, in relation to the Ponzi Scheme. In October, 2005, he was sentenced to 60 months in prison and ordered to pay over $12 million in restitution;

(d) a receiver was appointed to recover assets from Gilliland's estate to satisfy the civil and criminal monetary orders. The receiver was able to seize and recover just over $3.6 million; and

(e) Gilliland was released from prison in October, 2008, moved to British Columbia, and changed his name to Nielsen.

The BC Order

[12] The BC Order imposed the following sanctions on Nielsen:

(a) pursuant to section 161(l)(b) of the BC Act, Nielsen is to cease trading or purchasing securities or exchange contracts for 25 years from the date of the BC Order, except that he may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if he first provides a copy of the BC Order to the registrant;

(b) pursuant to section 161(l)(d)(i) of the BC Act, Nielsen is to resign any position that he holds as a director or officer of any issuer;

(c) pursuant to section 161(l)(d)(ii) of the BC Act, Nielsen is prohibited from acting as a director or officer of any issuer for 25 years from the date of the BC Order;

(d) pursuant to section 161(l)(d)(iii) of the BC Act, Nielsen is prohibited from becoming or acting as a registrant, investment fund manager or promoter for 25 years from the date of the BC Order;

(e) pursuant to section 161(1)(d)(iv) of the BC Act, Nielsen is prohibited from acting in a management or consultative capacity in connection with activities in the securities market for 25 years from the date of the BC Order; and

(f) pursuant to section 161(l)(d)(v) of the BC Act, Nielsen is prohibited from engaging in investor relations activities for 25 years from the date of the BC Order.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[13] Subsection 127(10) of the Act provides as follows:

> **127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.
>
> 5. 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.

[14] The BC Order makes Nielsen subject to an order of the BCSC that imposes sanctions, conditions, restrictions or requirements on him, within the meaning of paragraph 4 of subsection 127(10) of the Act. Further, Nielsen has agreed in the Settlement Agreement to be made subject to sanctions, conditions, restrictions and requirements, within the meaning of paragraph 5 of subsection 127(10) of the Act.

[15] Based on the finding in paragraph 14 of these reasons, the Commission is entitled to make one or more orders under subsections 127(1) or 127(5) of the Act, if in its opinion it is in the public interest to do so.

[16] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 ("***Euston Capital***"), the Commission concluded that subsection 127(10) can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

> … we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.
>
> (*Euston Capital*, *supra*, at para. 26)

[17] I therefore find that I have the authority to make a public interest order under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the BC Order and the facts and circumstances set out in the Settlement Agreement.

B. SUBMISSIONS OF THE PARTIES

Staff's Submissions

[18] Staff requests the following sanctions against Nielsen:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Nielsen cease until March 25, 2036;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Nielsen be prohibited until March 25, 2036;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Nielsen until March 25, 2036;

(d) pursuant to paragraph 7 of subsection 127(1) of the Act, that Nielsen resign any positions that he holds as a director or officer of any issuer as of the date of the order;

(e) pursuant to paragraph 8 of subsection 127(1) of the Act, that Nielsen be prohibited from becoming or acting as a director or officer of any issuer until March 25, 2036; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, that Nielsen be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter until March 25, 2036.

[19] Staff submits that I am entitled to impose the sanctions requested by Staff based solely on the evidence before me, which consists of the BC Order and the Settlement Agreement.

Respondent's Submissions

[20] The Respondent did not appear and did not make any submissions.

C. FINDINGS

[21] In imposing sanctions, I rely on the BC Order and the facts and circumstances set out in the Settlement Agreement. It is not appropriate in exercising my jurisdiction to revisit or second-guess the BCSC's findings of fact or legal conclusions.

D. SHOULD AN ORDER FOR SANCTIONS BE IMPOSED?

[22] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[23] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act are restrictions on fraudulent and unfair market practices and procedures.

[24] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so 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.

[25] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[26] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to make a sanctions order against the Respondent in the public interest.

E. THE APPROPRIATE SANCTIONS

[27] In determining the nature and duration of the appropriate sanctions, I must consider all of the relevant facts and circumstances before me, including:

(a) the seriousness of the conduct and the breaches of the BC Act;

(b) the harm to investors;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not the sanctions imposed may serve to deter not only the Respondent but any like-minded people from engaging in similar abuses of the Ontario capital markets;

(e) the effect any sanctions may have on the ability of the Respondent to participate without check in the capital markets; and

(f) any mitigating factors.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[28] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against Nielsen:

(a) Nielsen admitted that his conduct contravened sections 34 and 49 the BC Act;

(b) Nielsen admitted to the aggravating factors set out in paragraph 11 of these reasons;

(c) the conduct for which Nielsen was sanctioned in the BC Order would have constituted contraventions of Ontario securities laws if they had occurred in Ontario, including a contravention of subsection 25(1) of the Act;

(d) the sanctions imposed by me under the proposed order are consistent with the sanctions imposed in the BC Order; and

(e) Nielsen consented in the Settlement Agreement to any securities regulator in Canada relying on the facts admitted in that agreement for the purpose of making a similar order.

[29] In my view, there are no mitigating factors or circumstances in this matter.

[30] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the sanctions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (Re M.C.J.C. Holdings Inc. (2002), 25 OSCB 1133 at paras. 9 and 10 and Belteco, supra, at para. 26).

[31] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 ("***McLean***") the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the BCSC has a duty to provide reasons, however brief, for the sanctions it was imposing and why they were in the public interest. "[M]erely reciprocally enforcing] the Ontario order ... would not be consistent with it's mandate under s. 161 [section 127 of the Act], and ... might amount to a fettering of discretion" (*McLean*, *supra*, at paras. 28-29).

[32] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 ("***Lines***"), the British Columbia Court of Appeal interpreted *McLean*, *supra*, as holding that the Commission "must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction" (*Lines*, *supra*, at para. 31).

[33] Staff submits that the sanctions imposed in the BC Order are appropriate to the misconduct admitted to by Nielsen, and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on Nielsen's participation in Ontario capital markets consistent with those imposed by the BC Order, are required to protect Ontario investors and Ontario's capital markets from similar misconduct by Nielsen.

[34] It should be noted that under the BC Order, Nielsen is permitted to "trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if he first provides a copy of the Order to the registrant" (the "**Carve out**"). I am prepared to impose sanctions subject to the Carve out in order to mirror the BC Order.

[35] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following sanctions on Nielsen:

(a) trading in securities by Nielsen shall cease until March 25, 2036, except that Nielsen may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if he first provides to the registrant a copy of the BC Order and the Order attached as Schedule A to these Reasons;

(b) the acquisition of any securities by Nielsen shall be prohibited until March 25, 2036, except that Nielsen may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if he first provides to the registrant a copy of the BC Order and the Order attached as Schedule A to these reasons;

(c) any exemptions in Ontario securities law shall not apply to Nielsen until March 25, 2036;

(d) Nielsen shall resign any positions he holds as a director or officer of any issuer;

(e) Nielsen shall be prohibited from becoming or acting as a director or officer of any issuer until March 25, 2036; and

(f) Nielsen shall be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter until March 25, 2036.

IV. CONCLUSION

[36] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule "A" hereto.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

Schedule "A"

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

AND
IN THE MATTER OF
FREDERICK JOHNATHON NIELSEN,
previously known as FREDERICK JOHN GILLILAND

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on November 23, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter 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 Frederick Johnathon Nielsen, previously known as Frederick John Gilliland ("Nielsen");

AND WHEREAS on November 22, 2012, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

AND WHEREAS Nielsen entered into a settlement agreement with the British Columbia Securities Commission dated March 25, 2011 ("Settlement Agreement");

AND WHEREAS in the Settlement Agreement, Nielsen consented to any securities regulator in Canada relying on the facts admitted in the Settlement Agreement for the purpose of making a similar order;

AND WHEREAS the Respondent is subject to an order dated March 25, 2011 made by the British Columbia Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act (the "BC Order");

AND WHEREAS on December 14, 2012, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and established a schedule for the submission of materials by the parties;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS Nielsen did not appear and did not file any materials;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act, in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities by Nielsen shall cease until March 25, 2036, except that Nielsen may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if Nielsen first provides to the registrant a copy of the BC Order and this Order;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Nielsen is prohibited until March 25, 2036, except that Nielsen may trade and purchase securities and exchange contracts through a registrant in one cash and one RSP account if he first provides to the registrant a copy of the BC Order and this Order;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Nielsen until March 25, 2036;

(d) pursuant to paragraph 7 of subsection 127(1) of the Act, Nielsen shall resign any positions that he holds as a director or officer of any issuer;

(e) pursuant to paragraph 8 of subsection 127(1) of the Act, Nielsen is prohibited from becoming or acting as a director or officer of any issuer until March 25, 2036; and

(f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Nielsen is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter until March 25, 2036.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

3.1.3 Steven Vincent Weeres and Rebekah Donszelmann – ss. 127(1), (10)

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

AND

IN THE MATTER OF STEVEN VINCENT WEERES AND REBEKAH DONSZELMANN

REASONS AND DECISION ON SANCTIONS (Subsections 127(1) and 127(10) of the Act)

Decision: March 27, 2013

Panel: James E. A. Turner – Vice-Chair

Counsel: Sylvia Schumacher – For Staff of the Commission

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REASONS FOR DECISION ON SANCTIONS

I. OVERVIEW

[1] This was a hearing (the "**Hearing**") conducted in writing before the Ontario Securities Commission (the "**Commission**") pursuant to subsections 127(1) and 127(10) 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 imposing sanctions against Steven Vincent Weeres ("**Weeres**") and Rebekah Donszelmann ("**Donszelmann**") (collectively, the "**Respondents**").

[2] A Notice of Hearing in this matter was issued by the Commission on February 6, 2013 and a Statement of Allegations was filed by Staff of the Commission ("**Staff**") on January 31, 2013.

[3] On February 19, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondents did not appear at the application hearing.

[4] The Commission granted Staff's application to proceed by way of written hearing and set a schedule for submission of materials from the parties.

[5] Staff provided written submissions, a hearing brief and a brief of authorities. The Respondents did not appear and did not file any responding materials.

Facts

[6] The Respondents are residents of Millet, Alberta.

[7] The Respondents were involved in the operations of Shaker Management Group Inc. ("**SMGI**"), a New Brunswick corporation incorporated in 2008.

[8] Neither Weeres nor Donszelmann has ever been registered with the New Brunswick Securities Commission ("**NBSC**") in any capacity.

[9] On September 8, 2011, a panel of the NBSC conducted a hearing by conference call. The Respondents disputed the allegations, filed written submissions prior to the hearing, and participated in the hearing.

[10] On March 15, 2012, the NBSC issued an order (the "**NBSC Order**") imposing sanctions, conditions, restrictions or requirements upon the Respondents.

[11] The conduct for which the Respondents were sanctioned occurred between November 2008 and September 2009.

[12] SMGI discontinued operations in the Fall of 2009 and is currently insolvent.

[13] Staff relies on subsection 127(10) of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (subsection 127(10)4 of the Act).

[14] These are my reasons for sanctions imposed pursuant to subsection 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE NEW BRUNSWICK SECURITIES COMMISSION

[15] In its reasons for decision on the merits (the "**Merits Decision**") dated November 29, 2011, the panel of the NBSC made the following findings against the Respondents:

(a) the Respondents traded in securities in New Brunswick without being registered to do so and without any exemption from the registration requirements, contrary to section 45(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the "**NB Act**");

(b) the Respondents did not file a prospectus with the NBSC in relation to the distribution of SMGI securities, nor were they exempted from doing so, in contravention of section 71 (1) of the NB Act;

(c) Weeres made representations relating to the future value of securities in an effort to effect a trade, contrary to section 58(2) of the NB Act;

(d) Weeres perpetrated a fraud, in contravention of section 69(b) of the NB Act; and

(e) Weeres made misleading and untrue statements in a material respect, in contravention of section 181 of the NB Act.

The NBSC Order

[16] The NBSC Order imposed the following sanctions, conditions, restrictions or requirements:

(a) upon Weeres:

(i) pursuant to sections 184(1)(c), (d) and (i) of the NB Act, that Weeres cease trading in securities in New Brunswick permanently, that any exemptions from New Brunswick securities laws do not apply to him permanently and that he be prohibited from becoming or acting as a director or officer of any issuer permanently; and

(ii) pursuant to subsection 186(1) of the NB Act, that Weeres pay an administrative penalty in the amount of $200,000.00;

(b) upon Donszelmann:

(i) pursuant to sections 184(l)(c),(d) and (i) of the NB Act, Donszelmann cease trading in securities in New Brunswick for a period of 20 years, that any exemptions from New Brunswick securities laws not

apply to her for a period of 20 years and that she be prohibited from becoming or acting as a director or officer of any issuer for a period of 20 years; and

(ii) pursuant to subsection 186(1) of the NB Act, that Donszelmann pay an administrative penalty in the amount of $25,000.00;

(c) upon the Respondents:

(i) pursuant to paragraph 184(l)(p) of the NB Act, that the Respondents disgorge $22,600.00 to the NBSC; and

(ii) pursuant to paragraph 185 of the NB Act, that the Respondents jointly and severally pay costs in the amount of $ 13,575.00.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[17] Subsection 127(10) of the Act provides in part as follows:

> **127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …
>
> 4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.
>
> …

[18] The NBSC Order makes the Respondents subject to an order of the NBSC that imposes sanctions, conditions, restrictions or requirements on them, within the meaning of paragraph 4 of subsection 127(10) of the Act.

[19] Based on the NBSC Order, the Commission may make one or more orders under subsections 127(1) of the Act, if in its opinion it is in the public interest to do so.

[20] In *Re Euston Capital Corp*. (2009), 32 OSCB 6313 ("***Euston Capital***"), the Commission concluded that subsection 127(10) can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

> … we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.
>
> (*Euston Capital*, *supra,* at para. 26)

[21] I therefore find that I have the authority to make a public interest order under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the findings of the NBSC and the NBSC Order.

B. SUBMISSIONS OF THE PARTIES

Staff's Submissions

[22] To adequately protect the Ontario capital markets, Staff seek to impose sanctions on the Respondents that are consistent with the sanctions imposed by the NBSC under the NBSC Order.

[23] Staff requests the following sanctions against Weeres:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Weeres cease permanently;

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

(c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Weeres resign any positions that he holds as a director or officer of any issuer; and

(d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Weeres be prohibited from becoming or acting as a director or officer of any issuer permanently.

[24] Staff requests the following sanctions against Donszelmann:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Donszelmann cease until March 15, 2032;

(b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Donszelmann until March 15, 2032;

(c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Donszelmann resign any positions that she holds as a director or officer of any issuer; and

(d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Donszelmann be prohibited from becoming or acting as an officer or director of any issuer until March 15, 2032.

[25] Staff submits that I am entitled to impose the sanctions requested by Staff based solely on the evidence before me, which consists of the Merits Decision and the NBSC Order.

Respondents' Submissions

[26] The Respondents did not appear and did not file any submissions.

C. FINDINGS

[27] In imposing sanctions, I rely on the Merits Decision and the NBSC Order. In my view, it is not appropriate in exercising my jurisdiction to revisit or second-guess the NBSC's findings of fact or legal conclusions.

D. SHOULD AN ORDER FOR SANCTIONS BE IMPOSED?

[28] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[29] In pursuing these purposes, I must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[30] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that when considering imposing sanctions, it should be remembered that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[31] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now SECTION 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so 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.

[32] The Supreme Court of Canada has also held that the Commission may impose sanctions which have as their objective general deterrence. The Supreme Court of Canada has stated 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).

[33] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to make a sanctions order against the Respondents in the public interest.

E. THE APPROPRIATE SANCTIONS

[34] In determining the nature and duration of the appropriate sanctions, I must consider all of the relevant facts and circumstances before me, including:

(a) the seriousness of the conduct and the breaches of the NB Act;

(b) the harm to investors;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not the sanctions imposed may serve to deter not only the Respondents but any like-minded people from engaging in similar abuses of the Ontario capital markets;

(e) the effect any sanctions may have on the ability of the Respondents to participate without check in the capital markets; and

(f) any mitigating factors.

(See, for instance, *Re Belteco Holdings Inc*. (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[35] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

(a) the Respondents were found by a panel of the NBSC to have breached New Brunswick securities law;

(b) Weeres was found to have committed fraud;

(c) the terms of the NBSC Order; and

(d) the conduct for which the Respondents were sanctioned in the NBSC Order would constitute contraventions of Ontario securities law if they had occurred in Ontario, including contraventions of subsections 25(1) and 53(1) of the Act.

[36] In my view, there are no mitigating factors or circumstances.

[37] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the sanctions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco*, *supra*, at para. 26).

[38] In *British Columbia (Securities Commission) v. McLean* (2011), BCCA 455 ("***McLean***"), the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the BCSC has a duty to provide reasons, however brief, for the sanctions it is imposing and why they are in the public interest. "[M]erely reciprocally enforcing] the Ontario order ... would not be consistent with it's mandate under s. 161 [section 127 of the Act], and ... might amount to a fettering of discretion" (*McLean*, *supra*, at paras. 28-29).

[39] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 ("***Lines***"), the British Columbia Court of Appeal interpreted *McLean*, *supra*, as holding that the Commission "must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction" (*Lines*, *supra*, at para. 31).

[40] Staff submits that the NBSC Order imposed significant sanctions on the Respondents. Staff submit that the Commission should exercise its discretion to impose sanctions consistent with those imposed by the NBSC.

[41] Staff submits that the sanctions imposed in the NBSC Order are appropriate to the misconduct by the Respondents, and serve as both specific and general deterrence. Staff further submit that a protective order imposing market conduct restrictions on the Respondents; substantially similar to those imposed by the NBSC Order, are required to protect Ontario investors and Ontario's capital markets from similar misconduct by the Respondents.

[42] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following sanctions on the Respondents:

(a) trading in any securities by Weeres shall cease permanently;

(b) any exemptions contained in Ontario securities law do not apply to Weeres permanently;

(c) Weeres shall resign any positions that he holds as a director or officer of any issuer;

(d) Weeres shall be prohibited permanently from becoming or acting as a director or officer of any issuer;

(e) trading in any securities by Donszelmann shall cease until March 15, 2032,

(f) any exemptions contained in Ontario securities laws shall not apply to Donszelmann until March 15, 2032;

(g) Donszelmann shall resign any positions that she holds as a director or officer of any issuer; and

(h) Donszelmann is prohibited from becoming or acting as a director or officer of any issuer until March 15, 2032.

IV. CONCLUSION

[43] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” hereto.

DATED at Toronto this 27th day of March, 2013.

“James E. A. Turner”

Schedule "A"

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

AND

IN THE MATTER OF
STEVEN VINCENT WEERES AND
REBEKAH DONSZELMANN

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on February 6, 2013, 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 Steven Vincent Weeres ("Weeres") and Rebekah Donszelmann ("Donszelmann") (collectively, the "Respondents");

AND WHEREAS on January 31, 2013, Staff of the Commission ("Staff) filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 19, 2013, the Commission heard an application by Staff to convert the matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

AND WHEREAS Staff provided written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS the Respondents are subject to an order dated March 15, 2012 made by the New Brunswick Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act, in reliance upon subsection 127(10) of the Act:

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Weeres cease permanently;

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

(c) pursuant to paragraph 7 of subsection 127(1) of the Act, that Weeres resign any positions that he holds as a director or officer of any issuer;

(d) pursuant to paragraph 8 of subsection 127(1) of the Act, that Weeres be prohibited from becoming or acting as a director or officer of any issuer permanently;

(e) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Donszelmann cease until March 15, 2032;

(f) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Donszelmann until March 15, 2032;

(g) pursuant to paragraph 7 of subsection 127(1) of the Act, Donszelmann resign any positions that she holds as a director or officer of any issuer; and

(h) pursuant to paragraph 8 of subsection 127(1) of the Act, Donszelmann be prohibited from becoming or acting as an officer or director of any issuer until March 15, 2032.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

3.1.4 MI Capital Corporation and One Capital Corp. Limited – 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
MI CAPITAL CORPORATION
and ONE CAPITAL CORP. LIMITED

REASONS AND DECISION ON SANCTIONS
(Subsections 127(1) and 127(10) of the Act)

Decision: March 27, 2013

Panel: James E. A. Turner – Vice-Chair

Counsel: Sylvia Schumacher – For Staff of the Commission

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REASONS FOR DECISION ON SANCTIONS

I. OVERVIEW

[1] This was a hearing (the "**Hearing**") conducted in writing before the Ontario Securities Commission (the "**Commission**") pursuant to subsections 127(1) and 127(10) 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 imposing sanctions against MI Capital Corporation ("**MI Capital**") and One Capital Corp. Limited ("**One Capital**") (collectively, the "**Respondents**").

[2] A Notice of Hearing in this matter was issued by the Commission on February 13, 2013 and a Statement of Allegations was filed by Staff of the Commission ("**Staff**") on February 12, 2013.

[3] On February 28, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S. 22, as amended. The Respondents did not appear at the application hearing.

[4] The Commission granted Staff's application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff provided written submissions, a hearing brief and a brief of authorities. The Respondents did not appear and did not file any responding materials.

Facts

[6] On June 11, 2012, a panel of the New Brunswick Securities Commission (the "**NBSC**") conducted a hearing. Despite being properly served, no one appeared on behalf of either of the Respondents, and neither of the Respondents filed a response to NBSC Staff's allegations.

[7] The Respondents are subject to an order made by the NBSC dated June 11, 2012 (the "**NBSC Order**") that imposes sanctions, conditions, restrictions or requirements upon them.

[8] In its Reasons for Decision on the Merits dated August 8, 2012 (the "**Reasons**"), a panel of the NBSC found that the Respondents engaged in unregistered trading contrary to subsection 45(a) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the "**NB Act**"), and acted contrary to the public interest.

[9] Staff are seeking an inter-jurisdictional enforcement order pursuant to paragraph 4 of subsection 127(10) of the Act, reciprocating the NBSC Order.

[10] In its Reasons, the NBSC found that MI Capital has its head office in Hong Kong and One Capital has its head office in Singapore.

[11] The conduct for which the Respondents were sanctioned took place in and around April 2012 through May 2012.

[12] Staff relies on subsection 127(10) of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (subsection 127(10)4 of the Act).

[13] These are my reasons for sanctions imposed pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE NEW BRUNSWICK SECURITIES COMMISSION

[14] In its Reasons, the panel of the NBSC made the following findings against the Respondents:

(a) the Respondents traded in securities or exchange contracts in New Brunswick;

(b) no exemptions were available to the Respondents which would allow them to trade without being registered;

(c) neither of the Respondents was registered with the NBSC to trade; and

(d) these are appropriate circumstances for the NBSC to exercise its public interest jurisdiction, pursuant to section 184 of the NB Act.

The NBSC Order

[15] The NBSC Order imposed the following sanctions, conditions, restrictions or requirements pursuant to paragraphs 184(l)(c) and 184(l)(d) of the NB Act:

(a) that the Respondents permanently cease trading in all securities; and

(b) that any exemptions contained in New Brunswick securities law do not apply to the Respondents permanently.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[16] Subsection 127(10) of the Act provides in part as follows:

> **127 (10) Inter-jurisdictional enforcement –** Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> …

> 4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.
>
> …

[17] The NBSC Order makes the Respondents subject to an order of the NBSC that imposes sanctions, conditions, restrictions or requirements on them, within the meaning of paragraph 4 of subsection 127(10).

[18] Based on the NBSC Order, the Commission may make one or more orders under subsections 127(1) of the Act, if in its opinion it is in the public interest to do so.

[19] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 ("***Euston Capital***"), the Commission concluded that subsection 127(10) of the Act can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

> … we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.
>
> (*Euston Capital, supra,* at para. 26)

[20] I therefore find that I have the authority to make a public interest order under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the findings of the NBSC and the NBSC Order.

B. SUBMISSIONS OF THE PARTIES

Staff's Submissions

[21] To adequately protect Ontario capital markets, Staff seek to impose sanctions that are consistent with the sanctions imposed by the NBSC pursuant to the NBSC Order.

[22] Staff requests the following sanctions against the Respondents:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by or of the Respondents cease permanently; and

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

[23] Staff submits that I am entitled to impose the sanctions requested by Staff based solely on the evidence before me, which consists of the Reasons and the NBSC Order.

Respondents' Submissions

[24] The Respondents did not appear and did not make any submissions.

C. FINDINGS

[25] In imposing sanctions, I rely on the NBSC Order. In my view, it is not appropriate in exercising my jurisdiction to revisit or second-guess the NBSC's findings of fact or legal conclusions.

D. SHOULD AN ORDER FOR SANCTIONS BE IMPOSED?

[26] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

(a) to protect investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[27] In pursuing these purposes, I must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[28] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that when considering imposing sanctions, it should be remembered that "participation in the capital markets is a privilege and not a right" (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[29] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so 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.

[30] I find that it is necessary to protect Ontario investors and the integrity of Ontario's capital markets to make a sanctions order against the Respondents in the public interest.

E. THE APPROPRIATE SANCTIONS

[31] In determining the nature and duration of the appropriate sanctions, I must consider all of the relevant facts and circumstances before me, including:

(a) the seriousness of the conduct and the breaches of the NB Act;

(b) the harm to investors;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not the sanctions imposed may serve to deter not only the Respondents but any like-minded people from engaging in similar abuses of the Ontario capital markets;

(e) the effect any sanctions may have on the ability of the Respondents to participate without check in the capital markets;

(f) any mitigating factors.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[32] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

(a) the Respondents were found by a panel of the NBSC to have breached New Brunswick securities law;

(b) the terms of the NBSC Order; and

(c) the conduct for which the Respondents were sanctioned in the NBSC Order would constitute contraventions of Ontario securities law if they had occurred in Ontario, including a contravention of subsections 25(1) of the Act.

[33] In my view, there are no mitigating factors or circumstances.

[34] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the sanctions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26).

[35] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 ("***McLean***"), the British Columbia Court of Appeal held that when reciprocating an order originally made in Ontario, the BCSC has a duty to provide reasons, however brief, for the sanctions it is imposing and why they are in the public interest. "[M]erely reciprocally enforcing] the Ontario order ... would not be consistent with it's mandate under s. 161 [section 127 of the Act], and ... might amount to a fettering of discretion" (*McLean, supra,* at paras. 28-29).

[36] In *Lines v. British Columbia (Securities Commission), (2012) BCCA 316* ("***Lines***"), the British Columbia Court of Appeal interpreted *McLean, supra,* as holding that the Commission "must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction" (*Lines, supra,* at para. 31).

[37] Staff submits that the NBSC Order imposed significant sanctions on the Respondents. Staff submits that the Commission should exercise its discretion to impose sanctions consistent with those imposed by the NBSC pursuant to the NBSC Order.

[38] Staff submits that the sanctions imposed in the NBSC Order are

- appropriate to the misconduct by the Respondents, and serve as both specific and general
- deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondents substantially similar to those imposed by the NBSC Order are required to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents.

[39] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following sanctions on the Respondents:

(a) trading in any securities by the Respondents shall cease permanently; and

(b) any exemptions contained in Ontario securities law do not apply to the Respondents permanently.

IV. CONCLUSION

[40] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule "A" hereto.

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

Schedule "A"

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

AND

IN THE MATTER OF
MI CAPITAL CORPORATION
and ONE CAPITAL CORP. LIMITED

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on February 13, 2013, 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 MI Capital Corporation ("MI Capital") and One Capital Corp. Limited ("One Capital") (collectively, the "Respondents");

AND WHEREAS on February 12, 2013, Staff of the Commission ("Staff) filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 28, 2013, the Commission heard an application by Staff to convert the matter to a written hearing, in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS the Respondents are subject to an order dated June 11, 2012 made by the New Brunswick Securities Commission, that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act, in reliance upon subsection 127(10) of the Act:

IT IS HEREBY ORDERED THAT:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents shall cease permanently; and

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

DATED at Toronto this 27th day of March, 2013.

"James E. A. Turner"

3.1.5 Bernard Boily

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

AND

IN THE MATTER OF
BERNARD BOILY

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND BERNARD BOILY*

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 Bernard Boily (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 29, 2011 (the "Proceeding") against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.
3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement ("the Settlement Agreement").

PART III – AGREED FACTS

A. Bear Lake Gold Ltd.

4. Bear Lake Gold Ltd. ("Bear Lake Gold") is a gold exploration company incorporated in Ontario. The company is a reporting issuer in Ontario with shares listed on the TSX Venture Exchange ("TSX-V") under the trading symbol "BLG". Bear Lake Gold was previously known as NFX Gold Inc. ("NFX") and was incorporated on July 19, 1996. In September 2008, NFX acquired Maximus Ventures Ltd. ("Maximus") (which was then a reporting issuer on the TSX-V) and, subsequently, the new company was named Bear Lake Gold. Unless otherwise indicated, all references to Bear Lake Gold include reference to NFX and Maximus.

5. Throughout the period December 2007 and July 2009 (the "Material Period"), Bear Lake Gold had a mining exploration project in the Larder Lake gold mining district (the "Larder Lake Project"), located in north-eastern Ontario. The project was the company's primary project and principal asset.

B. Bernard Boily

6. Bernard Boily ("Boily") is a resident of Blainville, Québec. During the Material Period, Boily served as the Manager of Exploration and, from September 2008, as the Vice-President of Explorations of Bear Lake Gold and as a Director of Maximus. Boily also acted as the qualified person (as defined in National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*[1]) ("Qualified Person") for Bear Lake Gold during the Material Period.

7. As the Qualified Person, Boily performed a critical role under Ontario securities law for the company. Among other things, National Instrument 43-101 required:

   a. that all disclosure of scientific or technical information made by Bear Lake Gold concerning a mineral project on property material to the company had to be based upon information prepared by, or under the supervision of, its Qualified Person (section 2.1); and

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* This is a translation of the original French version signed by the parties. In the event of a conflict, the signed French version shall prevail.

1 *Qualified Person*: means an individual who (i) is an engineer or geoscientist with at least five years of experience in mineral exploration, mine development or operation or mineral project assessment, or any combination of these; (ii) has experience relevant to the subject matter of the mineral project and the technical report; and (iii) is in good standing with a professional association (section 1.1, NI 43-101).

a. that Bear Lake Gold indicate in all written disclosure the name of the Qualified Person who had prepared or supervised the preparation of the scientific or technical information being disclosed concerning any such mineral project and whether the Qualified Person had verified the data disclosed (sections 3.1 and 3.2).

C. Publication of Gold Results for the Larder Lake Project

8. Throughout the Material Period, the Larder Lake Project was a mineral project located on property material to Bear Lake Gold. Bear Lake Gold issued numerous press releases which included positive scientific and/or technical results related to its gold findings for this project. During the Material Period, these press releases named Boily as the Qualified Person and noted that the technical content of the information had been reviewed and/or approved by him.

9. On July 21, 2009, Bear Lake Gold announced that it had become aware of "material inconsistencies" regarding its exploration results for the Larder Lake Project. The company further noted that the discrepancies appeared "serious" and could result in "significant reductions of gold values for some of the previously announced drilling intercepts." Earlier, on July 17, 2009, Bear Lake Gold shares were halted on the basis of pending news from the company.

10. An internal investigation was immediately commenced with an independent consultant, Scott Wilson Roscoe Postle Associates Inc. (now known as Roscoe Postle Associates Inc.) ("RPA"), retained to lead the technical investigation.

11. On July 24, 2009, Bear Lake Gold withdrew all of its previously announced results for the Larder Lake Project and advised investors that the results should not be relied upon. The trading in Bear Lake Gold resumed on July 28, 2009.

12. On November 3, 2009, Bear Lake Gold announced that RPA had substantially completed its technical investigation. According to Bear Lake Gold, the investigation confirmed that exploration data for the Larder Lake Project had indeed been compromised. In total, RPA identified discrepancies related to approximately 140 assays within Bear Lake Gold's assay database (the "Assay Database").

13. Of the 58 drill hole intercepts disclosed in press releases, RPA concluded that 24 of the intercepts (41%) were affected by unsupported assays. According to RPA, after using verified data, it was determined that only 7 of the 24 affected intercepts retained a significant intercept.

14. In addition, Bear Lake Gold also provided restated exploration results for previously reported intercepts. The gold content of previously reported intercepts were, in some cases, over 1000% higher than restated values. For example, the originally released results for Hole #57AW indicated a gold value of 15.1 grams/ton (“g/t") compared to a restated result indicating only 0.6 g/t. This represented a difference of over 2400%.

15. The material differences between original and restated results included the following:

Press Release	*Hole No.*	*From (m)*	*To (m)*	*Mineralization Type*	**Reported** *Au (g/t)*	**Restated** *Au (g/t)*	**Difference** *Au (%)*
04-Jun-08	38	555.2	558.1	Flow	6.5	0.7	828%
19-May-09	44W2	687.0	688.5	Carbonate	8.5	2.6	226%
		695.0	703.5	Carbonate	10.6	3.6	194%
	Including	695.0	698.5		18.3	5.1	258%
14-Jul-09	56A	1,221.5	1,222.6	Flow	23.4	3.1	654%
26-Mar-09	57AW	1,636.5	1,638.0	Flow	15.1	0.6	2416%
14-Jul-09	59	1,133.0	1,136.5	Carbonate	10.5	1.7	517%
14-Jul-09	59W	1,466.8	1,469.6	Flow	6.7	2.5	168%
19-May-09	64	619.5	624.6	Carbonate	9.9	3.0	230%
	Including	622.3	624.6		14.9	4.5	231%
		754.0	759.0	Flow	5.4	0.2	2600%
09-Jun-09	66	615.5	625.1	Carbonate	8.4	0.6	1300%
	Including	615.5	618.2		10.6	0.9	1077%
14-Jul-09	67	719.7	727.2	Carbonate	10.4	4.0	160%
14-Jul-09	70	475.5	480.0	Carbonate	11.0	0.0	N/A%

16. By November 3, 2009, RPA could not verify the significant gold values that had been originally reported by Bear Lake Gold for certain intervals for Hole #49 (19.4, 27.9 and 76.1 g/t). New samples taken from the drilling conducted for a wedge of this hole (wedge cut) produced the following results: 0.29, 1.74 and 4.74 g/t.

D. Materiality of Information

17. Upon resumption of trading on July 28, 2009, Bear Lake Gold's share price had declined significantly. The stock price closed that day at $0.24, down 66% from a closing price of $0.71 prior to the halt (July 17). The closing price reflected a market capitalization loss on that day alone of over $42 million.

18. For over one year thereafter, the Bear Lake Gold share price remained at or below $0.30.

E. The Larder Lake Assay Results

19. During the Material Period, Boily received assay results from laboratories.

20. Boily altered certain of the results received and transferred the altered results into the assay database for the Larder Lake Project (the “Assay Database”).

F. Bear Lake Gold Press Releases

21. Boily prepared draft press releases for Bear Lake Gold which contained incorrect and inflated data based on the altered results mentioned in paragraph 20 above; this data was subsequently issued to the market.

22. Incorrect results were often featured prominently in Bear Lake Gold press releases and were accompanied with technical commentary which highlighted the "high-grade results" which were said to demonstrate "deep high-grade gold values," "deeper extension and continuity" of the Bear Lake Gold gold zone, and "intensity" and "great potential" of a "strong gold mineralized system" for Bear Lake Gold which "remain[ed] open to depth".

23. In one press release, dated July 14, 2009, Bear Lake Gold issued additional results for drill hole intercepts which had been re-assayed due to suspected tellurides. Several of these resampling results were highlighted by Bear Lake Gold as demonstrating a "significant increase in gold content" which "should have a positive impact on the upcoming resource estimate." These highlighted results were all inaccurate and were based on the altered results described in paragraph 20 above. In some cases, the assay results further inflated gold values which had already been previously inflated in prior press releases.

G. Investigations by Independent Qualified Persons

24. Independent Qualified Persons ("Independent QPs"), initially RPA and later InnovExplo Inc., were retained by Bear Lake Gold to prepare a technical report in support of a mineral resource estimate for the Larder Lake project, as required by section 5.3 ("Independent Technical Report") of NI 43-101.

25. Boily provided Independent QPs with altered assay results, as mentioned in paragraph 20, and Assay Databases that contained gold results which were calculated based on these altered results. Boily ought reasonably to have known that, by acting in this manner, he was misleading the Independent QPs.

26. Boily also provided InnovExplo Inc. with photographs of core from an unrelated hole which he represented as being core from Hole #57AW. The relevant interval was publicly reported as containing 15.1 g/t of gold, yet was later tested by RPA as containing a negligible amount of gold (0.6 g/t). Boily replaced the core and provided the above-mentioned photographs to InnovExplo Inc. in order to convince the company that the amount of gold in the interval was that which was initially publically disclosed.

27. Boily also caused data to be modified within a drill core log for Hole #57AW. The log was then provided to InnovExplo Inc. in order to convince the Independent QP that the amount of gold in the interval was that which was initially publicly disclosed.

28. Boily also provided incorrect information to InnovExplo Inc. to explain discrepancies encountered by the company during the data verification process.

H. Mitigating Factors

29. Prior to the events noted above, Boily had an unblemished career as a geologist for over 30 years.

30. Aside from continuing to draw his salary during the Material Period and the increase in value to the shareholdings and options in Bear Lake Gold that Boily held and that he could have sold or exercised, as the case may be (the value of which was not realised, but would have constituted a profit had the value been realised), Boily did not profit from the acts described above.

31. Boily participated in a voluntary interview for the purposes of Bear Lake Gold's internal investigation.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

32. By engaging in the conduct described in paragraphs 20, 21 and 25-28 above, Boily engaged in conduct that he reasonably ought to have known resulted in or contributed to an artificial price for Bear Lake Gold securities, contrary to subsection 126.1(a) of the Act.

33. By engaging in the conduct described in paragraphs 26-28, Boily engaged in acts which he knew perpetrated a fraud, contrary to subsection 126.1(b) of the Act.

34. The press releases referred to in paragraphs 21-23 above contained misleading and untrue statements regarding gold results for the Larder Lake Project which Boily reasonably ought to have known would reasonably be expected to have a significant effect on the market price or value of Bear Lake Gold securities, contrary to subsection 126.2(1).

35. The conduct of Boily described in paragraphs 20, 21 and 25-28 above was contrary to the public interest and abusive to the integrity of Ontario's capital markets.

PART V – TERMS OF SETTLEMENT

36. Boily agrees to the terms of settlement listed below.

37. The Commission will make an order, pursuant to sections 127(1) and 127.1 of the Act, that:

(a) the settlement agreement is approved;

(b) trading in any securities by the Respondent shall cease for a period that is the later of 15 years or until the penalty and costs set out in subparagraphs (j) and (k) below are paid in full, with the exception that the Respondent shall be permitted to trade in the Locked-In Retirement Account ("LIRA") currently held by the Respondent provided that:

i. the Respondent's LIRA is maintained in an account managed by a person who has exclusive authority to manage the Respondent's account at the person's discretion, and the person is either (1) an adviser who is registered as an adviser with the applicable provincial securities regulatory authority in Canada; or (2) a dealer who is registered as a dealer with the applicable provincial securities regulatory authority in Canada and is appropriately exempt from the adviser registration requirement; and

ii. the said dealer or adviser is given a copy of this Order;

(c) the acquisition of any securities by the Respondent shall cease for a period that is the later of 15 years or until the penalty and costs set out in subparagraphs (j) and (k) below are paid in full, with the exception that the Respondent shall be permitted to acquire securities in the LIRA currently held by the Respondent provided that:

i. the Respondent's LIRA is maintained in an account managed by a person who has exclusive authority to manage the Respondent's account at the person's discretion, and the person is either (1) an adviser who is registered as an adviser with the applicable provincial securities regulatory authority in Canada; or (2) a dealer who is registered as a dealer with the applicable provincial securities regulatory authority in Canada and is appropriately exempt from the adviser registration requirement; and

ii. the said dealer or adviser is given a copy of this Order;

(d) any exemptions contained in Ontario securities law do not apply to the Respondent for a period that is the later of 15 years or until the penalty and costs set out in subparagraphs (j) and (k) below are paid in full;

(e) the Respondent is reprimanded;

(f) the Respondent shall immediately resign any position he holds as a director or officer of any issuer;

(g) the Respondent is prohibited permanently from becoming or acting as a director or officer of any issuer;

(h) the Respondent is prohibited permanently from becoming or acting as a director or officer of a registrant;

(i) the Respondent is prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(j) the Respondent shall pay an administrative penalty of $750,000 for his failure to comply with Ontario securities law. The administrative penalty shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act; and

(k) the Respondent shall pay costs in the amount of $50,000.

38. The Respondent undertakes for life not to act as a Qualified Person for any issuer.

39 The Respondent further undertakes 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 the Settlement Agreement. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

40. The Respondent agrees to attend in person at the hearing before the Commission to consider the proposed settlement.

PART VI – STAFF COMMITMENT

41. 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 42 below.

42. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

43. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

44. Staff and the Respondent 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.

45. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

46. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

47. Whether or not the Commission approves this Settlement Agreement, the Respondent 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 VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

48. If, for whatever reason, 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 between Staff and the Respondent, including all negotiations between Staff and the Respondent before the settlement hearing took place, shall be without prejudice to Staff and the Respondent; and

(b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges available by law and may, among other things, seek a hearing of the allegations contained in the Statement of Allegations without regard to this Settlement Agreement, or any negotiations relating to this agreement.

49. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement remain confidential indefinitely, unless Staff and the Respondent otherwise agree or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

50. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

51. A fax copy of any signature will be treated as an original signature.

DATED AT TORONTO this day of March, 2013.

_____ _____

Bernard Boily
Respondent

Witness

_____

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
BERNARD BOILY

ORDER
(Sections 127(1) and 127.1)

WHEREAS on March 29, 2011, 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 29, 2011 with respect to Bernard Boily (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff (the "Settlement Agreement"), subject to the approval of the Commission;

AND WHEREAS the Commission issued a Notice of Hearing dated March • , 2013 setting out that it proposed to consider the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing dated March 29, 2011, the Statement of Allegations of Staff, and upon considering submissions from counsel for Staff and counsel for the Respondent;

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 by the Respondent shall cease for a period that is the later of 15 years or until the penalty and costs set out in paragraphs 10 and 11 below are paid in full, with the exception that the Respondent shall be permitted to trade in the Locked-In Retirement Account ("LIRA") currently held by the Respondent provided that:

    i. the Respondent's LIRA is maintained in an account managed by a person who has exclusive authority to manage the Respondent's account at the person's discretion, and the person is either (a) an adviser who is registered as an adviser with the applicable provincial securities regulatory authority in Canada; or (b) a dealer who is registered as a dealer with the applicable provincial securities regulatory authority in Canada and is appropriately exempt from the adviser registration requirement; and

    ii. the said dealer or adviser is given a copy of this Order;

3. the acquisition of any securities by the Respondent shall cease for a period that is the later of 15 years or until the penalty and costs set out in paragraphs 10 and 11 below are paid in full, with the exception that the Respondent shall be permitted to acquire securities in the LIRA currently held by the Respondent provided that:

    i. the Respondent's LIRA is maintained in an account managed by a person who has exclusive authority to manage the Respondent's account at the person's discretion, and the person is either (a) an adviser who is registered as an adviser with the applicable provincial securities regulatory authority in Canada; or (b) a dealer who is registered as a dealer with the applicable provincial securities regulatory authority in Canada and is appropriately exempt from the adviser registration requirement; and

    ii. the said dealer or adviser is given a copy of this Order;

4. any exemptions contained in Ontario securities law do not apply to the Respondent for a period that is the later of 15 years or until the penalty and costs set out in paragraphs 10 and 11 below are paid in full;

5. the Respondent is reprimanded;

6. the Respondent shall immediately resign any position he holds as a director or officer of any issuer;

7. the Respondent is prohibited permanently from becoming or acting as a director or officer of any issuer;

8. the Respondent is prohibited permanently from becoming or acting as a director or officer of a registrant;

9. the Respondent is prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

10. the Respondent shall pay an administrative penalty of $750,000 for his failure to comply with Ontario securities law. The administrative penalty shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act; and

11. the Respondent shall pay costs in the amount of $50,000.

DATED at Toronto this _____ day of March, 2013.

3.1.6 Stephen Campbell

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

AND

IN THE MATTER OF
STEPHEN CAMPBELL

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 "***Securities Act***") it is in the public interest for the Commission to make certain orders in respect of Stephen Campbell (the "*Respondent*").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 25, 2013 (the "Proceeding") against the Respondent according to the terms and conditions set out in Part VII of this settlement agreement (the "Settlement Agreement"). The Respondent agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. The Respondent agrees with the facts set out in this Part III.

4. Staff and the Respondent agree that the facts set out in this Part III for the purpose of this settlement are without prejudice to the Respondent in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings brought by the Commission under the *Securities Act* (subject to paragraph 46 below) or any civil or other proceedings currently pending or which may be brought by any other person, corporation or agency.

Overview

5. Between January 1, 2010 and December 31, 2011 (the "**Material Time**"), the Respondent knowingly executed trades in the class A common shares and 8.75% convertible debentures of Discovery Air Inc. ("**Discovery Air**") where:

   (a) he had knowledge of and/or control over another order on the opposite side of the market with substantially the same terms and conditions (price, size and time of entry) and used that knowledge and/or control to match orders ("**Match Trades**"); and at other times

   (b) he knew or reasonably ought to have known that his order entry would result in trades involving no change in beneficial or economic ownership ("**Wash Trades**").

6. Also during the Material Time, the Respondent sometimes executed trades with third parties at better prices in the marketplace in order to enable Match Trades and/or Wash Trades ("**Facilitation Trades**").

7. The Respondent was aware throughout the Material Time that Match Trades and Wash Trades are prohibited by Ontario securities law. During the Material Time the Respondent executed Facilitation Trades without regard to whether such trades are prohibited by Ontario securities law.

8. The Respondent was aware throughout the Material Time that the volume from all of his trading, including his Match Trades, Wash Trades and Facilitation Trades, would be and was included in and reported as part of the daily volume for those securities.

9. The Respondent's Match Trades, Wash Trades and Facilitation Trades together increased the monthly trading volume for the class A common shares of Discovery Air by as much as 24.27% in December 2010, and increased the monthly trading volume for the debentures by as much as 29.32% in February 2011.

10. The Respondent's Match Trades, Wash Trades and Facilitation Trades appear not to have resulted in artificial prices for the traded securities.

The Respondent

11. The Respondent is an individual residing in Ontario. He has been a Chartered Accountant since 1983 and has been a Chartered Financial Analyst charter holder since 2002. Throughout the Material Time the Respondent was employed as a senior finance executive in a not-for-profit organization (he retired from this position in August 2012). The Respondent is a sophisticated investor with over 20 years of personal investing experience.

The Subject Securities

12. According to Discovery Air's 2012 Annual Information Form:

    a. Discovery Air is a TSX listed company based out of the Northwest Territories that provides specialty aviation services across Canada and in select international locations.

    b. Throughout the Material Time, Discovery Air had two classes of common shares: Class A common voting shares (the "**Class A Shares**"; trading on the TSX under the symbol DA.A) and Class B common variable voting shares (the "**Class B Shares**"; not listed on any marketplace).

    c. On September 23, 2011, all of the issued and outstanding Class A Shares and Class B Shares were consolidated on the basis of one post-consolidated Class A Share or Class B Share, as applicable, for every ten pre-consolidation Class A Shares or Class B Shares, as applicable. The Class A Shares commenced trading on a post-consolidation basis on September 29, 2011. All Class A share volumes referenced in this Settlement Agreement are shown on an equivalent post-consolidation basis.

    d. During the Material Time until June 16, 2011, when they were repaid, Discovery Air had outstanding approximately $28.75 million aggregate principal amount of 8.75% convertible unsecured debentures listed on the TSX (symbol: DA.DB). The DA.DB debentures are referred to in this Settlement Agreement as the "**Debentures**".

13. During the Material Time, the Respondent bought and sold Class A Shares on a pre-consolidation and post-consolidation basis, and the Debentures (together the "**Subject Securities**"), but not the Class B Shares.

14. The Respondent has no connection to Discovery Air other than a long history of trading in the Subject Securities.

The Subject Accounts

15. During the Material Time, the Respondent operated three brokerage accounts in his name with two Canadian discount brokerage firms (two margin accounts and one TFSA), and had trading authority over three brokerage accounts in his wife's name (margin account, RRSP and TFSA) and trading authority over four brokerage accounts in his children's names (one RRSP and three TFSAs). During the Material Time the Respondent executed trades in the Subject Securities in these ten accounts (the "**Subject Accounts**").

16. Throughout the Material Time the Respondent managed the Subject Accounts on his own behalf and on a voluntary unpaid basis on behalf of the family members who were the beneficial owners of the Subject Accounts.

17. All of the trades in the Subject Accounts during the Material Time were initiated based on decisions made solely by the Respondent and did not involve the beneficial owners of those accounts.

18. All of the trade orders in the Subject Accounts during the Material Time were entered by the Respondent using the discount brokerage firms' online order screens, accessed using access codes that only he had, or placed by telephone by the Respondent alone with a registered broker at the discount brokerage firm.

The Investment Strategy

19. Having decided that Discovery Air appeared to present a good long term investment opportunity, the Respondent implemented a dual investment strategy during the Material Time: first to gradually accumulate the Subject Securities

so as to increase the Respondent's family's overall holdings of these securities over time, and second, to trade a portion of those holdings so as to reduce the cumulative book value of the holdings, particularly in the family's non-taxable accounts where there are inherent tax efficiencies and limits to the amount of capital that can be contributed each year (e.g., RRSP, RESP and TFSA accounts).

20. While the overall objective of the Respondent's investment strategy was to buy and hold the Subject Securities in the expectation of long term price appreciation, it also recognized that the Subject Securities exhibited both short term price volatility and wider bid-ask spreads that might be repeatedly traded during the longer term hold period to produce, over time, an accumulation of small gains.

21. The fact that the discount brokerages used by the Respondent charged relatively low, flat-rate commission fees, enabled the Respondent to implement the second element of the investment strategy to realize gains in the Subject Accounts even on small incremental increases in the price of the Subject Securities bought and sold.

22. When there appeared to be a limited volume of orders in the marketplace for the Subject Securities at the prices required by the Respondent to execute the trading component of his investment strategy, he would sometimes use a taxable Subject Account to enter orders on the opposite side of the market with substantially the same terms (desired price, amount and time of entry), or with terms intended to trade with better priced existing open orders in the marketplace (i.e., Facilitation Trades) in order to execute the desired trade(s) between Subject Accounts (i.e., Match Trades or Wash Trades).

23. The bid or ask prices entered by the Respondent to implement the trading component of the investment strategy were typically within the then market spread. However, due to the illiquidity of the Subject Securities and especially the Debentures, the market spreads could be wide, sometimes as great as $3 in the case of the Debentures. These wide spreads and the overall illiquidity of the Subject Securities were conducive to the execution of the trading component of the Respondent's investment strategy.

24. Where the Respondent's trading strategy resulted in Facilitation Trades, Match Trades and Wash Trades, the Respondent created market activity that would not have otherwise existed in the Subject Securities, and thereby was able to buy the Subject Securities at low prices in the non-taxable Subject Accounts, and sell these same securities at higher prices from these same accounts more often than the natural order flow for the Subject Securities would allow. Over time, the non-taxable Subject Accounts increased in value from this trading, even if at times losses were created in the taxable Subject Accounts in order to complete the Match Trades and Wash Trades.

25. The Subject Accounts were net accumulators of the Subject Securities over the Material Time, with most realized gains reinvested in the same Subject Securities such that the cumulative net gain or loss on these investments is unrealized.

Trading Analysis

26. Staff reviewed the Respondent's trading throughout the Material Time and prepared a daily trading analysis for a representative period of December 1, 2010 to April 30, 2011 (the "**Analysis Period**").

27. With respect to the Class A Shares, during the Analysis Period:

    a. a total of 1,882,850 Class A Shares were traded in the marketplace;

    b. the Respondent traded 160,700 Class A Shares that were Match Trades or Wash Trades (8.53% of the total volume in that period), and traded another 40,400 Class A Shares as a result of Facilitation Trades (2.15% of the total volume in that period);

    c. altogether the Respondent's Match Trades, Wash Trades and Facilitation Trades represented 10.68% of the total volume of Class A Shares traded in that period;

    d. altogether the Respondent executed 207 Match Trades, Wash Trades and Facilitation Trades in Class A Shares in the period;

    e. approximately 43% of the Respondent's trades in Class A Shares in the Subject Accounts in the Analysis Period were Match Trades, Wash Trades or Facilitation Trades;

    f. the Respondent's Match Trades, Wash Trades and Facilitation Trades together increased the monthly trading volume for the Class A Shares by as much as 24.27% in December 2010 and by as little as 1.95% in March 2011.

28. With respect to the Debentures, during the Analysis Period:

    a. a total face value of $2,721,000 of Debentures were traded in the marketplace;

    b. the Respondent traded a total face value of $155,000 of Debentures using Match Trades or Wash Trades (5.70% of the total volume in that period), and did not execute any Facilitation Trades;

    c. altogether the Respondent executed 14 Match Trades and Wash Trades in Debentures in the period;

    d. approximately 88.57% of the Respondent's trades in Debentures in the Subject Accounts in the Analysis Period were Match Trades or Wash Trades;

    e. the Respondent's Match Trades and Wash Trades together increased the monthly trading volume in the Debentures by as much as 29.32% in February 2011 and by as little as 0% in March 2011.

First Contact from discount broker

29. On February 10, 2011, a representative of one of the discount brokerage firms spoke with the Respondent by telephone, explained to him that some of his online orders had resulted in Match Trades between Subject Accounts, informed him that this type of trade is prohibited under Ontario securities law, and explained that the brokerage firm cannot and would not accept orders for this type of trade. The Respondent acknowledged his understanding and agreed not to enter any more Match Trades.

30. Despite the telephone conversation noted above, the Respondent continued to enter and execute Match Trades in the Subject Accounts (and Wash Trades and Facilitation Trades), including the next day when he traded 4,400 Class A Shares between one of his wife's accounts at the brokerage firm that had called him and one of his sons' accounts at a second discount brokerage firm.

31. Subsequent to being contacted by the first discount brokerage firm on February 10, 2011, the Respondent reduced the execution of Match Trades, Wash Trades and Facilitation Trades through that firm. Between February 10, 2011 and March 31, 2011, the Respondent executed eight Match Trades/Wash Trades, of which seven were split between the two discount brokerage firms, which had the effect of concealing those trades.

Second Contact from discount broker

32. On July 5, 2011, another representative of the brokerage firm that had called in February 2011 spoke with the Respondent by telephone, explained to him what Match Trades and Wash Trades are, informed him that these types of trades are prohibited under Ontario securities law, and explained that the firm could not accept orders for this type of trade. The Respondent acknowledged his understanding of the rules against Match Trades and Wash Trades.

33. The Respondent executed Match Trades and Wash Trades in the Subject Securities in the Subject Accounts after this date.

Third Contact from discount broker

34. On August 9, 2011, a third representative of the discount brokerage firm that had called in February and July 2011 contacted the Respondent with respect to a Match Trade between Subject Accounts that was executed on July 25, 2011. The representative informed the Respondent that there had been a repeating pattern of similar Match Trades occurring in the client's accounts and gave the Respondent "a stern warning" to stop this type of activity or the next step would be to remove the Respondent's trading authorization over the account.

Second discount broker exits two accounts

35. The second discount brokerage firm forced the closure of two of the Subject Accounts in February and September 2011.

Misleading appearance of trading activity

36. The Respondent was aware throughout the Material Time that Match Trades and Wash Trades are prohibited by Ontario securities law, and disregarded whether Facilitation Trades are also prohibited by Ontario securities law.

37. The Respondent was aware throughout the Material Time that the volume from his Match Trades, Wash Trades and Facilitation Trades would be and was included in and reported as part of the daily volume for those securities.

38. The Respondent chose to ignore the fact that his Match Trades, Wash Trades and Facilitation Trades would create and did create a misleading appearance of trading activity in the Subject Securities.

Credit for Co-operation

39. The Respondent has fully co-operated with Staff in the investigation of this matter.

PART IV – RESPONDENT'S POSITION

40. The Respondent requests that the settlement hearing panel consider the following mitigating circumstances:

a. the Respondent states that it was not his intention to create a false or misleading appearance of trading activity in the Subject Securities, rather, in the pursuit of his investment strategy he disregarded that impact;

b. the Respondent's conduct has not previously been the subject of any enforcement proceeding by Staff;

c. as of the date of this Settlement Agreement, the Respondent states that the Subject Securities in the Subject Accounts are carrying an unrealized net loss of approximately $157,000; and

d. the Respondent has fully co-operated with Staff in its investigation.

PART V – CONDUCT CONTRARY TO SUBSECTION 126.1(a) OF THE *SECURITIES ACT*

41. The Respondent's activities described above regarding Wash Trades, Match Trades and Facilitation Trades were contrary to subsection 126.1(a) of the *Securities Act* in that they created a misleading appearance of trading activity in the Subject Securities.

PART VI – CONDUCT CONTRARY TO THE PUBLIC INTEREST

42. The above described conduct and breaches of Ontario securities law constitute conduct contrary to the public interest.

PART VII – TERMS OF SETTLEMENT

43. The Respondent agrees to the terms of settlement set out below.

44. The Commission will make an order pursuant to subsection 127(1) and section 127.1 of the *Securities Act* that:

(a) this Settlement Agreement shall be approved;

(b) the Respondent shall be reprimanded;

(c) the Respondent shall be prohibited from trading in any securities for a period of two years commencing from the date this Settlement Agreement is approved; and

(d) the Respondent shall within thirty days of this Settlement Agreement being approved pay $25,000 towards the costs of Staff's investigation.

PART VIII – STAFF COMMITMENT

45. If this Settlement Agreement is approved by the Commission, Staff will not commence any other proceeding under the Securities Act against the Respondent under Ontario securities law respecting the facts set out in Part III of the Settlement Agreement, subject to the provisions of paragraph 46 below.

46. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART IX – PROCEDURE FOR APPROVAL OF SETTLEMENT

47. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

48. Staff and the Respondent 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.

49. If the Settlement Agreement is approved by the Commission, the Respondent agrees to waive all of his rights to a full hearing, judicial review or appeal of the matter under the *Securities Act.*

50. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

51. Whether or not the Commission approves this Settlement Agreement, the Respondent 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 X – DISCLOSURE OF SETTLEMENT AGREEMENT

52. 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 Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and

    b. Staff and the Respondent will 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.

53. All parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, all parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART XI – EXECUTION OF SETTLEMENT AGREEMENT

54. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

55. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 25th day of March, 2013.

"*Gail Pepler*"
Witness

"S. Campbell"
Stephen Campbell

"*Tom Atkinson*"
Tom Atkinson
Director, Enforcement Branch
Ontario Securities Commission

SCHEDULE "A"

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

AND

IN THE MATTER OF
STEPHEN CAMPBELL

ORDER
(Subsections 127(1) and Section 127.1)

WHEREAS on March 26, 2013, Staff of the Ontario Securities Commission ("Staff" and 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 "Securities Act") in respect of Mr. Stephen Campbell (the "Respondent") in respect of conduct that occurred between January 1, 2010 and December 31, 2011 (the "Material Time");

AND WHEREAS the Respondent and Staff entered into a settlement agreement (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated March 26, 2013, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing, and upon hearing submissions from the Respondent and from counsel for Staff;

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 Settlement Agreement is hereby approved;

2. pursuant to paragraph 127(1)(6) of the *Securities Act,* the Respondent is hereby reprimanded;

3. pursuant to paragraph 127(1)(2) of the *Securities Act,* the Respondent is hereby prohibited from trading in any securities for a period of two years commencing from the date of this Order; and

4. pursuant to subsection 127.1(1) of the *Securities Act*, the Respondent shall within thirty days of this Order pay $25,000 towards the costs of Staff's investigation.

DATED at Toronto this _____ day of March, 2013.

3.1.7 Rejean Desrosiers

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

AND

IN THE MATTER OF
REJEAN DESROSIERS

SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND REJEAN DESROSIERS

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 Rejean DesRosiers ("DesRosiers").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated [date] against DesRosiers in accordance with the terms and conditions set out below. DesRosiers consents to the making of an order in the form attached as Schedule "A", based on the facts set out below.

3. For this proceeding and any other regulatory proceeding commenced by a securities regulatory authority, DesRosiers agrees with the facts as set out in Part III and the conclusion in Part IV of this settlement agreement (the "Settlement Agreement").

PART III – AGREED FACTS

4. DesRosiers is a resident of the City of Mississauga.

5. DesRosiers is an entrepreneur with no formal training or education in the securities industry or the capital markets.

6. DesRosiers has been fully cooperative with Staff.

7. In late 2007, DesRosiers and another person incorporated ZipZoom Canada Inc. ("ZipZoom Canada"), which was a company created to utilize patented technology allowing for commercial anonymous communication between consumers and vendors over the internet.

8. According to data provided by DesRosiers, starting in approximately February 2009, a total of 213 investors (the "Founding Members") invested in ZipZoom Canada by way of entering into an agreement which entitled the investors to receive, on a *pro rata* basis, a portion of the revenues that were to be generated by ZipZoom Canada (the "ZipZoom Canada Securities").

9. Due to a dispute with the other director of ZipZoom Canada, in October 2009 DesRosiers incorporated ZipZoom Horizons Inc. ("ZipZoom Horizons").

10. DesRosiers is a director of ZipZoom Horizons Inc. ("ZipZoom Horizons").

11. Founding Members were offered the opportunity to convert their interests in ZipZoom Canada into a beneficial interest in preferred shares of ZipZoom Horizons to be held in trust pursuant to the ZipZoom Capital Trust Agreement (the "ZipZoom Horizons Securities").

12. According to data provided by DesRosiers, 206 of the 213 Founding Members chose to convert their interests into ZipZoom Horizons Securities, one Founding Member chose to be repaid, and six chose to convert their interests into interests in an unrelated entity.

13. According to data provided by DesRosiers, between approximately October 2009 and March 2010, a total of 297 investors, including the 206 Founding Members, acquired ZipZoom Horizons Securities for total proceeds of $803,400.

14. As a result of an inquiry from staff of the Commission ("Staff") on March 5, 2010, all activities to sell ZipZoom Horizons Securities ceased as of March 5, 2010.

15. None of DesRosiers, ZipZoom Canada and ZipZoom Horizons has ever been registered with the Commission in any capacity.

16. The sales of ZipZoom Canada Securities and ZipZoom Horizons Securities were trades in securities not previously issued and were therefore distributions under the Act. No preliminary prospectus or prospectus was filed and no receipts were issued for them by the Director.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

17. By engaging in the conduct described above, DesRosiers admits and acknowledges that he contravened Ontario securities law by:

    (a) trading in ZipZoom Canada Securities and ZipZoom Horizons Securities without being registered under the Act to trade in securities, contrary to subsection 25(1)(a) of the Act as it existed prior to September 28, 2009 and subsection 25(1) in force as of September 28, 2009; and

    (b) distributing ZipZoom Canada Securities and ZipZoom Horizons Securities where no preliminary prospectus and prospectus in respect of such securities had been filed and receipts issued by the Director, contrary to subsection 53(1) of the Act.

18. DesRosiers admits and acknowledges that he acted contrary to the public interest and that his actions as described in Part IV above were harmful to the integrity of the capital markets.

PART V – RESPONDENT'S POSITION

19. It is the position of the Respondent that the following factors are relevant to a consideration of this settlement reached between the Respondent and Staff:

    a) at all times the Respondent was acting in good faith relying on reputable legal advice;

    b) all of the capital raised by means of the distribution of securities was for the purpose of funding the costs associated with ZipZoom Canada, and subsequently ZipZoom Horizons; no profit was realized by the Respondent from the distribution of securities;

    c) upon being notified by Staff of its concerns, the Respondent immediately stopped any further distribution of securities;

    d) the Respondent has fully cooperated with Staff during the course of the investigation;

    e) the Respondent agreed from the outset to make full restitution (disgorgement) to all persons who acquired securities by means of the Distribution.

PART VI – TERMS OF SETTLEMENT

20. DesRosiers agrees to the terms of settlement listed below.

21. The Commission will make an order pursuant to sections 127(1) and 127.1 of the Act that:

    (a) the Settlement Agreement is approved;

    (b) trading in any securities or derivatives by DesRosiers cease for a period of 7 years from the date of the approval of the Settlement Agreement;

    (c) the acquisition of any securities by DesRosiers is prohibited for a period of 7 years from the date of the approval of the Settlement Agreement;

(d) any exemptions contained in Ontario securities law do not apply to DesRosiers for a period of 7 years from the date of the approval of the Settlement Agreement;

(e) DesRosiers shall disgorge the amount of $803,400 obtained as a result of his non-compliance with Ontario securities law. The amount of $803,400 disgorged represents full disgorgement to all existing investors in ZipZoom Horizons Securities. Once Staff have received satisfactory confirmation that all investors in ZipZoom Horizons Securities have been fully repaid, then the trading, acquisition and exemption bans of subparagraphs (b), (c) and (d) above shall be reduced to 2 years from the date of Staff's written acceptance of the confirmation that investors have been fully repaid;

(f) DesRosiers shall resign any positions he holds as a director or officer of any reporting issuer;

(g) DesRosiers is prohibited for a period of 5 years from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of any reporting issuer, registrant, or investment fund manager;

(h) DesRosiers is prohibited for a period of 5 years from the date of approval of the Settlement Agreement from becoming or acting as a registrant, investment fund manager or promoter;

(i) DesRosiers shall pay to the Commission an administrative penalty in the amount of $25,000 for his failure to comply with Ontario securities law, payable upon satisfaction of the disgorgement provision in subparagraph (e) above. If the disgorgement provision in subparagraph (e) above is fully satisfied within 7 years of the date of approval of the Settlement Agreement, then the administrative penalty shall be deemed to have been paid in full; and

(j) DesRosiers shall pay to the Commission costs of the investigation and hearing in the amount of $14,691.25.

PART VII – STAFF COMMITMENT

22. If the Commission approves the Settlement Agreement, Staff will not initiate any other 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 23 below.

23. If the Commission approves this Settlement Agreement and DesRosiers fails to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against DesRosiers. 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 DesRosiers fails to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in paragraph 21 above.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

24. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for [date], or on another date agreed to by Staff and DesRosiers, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

25. Staff and DesRosiers agree that this Settlement Agreement includes all of the agreed facts that will be submitted at the settlement hearing regarding DesRosiers' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

26. If the Commission approves this Settlement Agreement, DesRosiers agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

27. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

28. Whether or not the Commission approves this Settlement Agreement, DesRosiers will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedy or challenge that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

29. 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 DesRosiers before the settlement hearing takes place will be without prejudice to Staff and DesRosiers; and

    (b) Staff and DesRosiers 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 his agreement.

30. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties agree to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

31. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

32. A fax copy of any signature will be treated as an original signature.

Dated this 26th day of March, 2013.

"Carole Kovachis"

"Rejean DesRosiers"
Witness

Dated this 26th day of March, 2013.

STAFF OF THE ONTARIO SECURITIES COMMISSION
"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
REJEAN DESROSIERS

ORDER
(Subsections 127 and 127.1)

WHEREAS on [date], 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"), issued a Notice of Hearing (the "Notice of Hearing") in respect of Rejean DesRosier ("DesRosiers");

AND WHEREAS DesRosiers entered into a settlement agreement with staff of the Commission ("Staff") dated [date] (the "Settlement Agreement") in which DesRosiers agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS in the Settlement Agreement, DesRosiers admitted to unregistered trading in securities of ZipZoom Canada Inc. and in securities of ZipZoom Horizons Inc. (the "ZipZoom Horizons Securities"), and distributing these securities where no preliminary prospectus and prospectus in respect of such securities had been filed and receipts issued by the Director;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and Statement of Allegations of Staff of the Commission dated [date], and upon hearing submissions from counsel for DesRosiers and from Staff of the Commission;

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by DesRosiers shall cease for a period of 7 years from the date of this order;

(c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by DesRosiers is prohibited for a period of 7 years from the date of this order;

(d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to DesRosiers for a period of 7 years from the date of this order;

(e) pursuant to paragraph 10 of subsection 127(1) of the Act, DesRosiers shall disgorge the amount of $803,400 obtained as a result of his non-compliance with Ontario securities law. The amount of $803,400 disgorged represents full disgorgement to all existing investors in ZipZoom Horizons Securities. Once Staff have received satisfactory confirmation that all investors in ZipZoom Horizons Securities have been fully repaid, then the trading, acquisition and exemption bans of subparagraphs (b), (c) and (d) above shall be reduced to 2 years from the date of Staff's written acceptance of the confirmation that investors have been fully repaid;

(f) pursuant to paragraphs 7, 8.1 and 8.3 respectively of subsection 127(1) of the Act, DesRosiers shall resign any positions he holds as a director or officer of any reporting issuer, registrant or investment fund manager;

(g) pursuant to paragraphs 8, 8.2 and 8.4 respectively of subsection 127(1) of the Act, DesRosiers is prohibited for a period of 5 years from the date of this order from becoming or acting as a director or officer of any reporting issuer, registrant, or investment fund manager;

(h) pursuant to paragraph 8.5 of subsection 127(1) of the Act, DesRosiers is prohibited for a period of 5 years from the date of this order from becoming or acting as a registrant, investment fund manager or promoter;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, DesRosiers shall pay to the Commission an administrative penalty in the amount of $25,000 for his failure to comply with Ontario securities law, payable

upon satisfaction of the disgorgement provision in subparagraph (e) above. If the disgorgement provision in subparagraph (e) above is fully satisfied within 7 years of the date of approval of the Settlement Agreement, then the administrative penalty shall be deemed to have been paid in full; and

(j) pursuant to subsection 127.1 of the Act, DesRosiers shall pay to the Commission costs of the investigation and hearing in the amount of $14,691.25.

DATED AT TORONTO this _____ day of March, 2013.

3.1.8 HEIR Home Equity Investment Rewards Inc. et al.

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

AND

IN THE MATTER OF
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS; MARCO CARUSO;
PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

SETTLEMENT AGREEMENT
BETWEEN STAFF AND
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUITS INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.; AND ARCHIBALD ROBERTSON

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of HEIR Home Equity Investment Rewards Inc., FFI First Fruits Investments Inc., Wealth Building Mortgages Inc., and Archibald Robertson (collectively the "HEIR 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 March 29, 2011, and amended February 14, 2012 against the HEIR Respondents (the "Proceeding") according to the terms and conditions set out in Part V of this Settlement Agreement. The HEIR Respondents agree to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the HEIR Respondents agree with the facts as set out in Part III of this Settlement Agreement. To the extent that the HEIR Respondents do not have personal knowledge of certain facts as described below, they believe those facts to be true and accurate.

4. Staff and the HEIR Respondents agree that the facts and admissions set out in Part III of this Settlement Agreement are made without prejudice to the HEIR Respondents in any past, present or future civil proceedings which may be brought by any other person, corporation or agency.

A. OVERVIEW

5. Between January 1, 2007 up to and including August 3, 2010 (the "Material Time"), the HEIR Respondents engaged in various activities that constituted trading or acts in furtherance of trading of securities when none of the HEIR Respondents were registered with the Commission and when no exemptions from registration were available to them under the Act. Further, each of the HEIR Respondents advised or engaged in the business of advising with respect to investing in or buying securities without proper registration.

6. Among the securities traded and distributed by the HEIR Respondents were those offered by Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC, Brent Borland, Wayne D. Robbins, Marco Caruso and the Caruso Companies as defined below (collectively the "Canyon Respondents").

7. The HEIR Respondents' activities involved trades in securities not previously issued which were therefore distributions. To the HEIR Respondents' knowledge, no prospectus receipt has ever been issued to qualify the sale of any of the securities with respect to which the HEIR Respondents engaged in acts in furtherance of trading.

8. This conduct was in breach of the Act and was contrary to the public interest.

B. BACKGROUND

9. HEIR Home Equity Investment Rewards Inc. ("HEIR") is a company which was federally incorporated on August 19, 2004. HEIR's principal office and centre of administration is located in Ottawa, Ontario.

10. FFI First Fruits Investments Inc. ("FFI"), which was misspelled in the Amended Statement of Allegations as FFI First Fruit Investments Inc., is a company which was federally incorporated on September 1, 2004. FFI shares its principal office and centre of administration with HEIR in Ottawa, Ontario.

11. Wealth Building Mortgages Inc. ("Wealth Building") is a company which was incorporated in Ontario on February 5, 2007. Wealth Building shares its principal office and centre of administration with HEIR in Ottawa, Ontario.

12. Archibald Robertson ("Robertson") is a resident in Ontario. Robertson is the sole shareholder and director of each of HEIR, FFI and Wealth Building (collectively the "HEIR Entities") and their directing mind.

13. Eric Deschamps ("Deschamps") is a resident of Ontario and a member of HEIR since approximately 2006. Since 2008, he was employed in an executive position under the direction of Robertson. He also became a salesperson for HEIR at that same time. For a period of approximately nine months, Deschamps was also HEIR's National Sales Leader and HEIR's salespeople reported to him.

14. Brent Borland ("Borland") is a resident of the United States of America ("U.S.") and the founder of Canyon Acquisitions, LLC ("Canyon U.S."). He is Chief Executive Officer ("CEO") of Canyon U.S. and Canyon Acquisitions International, LLC ("Canyon Nevis") (collectively the "Canyon Entities").

15. Wayne D. Robbins ("Robbins") is a U.S. resident and the President of the Canyon Entities.

16. Marco Caruso ("Caruso") is a resident of Belize, who represented himself to be a director and/or officer of Placencia Estates Development, LLC; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd. which are purportedly land development companies incorporated in Caribbean countries (collectively the "Caruso Companies").

17. None of the respondents was registered with the Commission in any capacity at any time.

C. UNREGISTERED ACTIVITIES OF THE HEIR RESPONDENTS

(i) Unregistered Trading and Illegal Distribution in Securities

18. During the Material Time, HEIR ran a private investment club under the direction of its founder, Robertson. Throughout the Material Time, HEIR offered its fee paying members access to certain investments of various third parties, including the following (collectively the "Third Party Entities"):

    (a) the Canyon Respondents;

    (b) the Skyline Apartment Real Estate Investment Trust (the "Skyline REIT") based in Ontario;

    (c) Capital Mountain Holding Corporation, a company incorporated in Texas, and its related entities (collectively the "Capital Mountain Entities"); and

    (d) Walton Capital Management Inc., a company incorporated in Ontario, and its related entities (the "Walton Entities").

19. The investment products of the Third Party Entities constituted securities under Ontario securities laws (collectively the "Securities"), and included the following investments:

(a) investment contracts offered by or through the Canyon Entities and Caruso Companies;

(b) units of the Skyline REIT ("Skyline Securities");

(c) promissory notes of the Capital Mountain Entities; and

(d) shares, limited partnership units or other securities in the Walton Entities offered by or through Walton Capital Management Inc.

20. The HEIR Respondents engaged in the following activities during the Material Time, either directly or through acts in furtherance of trading, including the following:

(a) advertising and promoting HEIR and/or the Third Party Entities and their projects and their potential returns through frequent appearances on radio show programs, the HEIR newsletter and by maintaining a website for HEIR;

(b) holding one-on-one sessions with potential investors that promoted HEIR and the Third Party Entities;

(c) obtaining some financial information from certain potential investors;

(d) holding HEIR seminars and meetings with potential investors and arranging for presentations to be given by the Third Party Entities, including Borland and Robbins on behalf of the Canyon Respondents, who attended the HEIR meetings and gave presentations promoting the Securities and provided promotional and other materials to potential investors;

(e) arranging trips for HEIR members to resort and other locations to meet representatives of the Third Party Entities including the Canyon Respondents, with the HEIR Entities often paying for some of the associated expenses;

(f) arranging for potential investors to have access to Third Party Entities' webinars regarding the Securities and otherwise facilitating investment in the Securities;

(g) arranging for potential investors to meet with representatives of the Walton Entities for the purpose of purchasing securities;

(h) employing and/or contracting commissioned sales agents to bring in new members and/or solicit investment in Securities offered by the Third Party Entities; and/or

(i) accepting funds intended to purchase Securities offered by at least one of the Third Party Entities.

21. Most HEIR members purchased the Securities and many invested in more than one. During the Material Time, at least 480 Ontario investors, consisting of HEIR members and others referred by the HEIR Respondents, purchased the securities of the Third Party Entities and other issuers, for a total investment of approximately $74.5 million.

22. The HEIR Entities received commissions from the Third Party Entities for their activities during the Material Time, which commissions exceeded $4.5 million. The HEIR Entities then paid HEIR's salespeople a portion of those commissions while retaining a portion for use by the HEIR Entities.

23. With respect to the investment contracts of the Canyon Respondents and the promissory notes of the Capital Mountain Entities, the HEIR Respondents had mistakenly taken the position that those investments were not securities.

24. In trading or distributing the Skyline Securities and the securities of Walton Capital Management Inc., the HEIR Respondents had mistakenly taken the position that the arrangements that were in place with those parties, and the actions that were taken in light of those arrangements, did not constitute trading or actions taken in furtherance of trading.

25. As a consequence of the incorrect positions that the HEIR Respondents took as outlined in paragraphs 23 and 24 above, the HEIR Respondents failed to ensure that the requirements for the exemptions to the registration and prospectus requirements were met.

26. Through the acts described above, the HEIR Respondents engaged in, and held themselves out as engaging in, the business of trading in securities in Ontario. The HEIR Respondents acted as "market intermediaries" as defined in OSC Rule 14-501 Definitions, and any exemptions from the dealer registration requirement included in NI 45-106 (which were in effect until March 27, 2010) were not available to them.

27. The Securities had not been previously issued. To the knowledge of the HEIR Respondents, the Third Party Entities had never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued from the Director to qualify the sale of any of the Securities.

(ii) Unregistered Advising by the HEIR Respondents

28. In addition to solicitations and other acts in furtherance of trading, the HEIR Respondents, directly or through their sales agents, offered their opinions on the investment merits of the Securities by expressly or impliedly recommending or endorsing the Securities to potential investors. They also recommended specific allocations of investment funds to be made by potential investors in regard to the Securities.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

29. By engaging in the conduct described above, the HEIR Respondents admit and acknowledge that they breached Ontario securities law by contravening sections 25 and 53 of the Act, and acted contrary to the public interest in that they:

(a) traded and engaged in the business of trading in securities, without being registered to do so and in circumstances where no exemptions were available, contrary to subsection 25(1)(a) of the Act as that subsection existed prior to September 28, 2009, and contrary to subsection 25(1) of the Act, as subsequently amended on September 28, 2009, and contrary to the public interest;

(b) advised and engaged 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 in circumstances where no exemptions were available, contrary to subsection 25(1)(c) of the Act as that subsection existed prior to September 28, 2009, and contrary to subsection 25(3) of the Act, as subsequently amended on September 28, 2009, and contrary to the public interest; and

(c) acted in furtherance of trades in securities in circumstances where the trading constituted a distribution and where no preliminary prospectus and prospectus had been filed and receipts issued by the Director, and no exemptions were available contrary to subsection 53(1) of the Act, and contrary to the public interest.

30. Robertson further admits that, as an officer and/or director of the HEIR Entities, he did permit or acquiesce in the commission of the breaches of the Act, set out above, by the HEIR Entities, contrary to section 129.2 of the Act and acted contrary to the public interest.

PART V – TERMS OF SETTLEMENT

31. The HEIR Respondents agree to the following terms of settlement and to the Order attached hereto, made pursuant to subsection 127(1) and section 127.1 of the Act:

(a) The settlement agreement is approved;

(b) Robertson will be ordered to pay to the Commission:

(i) an administrative penalty in the amount of $350,000, for his failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act; and

(ii) the amount of $150,000, representing a portion of Staff's costs in this matter;

(c) HEIR, FFI and Wealth Building will be ordered to pay to the Commission an administrative penalty in the aggregate amount of $1,000,000 (jointly and severally), for their failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

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

(e) Trading in any securities by the HEIR Respondents cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

(f) Acquisition of any securities by the HEIR Respondents is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(g) Any exemptions contained in Ontario securities law do not apply to the HEIR Respondents permanently pursuant to paragraph 3 of subsection 127(1) of the Act;

(h) Robertson will resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph 31(i) below), pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

(i) Robertson is permanently prohibited, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, from becoming or acting as a director or officer of any issuer, registrant or investment fund manager with the exception that Robertson is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as he, his spouse, and/or immediate family are the only holders of the securities of the corporation;

(j) Robertson is permanently prohibited 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; and

(k) As an exception to the provisions of paragraphs 31(e), (f) and (g), Robertson is permitted to: (1) trade on his own behalf in his accounts, and (2) acquire securities on his own behalf in his accounts, provided the schedule for payment set out in paragraph 32 is followed. In the event that Robertson does not pay in accordance with the timelines indicated in paragraphs 32, this exception shall be suspended until such time as those payments are made in full.

32. In regard to the payments ordered above in paragraph 31(b), Robertson agrees to personally make payments as follows:

(a) $10,000.00 by certified cheque or bank draft when the Commission approves this Settlement Agreement;

(b) a further $100,000 payable by cheque within one (1) year of the date of the Order attached as Schedule “A”;

(c) a further $150,000 payable by cheque within 30 months of the date of the Order attached as Schedule “A”; and

(d) the balance of $240,000 payable by cheque within four (4) years of the date of the Order attached as Schedule “A”.

33. Robertson undertakes (pursuant to the undertaking executed and attached as Schedule “B”) to advise Staff within 10 days of the sale of any investments held in Alberta, Quebec, and in the Dominican Republic and Belize in which he has an interest, and any proceeds Robertson receives from those sales or related to these investments are to be paid to the Commission pursuant to paragraph 31(b) above within 30 days of receipt of funds, notwithstanding the payment plan set out above in paragraph 32. In the event that Robertson fails to comply with the terms of this undertaking and Settlement Agreement, the amount set out in sub-paragraph 31(b) is payable and enforceable immediately, along with postjudgment interest from the date of the Order attached as Schedule “A” in accordance with section 129 of the *Courts of Justice Act* R.S.O. 1990 c. C-43 as amended.

34. Robertson, personally and on behalf of each of HEIR, FFI and Wealth Building, undertakes (pursuant to the undertaking executed and attached as Schedule “B”) that any funds obtained, or any proceeds received from investments by, or receivables owing to, any of HEIR, FFI and Wealth Building are to be paid to the Commission pursuant to paragraph 31(c) above within 30 days of receipt of funds up to the total amount owing to the Commission pursuant to paragraph 31(c).

PART VI – STAFF COMMITMENT

35. 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 36 below.

36. If the Commission approves this Settlement Agreement and the HEIR Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the HEIR 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 HEIR 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 sub-paragraphs 31(b) and (c) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

37. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for March 28, 2013, or on another date agreed to by Staff and the HEIR Respondents, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

38. Staff and the HEIR Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the HEIR Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

39. If the Commission approves this Settlement Agreement, the HEIR Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

40. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

41. Whether or not the Commission approves this Settlement Agreement, the HEIR 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 VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

42. 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 HEIR Respondents before the settlement hearing takes place will be without prejudice to Staff and the HEIR Respondents; and

    (b) Staff and the HEIR 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.

43. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless Staff and the HEIR Respondents both agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

44. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

45. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
HEIR HOME EQUITY INVESTMENT REWARDS INC.
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
FFI FIRST FRUITS INVESTMENTS INC.
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
WEALTH BUILDING MORTGAGES INC.
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
ARCHIBALD ROBERTSON
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 22th day of MARCH, 2013.

"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
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.; ARCHIBALD ROBERTSON;
ERIC DESCHAMPS; CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO; PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL ANDRESIDENCES LTD.

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUITS INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
AND ARCHIBALD ROBERTSON

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on March 29, 2011, 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") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of HEIR Home Equity Investment Rewards Inc. ("HEIR"), FFI First Fruits Investments Inc. ("FFI"), Wealth Building Mortgages Inc. ("Wealth Building"), and Archibald Robertson ("Robertson") (collectively the "HEIR Respondents") and others. 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 March 29, 2011 and amended February 14, 2012;

AND WHEREAS the HEIR Respondents entered into a Settlement Agreement with Staff of the Commission dated _____, 2013 (the "Settlement Agreement") in which the HEIR Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 29, 2011, subject to the approval of the Commission;

AND WHEREAS on _____, 2013 , 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 HEIR Respondents;

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

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. Robertson shall pay to the Commission:

(a) an administrative penalty in the amount of $350,000, for his failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act; and

(b) the amount of $150,000, representing a portion of Staff's costs in this matter;

3. HEIR, FFI and Wealth Building shall pay to the Commission an administrative penalty in the aggregate amount of $1,000,000 (jointly and severally), for their failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;

4. Pursuant to paragraph 6 of subsection 127(1) of the Act, the HEIR Respondents shall be reprimanded;

5. Pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by the HEIR Respondents shall cease permanently from the date of this Order;

6. Pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by the HEIR Respondents shall be prohibited permanently from the date of this Order;

7. Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the HEIR Respondents permanently from the date of this Order;

8. Pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Robertson shall resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph 9 below);

9. Pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Robertson shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager with the exception that Robertson is permitted to act or continue to act as a director and officer of any corporation through which he carries on business, so long as he, his spouse, and/or his immediate family are the only holders of the securities of the corporation;

10. Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Robertson shall be permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

11. As an exception to the provisions of paragraphs 5, 6, and 7, Robertson is permitted to: (1) trade on his own behalf in his accounts, and (2) acquire securities on his own behalf in his accounts, provided the schedule for payment set out in paragraph 12 below is followed. In the event that Robertson does not pay in accordance with the timelines indicated in paragraph 12 below, this exception shall be suspended until such time as those payments are made in full.

12. In regard to the payments ordered above in paragraph 2, Robertson shall personally make payments as follows:

(a) $10,000.00 by certified cheque or bank draft when the Commission approves this Settlement Agreement;

(b) a further $100,000 payable by cheque within one (1) year of the date of this Order;

(c) a further $150,000 payable by cheque within 30 months of the date of this Order; and

(d) the balance of $240,000 payable by cheque within four (4) years of the date of this Order.

13. Notwithstanding the payment plan set out in paragraph 12, in the event that Robertson fails to comply with the terms of the Settlement Agreement and his undertaking attached as Schedule "B", the amount set out in paragraph 2 is payable and enforceable immediately, along with postjudgment interest from the date of this Order in accordance with section 129 of the Courts of Justice Act R.S.O. 1990 c. C-43 as amended.

DATED at Toronto this _____ day of March, 2013.

SCHEDULE "B"

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

AND

IN THE MATTER OF
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS; MARCO CARUSO;
PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

SETTLEMENT AGREEMENT
BETWEEN STAFF AND
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUITS INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.; AND ARCHIBALD ROBERTSON

UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION

This Undertaking is given in connection with a settlement agreement between the Respondents HEIR Home Equity Investment Rewards Inc. ("HEIR"), FFI First Fruits Investments Inc. ("FFI"), Wealth Building Mortgages Inc. ("Wealth Building"), and Archibald Robertson ("Robertson"), and Staff of the Commission ("**Staff**") dated March, 2013 (the "**Settlement Agreement**"), and Order of the Commission dated March 28, 2013 (the "**Order**"), and all terms shall have the same meaning as therein.

1. Robertson agrees to advise Staff within 10 days of the sale of any investments held in Alberta, Quebec, and in the Dominican Republic and Belize in which he has an interest, and any proceeds Robertson receives from those sales or related to these investments are to be paid to the Commission pursuant to paragraph 2 of the Order within 30 days of receipt of funds; and

2. Robertson, personally and on behalf of each of HEIR, FFI and Wealth Building Mortgages Inc., undertakes that any funds obtained, or any proceeds received from investments by, or receivables owing to, any of HEIR, FFI and Wealth Building are to be paid to the Commission pursuant to paragraph 3 of the Order within 30 days of receipt of funds up to the total amount owing to the Commission pursuant to paragraph 3 of the Order.

The undersigned may each sign separate copies of this Undertaking. A copy of any signature will be treated as an original signature.

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
HEIR HOME EQUITY INVESTMENT REWARDS INC.
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
FFI FIRST FRUITS INVESTMENTS INC.
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
WEALTH BUILDING MORTGAGES INC.
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

DATED this 21th day of MARCH, 2013.

"WALTER SCHWABE"
Witness

"ARCHIE ROBERTSON"
ARCHIBALD ROBERTSON
Per: "ARCHIE ROBERTSON"
Title: "PRESIDENT"

3.1.9 HEIR Home Equity Investment Rewards Inc. et al.

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

AND

IN THE MATTER OF
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.;
WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC; CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO; PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

SETTLEMENT AGREEMENT
BETWEEN STAFF AND
CANYON ACQUISITIONS, LLC;
CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO; PLACENCIA ESTATES DEVELOPMENT, LLC;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.; AND
THE PLACENCIA HOTEL AND RESIDENCES LTD.

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC, Brent Borland, Wayne D. Robbins, Marco Caruso and the Caruso Companies as defined below (collectively the "Canyon 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 March 29, 2011, and amended February 14, 2012 against the Canyon Respondents (the "Proceeding") according to the terms and conditions set out in Part V of this Settlement Agreement. The Canyon Respondents agree to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. The Canyon Respondents agree with the facts as set out in Part III of this Settlement Agreement. To the extent that the Canyon Respondents do not have personal knowledge of certain facts as described below, they believe those facts to be true and accurate.

4. Staff and the Canyon Respondents agree that the facts and admissions set out in Part III of this Settlement Agreement are made without prejudice to the Canyon Respondents in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings currently pending or which may be brought by any other person, corporation or agency.

A. OVERVIEW

5. Between August 11, 2007 up to and including August 3, 2010 (the "Material Time"), the Canyon Respondents engaged in various activities that constituted trading or acts in furtherance of trading in securities when they were not registered with the Commission and when no exemptions from registration were available to them under the Act. Further, the Canyon Respondents' activities involved trades in securities not previously issued which were therefore distributions. None of the Respondents has ever filed a preliminary prospectus or a prospectus with the Commission, and no

prospectus receipt has ever been issued to qualify the sale of any of the securities that were traded by the Canyon Respondents.

6. This conduct was in breach of the Act and in a manner that was contrary to the public interest.

B. BACKGROUND

7. Canyon Acquisitions, LLC ("Canyon U.S.") is a company which was incorporated in Reno, Nevada, on May 16, 2006. Its registered address is in Boca Raton, Florida.

8. Canyon Acquisitions International, LLC ("Canyon Nevis") is a company which was incorporated in Nevis, the Federation of St. Kitts and Nevis. Its principal office, which it shares with Canyon U.S., is in Boca Raton, Florida.

9. Brent Borland ("Borland") is a resident of the United States of America ("U.S.") and the founder of Canyon U.S. He is Chief Executive Officer ("CEO") and a directing mind of Canyon U.S. and Canyon Nevis (collectively the "Canyon Entities").

10. Wayne D. Robbins ("Robbins") is a U.S. resident and the President of the Canyon Entities, and, along with Borland, a directing mind of these companies.

11. Marco Caruso ("Caruso") is a resident of Belize, who represented himself to be a director and/or officer and directing mind of Placencia Estates Development LLC also referred to as Placencia Estates Development, Ltd. in some documents provided to Ontario investors and in the Amended Statement of Allegations; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd. which are purportedly land development companies incorporated in Nevis and Belize (collectively the "Caruso Companies").

12. Archibald Robertson ("Robertson") is the sole shareholder and director of HEIR Home Equity Investment Rewards Inc. ("HEIR") and its directing mind. He is also the sole shareholder, director and directing mind of FFI First Fruits Investments Inc. ("FFI") whose name was misspelled in the Amended Statement of Allegations as FFI First Fruit Investments Inc. and Wealth Building Mortgages Inc. ("Wealth Building"). HEIR, FFI and Wealth Building shared their principal office and centre of administration in Ottawa, Ontario. Robertson, together with HEIR, FFI and Wealth Building are collectively the "HEIR Respondents".

13. Eric Deschamps ("Deschamps") is a resident of Ontario and a member of HEIR since approximately 2006. In September 2008, he became the "Chief Spiritual Officer" of HEIR, and was employed in an executive position under the direction of Robertson. He also became a salesperson for HEIR at that same time. For a period of approximately nine months, Deschamps was also HEIR's National Sales Leader and HEIR's salespeople reported to him.

14. None of the respondents was registered with the Commission in any capacity at any time.

C. UNREGISTERED ACTIVITIES BY THE CANYON RESPONDENTS

i) Unregistered Trading and Illegal Distribution in Securities

15. During the Material Time, the Canyon Respondents offered investors the opportunity to acquire fractional interests in condominiums, villas or boat slips in a number of different real estate development projects in the Dominican Republic and Belize. The Canyon Respondents marketed and sold these investments to Ontario investors through arrangements made with the HEIR Respondents.

16. During the Material Time, HEIR ran a private investment club under the direction of its founder, Robertson, and through the club, HEIR promoted certain investments of various third parties. HEIR offered access to third party investments to its fee paying members, sometimes on an exclusive basis, and the HEIR Respondents engaged in activities which constituted illegal trading and distribution of securities. The investments offered by the Canyon Respondents were among the securities offered and promoted by the HEIR Respondents.

17. The Canyon Respondents marketed and sold these investments to potential investors ("Canyon Investors") as having certain ranges of return on investment and as having certain features such as the following:

    (a) the purchase price for Canyon Investors was at a significant discount to the "public price" payable by retail buyers;

    (b) Canyon Investors only had to pay a deposit, a percentage of the discounted price, and were not liable for any further payments unless the purchase option was exercised;

(c) the deposits earned annual interest; and/or

(d) there were various "Program Protection Mechanisms" for Canyon Investors such as the obligation on the Caruso Companies for the Belize projects to resell the investments at a significantly higher rate than the discounted purchase price within a specified period of time and that failure to do so constituted a default by them which entitled Canyon Investors to further rights.

18. Although characterized by Canyon as real estate, these investments constituted "investment contracts" under Ontario securities laws and were therefore securities as defined in section 1(1) (n) of the Act (the "Canyon Securities").

19. During the Material Time, Borland, Robbins and the Canyon Entities traded in the Canyon Securities, either directly or through acts in furtherance of trading, including the following:

(a) holding public information seminars in Ontario, the Dominican Republic and Belize to promote the Canyon Securities or presenting them at seminars and meetings organized by the HEIR Respondents and/or through online webinars;

(b) maintaining a website which promoted the Canyon Entities and the Canyon Securities;

(c) meeting with potential investors individually to discuss the Canyon business and the Canyon Securities;

(d) preparing and disseminating promotional and other materials regarding the securities to potential investors;

(e) receiving introductions to potential investors through the HEIR Respondents;

(f) preparing and providing to investors the investment contract and other documents for the purchase of Canyon Securities and/or assisting and directing investors in completing them;

(g) directing investors to send the funds intended to purchase the Canyon Securities on to escrow agents they had retained; and/or

(h) approving any payments from the escrow accounts in which the Ontario investors' funds were deposited.

20. Caruso and the Caruso Companies traded in Canyon Securities with respect to projects in Belize during the Material Time either directly or through acts in furtherance of trading including the following:

(a) attending information seminars regarding the Canyon Securities organized by the Canyon Entities in Ontario and Belize, as well as those organized by the HEIR Respondents;

(b) engaging in meetings with potential investors in Ontario and Belize to promote the Canyon Securities;

(c) authorizing the Canyon Entities to highlight Caruso's involvement as the Belize projects' developer in meetings, seminars and promotional materials and to provide investors with the investment contract documents; and/or

(d) entering into agreements such as purchase and sale agreements and addenda to those agreements with Canyon Investors.

21. During the Material Time, approximately 307 investors residing in Ontario invested at least $24.2 million in the Canyon Securities, of which $17.1 million concerned investment contracts with the Caruso Companies in Belize. The Canyon Respondents paid the HEIR Respondents approximately $859,500 in commissions or fees in regard to the purchases of the Canyon Securities.

22. In engaging in the conduct described above, the Canyon Respondents traded in securities and/or engaged in, or held themselves out as engaging in, the business of trading during the Material Time contrary to section 25(1) of the Act. No steps were taken to rely on any exemptions to the registration requirements under Ontario securities laws and these trades occurred in circumstances where no exemptions from registration were available.

23. The sale of Canyon Securities referred to above were trades in securities not previously issued and were therefore distributions for which neither a preliminary prospectus nor a prospectus was filed and receipted by the Commission. None of the Respondents has ever filed a preliminary prospectus or a prospectus with the Commission, no prospectus receipt has ever been issued from the Director to qualify the sale of any of the Canyon Securities and no steps were taken to rely on any exemptions to the prospectus requirements under Ontario securities laws. By engaging in a

distribution to investors for which no exemption was available, the Canyon Respondents breached section 53 of the Act.

D. STATEMENTS BY CANYON AND BORLAND

24. At various times, in written communications to investors, the Canyon Entities represented that third parties had expressed an interest in acquiring the Canyon projects in Belize and the Dominican Republic, and that this would increase the value of those projects. Borland, on behalf of the Canyon Entities, subsequently made similar statements to Staff.

25. Staff has since received information from the Canyon Respondents demonstrating that the Canyon Entities and Borland relied upon certain facts and representations made to them by third parties (such as those associated with the Dominican Republic projects being developed by Fernando Alvarez Sr., as well as agents involved with the Belizean properties) in relation to potential purchases of the properties. Accordingly, in making the representations in issue, it does not appear that Borland and the Canyon Entities intentionally made misleading statements.

26. Borland also made statements to Staff regarding the business and affairs of the Canyon Entities in particular with respect to the usage of investor funds for particular purposes on the achievement of specific development milestones, for which Staff has incomplete information to assess. Borland believed the statements to be accurate at the time they were made and he did not intentionally make any misleading statements to Staff in that regard.

E. CONVERSION OF SECURITIES INTO REAL ESTATE AND PAYMENTS TO INVESTORS

27. Commencing in early 2012, the Canyon Respondents made offers to the Canyon Investors to exchange their investments in the Canyon Securities for land in the Panther Golf Course and Estates ("Panther Estates") in Belize. The investors who accepted the offer terminated their agreements with the Canyon Respondents in respect of the Canyon Securities in order to receive title to lots of the Panther Estates. Ontario Canyon investors holding over 85% of the Canyon Securities have taken the land exchange offer, executed agreements of purchase and sale for the land, and are no longer holders of Canyon Securities.

28. The Canyon Respondents have placed C$2,043,000 in trust with the Florida firm of Diaz, Reus & Targ, LLP in anticipation of making certain payments to the Commission and for the benefit of all of the Ontario investors who invested in Canyon Securities involving the Caruso Companies in Belize ("Canyon Belize Securities") and who still hold those securities as of March 15, 2013 (the "Remaining Canyon Belize Investors") with a direction to pay out to each of those investors amounts equivalent in each case to the monies paid by or on behalf of those investors to the Canyon Respondents for their Canyon Belize Securities.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

29. By engaging in the conduct described above, the Canyon Respondents admit and acknowledge that they breached Ontario securities law by contravening sections 25 and 53 of the Act, and acted contrary to the public interest in that:

    a. The Canyon Respondents traded in the Canyon Securities without being registered to trade in securities and where no exemptions were available, contrary to subsection 25(1)(a) of the Act (as that subsection existed prior to September 28, 2009) and, after September 28, 2009, engaged in, or held themselves out as engaging in, the business of trading in securities, without registration, contrary to subsection 25(1) of the Act, and contrary to the public interest;

    b. The Canyon Respondents traded in the Canyon Securities in circumstances where the trading constituted a distribution and where no preliminary prospectus and prospectus had been filed and receipts issued by the Director, and no exemptions were available contrary to subsection 53(1) of the Act;

    c. Borland and Robbins, as officers and/or directors of Canyon U.S. and Canyon Nevis, did authorize, permit or acquiesce in the commission of the breaches of the Act, set out above, by Canyon U.S. and Canyon Nevis, contrary to section 129.2 of the Act and acted contrary to the public interest; and

    d. Caruso, as an officer and/or director of the Caruso Companies, did authorize, permit or acquiesce in the commission of the breaches of the Act, set out above, by the Caruso Companies, contrary to section 129.2 of the Act and acted contrary to the public interest.

PART V – TERMS OF SETTLEMENT

30. The Canyon Respondents agree to the following terms of settlement and to the Order attached hereto, made pursuant to subsection 127(1) and section 127.1 of the Act:

(a) The Settlement Agreement is approved;

(b) The Canyon Respondents will be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(c) The Canyon Respondents shall be ordered to pay to the Commission:

i. an administrative penalty in the aggregate amount of C$350,000 (jointly and severally), for their failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act; and

ii. the aggregate amount of C$150,000 on a joint and several basis, representing a portion of Staff's costs in this matter;

(d) The Canyon Respondents undertake to have their counsel, the Florida firm of Diaz, Reus & Targ, LLP, pay out from the monies in trust referred to in paragraph 28 above to each of the Remaining Canyon Belize Investors amounts equivalent in each case to the monies paid by or on behalf of those investors to the Canyon Respondents for their Canyon Belize Securities, within 15 days of the approval by the Commission of this Settlement Agreement.

(e) The Canyon Respondents, jointly and severally, shall disgorge to the Commission within 60 days of the approval by the Commission of this Settlement Agreement the sum of C$1,671,066, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act, which amount shall be subject to a reduction equivalent to amounts paid by either direct deposit, certified cheques or bank drafts by the Canyon Respondents pursuant to paragraphs 28 and 30(d) above to the Remaining Canyon Belize Investors. The Canyon Respondents are responsible for providing Staff with accurate information regarding the amount of such payments to investors and satisfactory supporting evidence. If the information provided to Staff regarding payments is subsequently found to have overstated the payments actually made to investors, the reduction to the disgorgement amount will be adjusted accordingly and the Canyon Respondents will pay the difference to the Commission;

(f) Borland, Robbins and the Canyon Entities undertake to pay directly to all of the Ontario investors who invested in Canyon Securities involving projects in the Dominican Republic ("Canyon DR Securities") and who still hold those Canyon securities as of March 15, 2013 (the "Remaining Canyon DR Investors") amounts equivalent in each case to the monies paid by or on behalf of those investors to the Canyon Respondents for their Canyon DR Securities within 11 months following the approval by the Commission of this Settlement Agreement;

(g) Borland, Robbins and the Canyon Entities, jointly and severally, shall disgorge to the Commission the sum of C$1,519,658, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act, which amount shall be payable in one year from the date of settlement, subject to a reduction equivalent to amounts paid by either direct deposit, certified cheques or bank drafts by the Canyon Respondents pursuant to paragraph 30(f) above to the Remaining Canyon DR Investors. Borland, Robbins and the Canyon Entities are responsible for providing Staff with accurate information regarding the amount of such payments to investors and satisfactory supporting evidence. If the information provided to Staff regarding payments is subsequently found to have overstated the payments actually made to investors, the reduction to the disgorgement amount will be adjusted accordingly and Borland, Robbins and the Canyon Entities will pay the difference to the Commission;

(h) Trading in any securities by the Canyon Respondents cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

(i) Acquisition of any securities by the Canyon Respondents is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

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

(k) Borland, Robbins and Caruso shall resign all positions that any of them hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

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

(m) Caruso and Borland are permanently prohibited, pursuant to paragraphs 8.2 and 8.4 of subsection 127(1) of the Act, from becoming or acting as a director or officer of any registrant or investment fund manager;

(n) Borland and Caruso are prohibited, pursuant to paragraph 8 of subsection 127(1) of the Act, for a period of five (5) years from the date of the Order attached as Schedule "A" from becoming or acting as a director or officer of any issuer; and

(o) The Canyon Respondents are permanently prohibited 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.

31. The Canyon Respondents agree to make the payments ordered above in subparagraph 30(c) by wire transfer immediately on the date that the Commission approves this Settlement Agreement.

PART VI – STAFF COMMITMENT

32. If the Commission approves this Settlement Agreement, Staff will not commence any other proceeding under the Act against the Canyon Respondents in relation to the facts set out in Part III of this Settlement Agreement, and any other matter which has come to the attention of Staff in relation to Staff's investigation of the conduct of the Canyon Respondents up to the date of this Settlement Agreement, except in relation to any matter if Staff concludes that any information provided by the Canyon Respondents to Staff in relation to Staff's investigation of such matter is not accurate, and subject to the provisions of paragraph 33 below.

33. If the Commission approves this Settlement Agreement and the Canyon Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Canyon 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 Canyon 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 sub-paragraphs 30(c), (e) and (g) above.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

34. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for March 28, 2013, or on another date agreed to by Staff and the Canyon Respondents, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

35. Staff and the Canyon Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Canyon Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

36. If the Commission approves this Settlement Agreement, the Canyon Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

37. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

38. Whether or not the Commission approves this Settlement Agreement, the Canyon 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 VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

39. 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 Canyon Respondents before the settlement hearing takes place will be without prejudice to Staff and the Canyon Respondents; and

    (b) Staff and the Canyon 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.

40. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless Staff and the Canyon Respondents both agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

41. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

42. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Brent Borland"
CANYON ACQUISITIONS, LLC
Per: "Brent Borland"
Title: "CEO"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Brent Borland"
CANYON ACQUISITIONS INTERNATIONAL, LLC
Per: "Brent Borland"
Title: "Member"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Brent Borland"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Wayne Robbins"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Marco Caruso"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Marco Caruso"
PLACENCIA ESTATES DEVELOPMENT, LLC
Per: "Marco Caruso"
Title: "Director"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Marco Caruso"
COPAL RESORT DEVELOPMENT GROUP, LLC
Per: "Marco Caruso"
Title: "Director"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Marco Caruso"
RENDEZVOUS ISLAND, LTD.
Per: "Marco Caruso"
Title: "Director"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Marco Caruso"
THE PLACENCIA MARINA, LTD.
Per: "Marco Caruso"
Title: "Director"

DATED this 22nd day of March, 2013.

"Beverly La Torra"
Witness

"Marco Caruso"
THE PLACENCIA HOTEL AND RESIDENCES LTD.
Per: "Marco Caruso"
Title: "Director"

DATED this 22th day of March, 2013.

"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
HEIR HOME EQUITY INVESTMENT REWARDS INC.;
FFI FIRST FRUIT INVESTMENTS INC.; WEALTH BUILDING MORTGAGES INC.;
ARCHIBALD ROBERTSON; ERIC DESCHAMPS;
CANYON ACQUISITIONS, LLC; CANYON ACQUISITIONS INTERNATIONAL, LLC;
BRENT BORLAND; WAYNE D. ROBBINS;
MARCO CARUSO; PLACENCIA ESTATES DEVELOPMENT, LTD.;
COPAL RESORT DEVELOPMENT GROUP, LLC;
RENDEZVOUS ISLAND, LTD.; THE PLACENCIA MARINA, LTD.;
AND THE PLACENCIA HOTEL AND RESIDENCES LTD.

ORDER
(Sections 127(1) and 127.1)

WHEREAS on March 29, 2011, 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") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Canyon Acquisitions, LLC, Canyon Acquisitions International, LLC (together the "Canyon Entities"), Brent Borland ("Borland"), Wayne D. Robbins ("Robbins"), Marco Caruso ("Caruso"), the Placencia Estates Development LLC also referred to as Placencia Estates Development, Ltd., Copal Resort Development Group, LLC, Rendezvous Island, Ltd., The Placencia Marina, Ltd., and The Placencia Hotel and Residences Ltd. (all collectively the "Canyon Respondents") and others. 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 March 29, 2011 and amended February 14, 2012;

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

AND WHEREAS on _____, 2013 , 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 Canyon Respondents;

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

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

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

(b) trading in any securities by any of the Canyon Respondents shall cease permanently from the date of this Order pursuant to paragraph 2 of subsection 127(1);

(c) the acquisition of any securities by any of the Canyon Respondents shall be prohibited permanently from the date of this Order pursuant to paragraph 2.1 of subsection 127(1);

(d) any exemptions contained in Ontario securities law do not apply to any of the Canyon Respondents permanently from the date of this Order pursuant to paragraph 3 of subsection 127(1);

(e) Borland, Robbins and Caruso shall resign all positions that any of them hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;

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

(g) each of Caruso and Borland shall be permanently prohibited from the date of this Order, pursuant to paragraphs 8.2 and 8.4 of subsection 127(1) of the Act, from becoming or acting as a director or officer of any registrant or investment fund manager;

(h) each of Borland and Caruso shall be prohibited from the date of this Order, pursuant to paragraph 8 of subsection 127(1) of the Act, for a period of five (5) years from the date of the Order attached as Schedule "A" from becoming or acting as a director or officer of any issuer; and

(i) each of the Canyon Respondents shall be permanently prohibited from the date of this Order, pursuant to paragraph 8.5 of subsection 127(1) of the Act, from becoming or acting as a registrant, as an investment fund manager or as a promoter.

(j) each of the Canyon Respondents shall be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(k) the Canyon Respondents shall immediately pay to the Commission:

i. an administrative penalty in the aggregate amount of C$350,000 (jointly and severally), for their failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act; and

ii. the aggregate amount of C$150,000 on a joint and several basis, representing a portion of Staff's costs in this matter;

(l) the Canyon Respondents shall pay to the Commission (jointly and severally) by way of disgorgement within 60 days of the date of this Order, the sum of C$1,671,066, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act, which amount shall be reduced by the amounts paid in cash by the Canyon Respondents to the remaining Ontario investors who invested in Canyon securities in Belize and still hold those securities as of March 15, 2013, provided that the Canyon Respondents have provided accurate information to Staff along with satisfactory supporting evidence of such payments to those investors; and

(m) Borland, Robbins, Canyon Acquisitions, LLC and Canyon Acquisitions International, LLC shall pay to the Commission (jointly and severally) by way of disgorgement the sum of C$1,519,658, obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act, to be designated for allocation or for use by the Commission pursuant to subsection s. 3.4(2)(b) of the Act, which amount shall be payable in one year from the date of this Order, and shall be reduced by the amounts paid in cash by the Canyon Respondents to the remaining Ontario investors holding Dominican Republic Canyon securities as of March 15, 2013, provided that Borland, Robbins and the Canyon Entities have provided accurate information to Staff along with satisfactory supporting evidence of such payments to those investors.

DATED AT TORONTO this _____th day of _____, 2013.

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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

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

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Chapter 6

Request for Comments

6.1.1 Proposed OSC Policy 11-602 Guidelines on the Application of the Prohibition Against Orders of General Application to Applications to the OSC for Exemptive Relief

REQUEST FOR COMMENTS
PROPOSED OSC POLICY 11-602
GUIDELINES ON THE APPLICATION OF
THE PROHIBITION AGAINST ORDERS OF GENERAL APPLICATION TO
APPLICATIONS TO THE OSC FOR EXEMPTIVE RELIEF

April 4, 2013

Introduction

The Commission is seeking comments on its proposed guidelines relating to how the Commission applies the prohibition in section 143.11 of the *Securities Act* on the making of orders of general application (referred to in the guidelines as "prohibited blanket orders") to exemption applications. The Commission is publishing the proposed guidelines for a 60-day comment period. Following the comment period and after taking into consideration any comments received, the Commission will publish the guidelines in final form.

Background

Section 143.11 provides that "The Commission shall not make any orders or rulings of general application." Other members of the Canadian Securities Administrators (CSA) are not subject to a similar statutory prohibition on making orders of general application.

The Commission recognizes that there is a need to address developments in the capital markets on a timely basis. Orders for exemptive relief are tools which the Commission and Director use to provide targeted and responsive securities regulation. While Commission staff work to harmonize our regulatory response to exemption applications across the CSA, we are challenged in our efforts to respond to applicants' requests for exemptive relief where, if granted, they would constitute prohibited blanket orders. The exemptive relief process is not a substitute for the exercise by the Commission of its authority to make rules under section 143(1) of the Act, which is subject to a notice and comment process and to ministerial approval. Rather, exemption applications and orders for exemptive relief help to inform the Commission's rulemaking priorities.

Purpose and Summary of the Proposed Guidelines

The Commission's interpretation of the prohibition on blanket orders includes consideration of the appropriate use of exemptive relief orders and an approach to their issuance which respects the statutory prohibition in section 143.11 and the principles of transparency and accountability of the rule-making process.

The purpose of the guidelines is to set forth the Commission's policy under section 143.8 of the Act on the application of section 143.11 to applications for exemptive relief and the various factors that the Commission or Director will generally consider in determining whether an order sought constitutes a prohibited blanket order. The guidelines are intended to make the application of section 143.11 of the Act by the Commission or the Director more transparent and to assist applicants in proposing appropriate parameters around the scope of the relief they request in exemption applications to the Commission and Director.

Unpublished Materials

The Commission has not relied upon any significant unpublished study, report, decision or other written materials in putting forward the Proposed Guidelines.

Comments

The Commission invites interested parties to submit their comments on the proposed guidelines in writing. Persons submitting comments should be aware that written comments will be made public and will be published on the Commission's website unless confidentiality is requested. If you request confidentiality, the Commission will not place your comments in the public file, but may be required to make your comments available pursuant to a request made under freedom of information legislation.

You must provide your comments in writing by June 5, 2013. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Questions

Please refer your questions to:

Victoria L. Carrier
Senior Legal Counsel, General Counsel's Office
(416) 593 8329
vcarrier@osc.gov.on.ca

Text of the proposed guidelines

The text of the proposed guidelines follows.

ONTARIO SECURITIES COMMISSION POLICY 11-602
Guidelines on the Application of
the Prohibition against Orders of General Application to
Applications to the OSC for Exemptive Relief

1. Purpose

The Commission and Director have authority to issue orders and rulings (often referred to in these guidelines as "exemptive relief orders") that exempt market participants and others from regulatory requirements under the *Securities Act* (Ontario) and the rules. Section 143.11 of the Act prohibits the Commission from making an order or ruling of general application (often referred to in these guidelines as a "prohibited blanket order"). Other members of the Canadian Securities Administrators (CSA) are not subject to a similar statutory prohibition on making orders of general application.

The purpose of these guidelines is to set forth the Commission's policy under section 143.8 of the Act on the application of section 143.11 to applications for exemptive relief and the various factors that the Commission or Director will generally consider in determining whether an order sought constitutes a prohibited blanket order. These guidelines are intended to make the application of section 143.11 of the Act by the Commission or the Director more transparent and to assist applicants in proposing appropriate parameters around the scope of the relief they request in exemption applications to the Commission and Director.

2. Background

The purposes of the Act are set out in Section 1.1 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.

In pursuing the purposes of the Act, the Commission has regard to the fundamental principles provided in Section 2.1, including:

- effective and responsive securities regulation requires timely, open and efficient administration and enforcement of this Act, and
- business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized.

The Commission recognizes that there is a need to address developments in the capital markets on a timely basis in an effort to satisfy its dual mandate. Orders for exemptive relief are tools which the Commission and Director use to provide targeted and responsive securities regulation. Exemptive relief orders typically address circumstances that reflect the particularized needs of a market participant or the evolution of our capital markets before such market developments are addressed through new or amended regulatory requirements.

The Commission's previous statutory authority to issue orders and rulings of general application was removed in 1994 under the *Securities Amendment Act,* 1994, which gave the Commission rule-making authority. Section 143.11 was enacted following the Government of Ontario's determination that there would be little need to continue the Commission's use of blanket orders once the Commission received rule-making power. It provides that "The Commission shall not make any orders or rulings of general application."

While Commission staff work to harmonize our regulatory response to exemption applications across the CSA, we are challenged in our efforts to respond to applicants' requests for exemptive relief where, if granted, they would constitute prohibited blanket orders. The exemptive relief process is not, nor is it intended to be, a substitute for the exercise by the Commission of its authority to make rules under section 143(1) of the Act, which is subject to a notice and comment process and to ministerial approval. Rather, the exemptive relief process compliments and helps to inform the rule-making process and strikes an appropriate balance between targeted, responsive regulation and responsible rulemaking as contemplated by the Act. A market participant may initially bring an application for relief which is 'novel', but when the granting of similar relief becomes 'routine', the relief will typically be incorporated into the Commission's regulatory framework through the rule-making process.

The Commission's interpretation of the prohibition on blanket orders includes consideration of the appropriate use of exemptive relief orders and an approach to their issuance which respects the statutory prohibition in section 143.11 and the principles of transparency and accountability of the rule-making process.

3. Approach and Factors

In determining whether a requested order would constitute a prohibited blanket order, the Commission's considers whether the order is "of general application" and is consistent with our statutory accountability surrounding the rule-making process. In particular, we consider whether the Commission's regulatory response to the requested relief would be better informed by the public comment process for rule-making.

Three key, interrelated factors generally form the basis of our analysis: the scope of the proposed order, its impact, and the permanence of the order. The broader the scope of a proposed order, the more closely we evaluate the order's impact and whether the relief is ongoing or temporary.

Scope of the Proposed Order

We consider the breadth of the requested relief, including the number of applicants or transactions to which the relief applies and whether the order exempts a class of market participants or transactions from regulatory requirements. Where an order applies to a class of market participants or transactions that are not identified, known or ascertainable at the time the order is made, it is more likely to be viewed as a prohibited blanket order.

Related indicia of a prohibited blanket order include:

- whether the market participants or transactions to which the relief applies change over time; and
- the proportion of market participants or transactions benefitting from the relief is large compared to the proportion of market participants and transactions to which the requirements continue to apply.

Impact of the Proposed Order

Material exemptions to securities law requirements which have significant policy implications for capital markets are generally more appropriately addressed through the rule-making process under the Act.

A proposed order is less likely to be viewed by the Commission or Director as a prohibited blanket order if it is intended:

(a) to relieve the applicants from a technical or procedural requirement that does not serve a compelling regulatory purpose in the circumstances;

(b) to relieve the applicants from the unintended application or consequences of a requirement or from duplicative requirements;

(c) to facilitate the transition to a new or amended rule;

(d) to address an "outside" event or a change to an outside requirement, such as an accounting requirement, that affects the application of securities rules in an unanticipated way, or

(e) to relieve the impact of an error in any existing rule or an out-of-date rule until the error or out-of-date rule can be addressed through rule-making.

Permanence of the Proposed Order

In some circumstances, a proposed order may be broad in the scope of its relief and have a significant impact, but may provide temporary or transitional relief. Where a proposed order provides time-limited relief, it may suggest that the order addresses the short term needs of the applicants consistent with facilitating the longer term rule-making process.

4. Guidelines

These guidelines reflect the Commission's application of section 143.11 of the Act and are not intended as prescriptive rules.

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

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/03/2012 to 12/31/2012	4	Aberdeen Canada- EAFE Plus Fund - Units	75,747,211.92	735,581.74
02/01/2012 to 12/31/2012	13	Aberdeen Canada- Emerging Markets Equity Fund - Units	112,042,836.88	768,645.58
01/02/2012 to 12/31/2012	55	Aberdeen Canada- Global Equity Fund - Units	810,125,180.37	8,279,582.65
01/03/2012 to 12/31/2012	4	Aberdeen Canada- Socially Responsible Global Fund - Units	6,397,418.73	76,104.65
01/03/2012 to 12/31/2012	3	Aberdeen Canada- Socially Responsible International Fund - Units	8,520,029.13	13,369.81
03/06/2013	2	ACE INA Holdings Inc. - Notes	13,362,746.00	2.00
03/21/2013	14	Alder Resources Ltd. - Units	436,750.00	8,735,000.00
05/31/2012	28	Amethyst Arbitrage Fund - Units	23,790,113.00	76,213.63
02/21/2013	7	Arcelia Gold Corp. - Common Shares	1,027,500.00	4,110,000.00
03/12/2013	2	Avon Products, Inc. - Notes	8,123,628.96	2.00
06/01/2012 to 10/01/2012	2	BlueTrend Fund Limited - Common Shares	50,734,486.00	169,392.94
03/18/2013	1	Bold Ventures Inc. - Common Shares	9,600.00	80,000.00
03/18/2013	2	Bold Ventures Inc. - Warrants	19,669.10	327,820.00
03/04/2013	18	Brant Park Phase 2 Inc. - Bonds	1,085,000.00	1,085.00
02/29/2012 to 12/31/2012	8	BT Global Growth Fund LP - Units	1,205,000.00	N/A
03/19/2013	1	Canadian Imperial Bank of Commerce - Notes	3,150,000.00	31,500.00
03/15/2013	6	Castle Resources Inc. - Units	1,899,907.48	9,090,000.00
02/28/2013	262	Centurion Apartment Real Estate Investment Trust - Units	7,292,396.90	645,641.90
03/06/2013	4	Clearview Resources Ltd. - Common Shares	704,200.00	60,200.00
03/08/2013	6	Clera Inc. - Common Shares	327,252.00	218,168.00
03/12/2013	4	Coinstar, Inc. - Notes	1,546,303.20	4.00
06/29/2012	3	Commonfund Capital Venture Partners X, L.P. - Limited Partnership Interest	15,025,906.80	N/A

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
03/08/2013	3	Del Frisco's Restaurant Group, Inc. - Common Shares	11,434,823.16	4,750,000.00
03/25/2013	3	Delon Resources Corp. - Receipts	196,000.00	326,666.00
02/28/2013	10	Diablo Technologies Inc. - Common Shares	9,000,000.79	8,149,222.00
03/22/2013 to 03/26/2013	1	Energizer Resources Inc. - Common Shares	1,008,000.00	5,600,000.00
03/22/2013 to 03/26/2013	11	Energizer Resources Inc. - Flow-Through Shares	1,350,000.00	6,750,000.00
06/01/2012	1	Eosphoros Asset Management Fund I, L.P. - Units	200,000.00	2,000.00
03/05/2013	6	Equinix, Inc. - Notes	16,464,000.00	6.00
03/08/2013	1	First Reliance Asset Management - Common Shares	150,000.00	1,500,000.00
03/05/2013	5	FirstEnergy Corp. - Notes	12,342,897.39	5.00
01/01/2012 to 12/31/2012	4	FMS McLean Budden LifePlan Retiree Fund - Units	4,934,205.84	518,919.81
02/29/2012 to 03/30/2012	3	Formula Growth Global Opportunities Fund - Units	110,386.25	N/A
01/31/2012 to 10/31/2012	40	Formula Growth Hedge Fund - Units	9,685,869.90	N/A
03/07/2013	4	Freeport-McMoRan Copper & Gold Inc. - Notes	22,646,938.11	4.00
03/20/2013	7	Goldcorp Inc. - Notes	23,103,000.00	7.00
03/19/2013	2	Gondwana Gold Inc. - Common Shares	107,500.00	500,000.00
02/08/2013	3	Grupo Cementos De Chihuahua, S.A.B de C.V. - Notes	12,024,000.00	3.00
03/04/2013	1	Huntsman International LLC - Notes	3,086,986.41	1.00
03/22/2013	2	Intertainment Media Inc. - Units	300,000.00	300.00
03/14/2013	21	IOU Financial Inc. - Units	978,800.00	2,447,000.00
02/28/2013	1	Isle of Capri Casinos, Inc. - Note	3,085,500.00	1.00
03/26/2013	7	Lakeside Minerals Inc. - Common Shares	333,639.35	6,672,787.00
02/25/2013	1	Luxus Vacation Properties Limited Partnership - Limited Partnership Units	126,000.00	6,000.00
03/22/2013	1	Maudore Minerals Ltd. - Common Shares	1,620,000.00	1,500,000.00
01/01/2012 to 12/31/2012	41	MFS McLean Budden Balanced Fund - Units	299,361,286.81	27,595,629.65
01/01/2012 to 12/31/2012	13	MFS McLean Budden Balanced Growth Fund - Units	105,853,389.71	8,990,048.55
01/01/2012 to 12/31/2012	4	MFS McLean Budden Balanced Growth Pension Fund - Units	5,375,731.56	457,080.89

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2012 to 12/31/2012	5	MFS McLean Budden Balanced Plus Fund - Units	100,403.64	9,924.81
01/01/2012 to 12/31/2012	5	MFS McLean Budden Balanced Value Fund - Units	72,817,589.26	7,931,039.00
01/01/2012 to 12/31/2012	134	MFS McLean Budden Canadian Equity Core Fund - Units	761,261,357.34	77,385,403.08
01/01/2012 to 12/31/2012	53	MFS McLean Budden Canadian Equity Growth Fund - Units	581,262,062.61	8,615,437.12
01/01/2012 to 12/31/2012	4	MFS McLean Budden Canadian Equity Plus Fund - Units	4,249,494.67	412,896.46
01/01/2012 to 12/31/2012	33	MFS McLean Budden Canadian Equity Value Fund - Units	53,178,711.19	4,678,401.62
01/01/2012 to 12/31/2012	69	MFS McLean Budden Dividend Income Fund - Units	25,315,963.77	2,564,737.56
01/01/2012 to 12/31/2012	232	MFS McLean Budden Fixed Income Fund - Units	1,336,735,052.01	22,833,675.10
01/01/2012 to 12/31/2012	7	MFS McLean Budden Global Equity Growth Fund - Units	388,043,430.08	51,304,053.75
01/01/2012 to 12/31/2012	23	MFS McLean Budden Global Equity Value Fund - Units	37,580,378.40	4,956,992.22
01/01/2012 to 12/31/2012	2	MFS McLean Budden Global Research C$ - Hedged Fund - Units	4,570,000.00	503,657.86
01/01/2012 to 12/31/2012	119	MFS McLean Budden Global Research Fund - Units	737,698,075.54	62,302,116.11
01/01/2012 to 12/31/2012	31	MFS McLean Budden International Equity Fund - Units	191,512,722.02	31,491,726.70
01/01/2012 to 12/31/2012	3	MFS McLean Budden LifePlan Growth Fund - Units	6,544,567.55	597,611.20
01/01/2012 to 12/31/2012	3	MFS McLean Budden LifePlan Growth & Income Fund - Units	10,814,415.03	1,018,625.88
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Income Fund - Units	4,526,731.83	427,268.04
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2015 Fund - Units	7,864,289.39	841,271.06
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2020 Fund - Units	12,962,237.68	1,402,315.77
01/01/2007 to 12/31/2007	4	MFS McLean Budden LifePlan Retirement 2025 Fund - Units	3,849,432.04	346,948.73
01/01/2008 to 12/31/2008	4	MFS McLean Budden LifePlan Retirement 2025 Fund - Units	16,650,500.22	1,704,632.78
01/01/2009 to 12/31/2009	4	MFS McLean Budden LifePlan Retirement 2025 Fund - Units	24,994,030.27	2,796,375.99
01/01/2010 to 12/31/2010	4	MFS McLean Budden LifePlan Retirement 2025 Fund - Units	17,873,981.62	1,934,315.27

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2006 to 12/31/2006	2	MFS McLean Budden LifePlan Retirement 2025 Fund - Units	1,399,637.82	133,471.80
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2025 Fund - Units	11,973,911.54	1,297,551.60
01/01/2007 to 12/31/2007	4	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	3,276,161.60	292,058.39
01/01/2006 to 12/31/2006	2	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	1,352,888.28	128,261.08
01/01/2008 to 12/31/2008	4	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	11,503,087.77	1,184,307.76
01/01/2009 to 12/31/2009	4	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	15,779,033.12	1,805,797.79
01/01/2010 to 12/31/2010	4	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	15,503,782.55	1,662,819.19
01/01/2011 to 12/31/2011	4	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	16,221,241.65	1,721,630.83
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2030 Fund - Units	11,924,857.66	1,319,686.77
01/01/2007 to 12/31/2007	4	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	2,045,600.45	180,171.56
01/01/2006 to 12/31/2006	3	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	1,179,601.23	112,207.16
01/01/2008 to 12/31/2008	4	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	7,157,860.05	740,345.24
01/01/2009 to 12/31/2009	4	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	12,345,918.45	1,437,396.03
01/01/2010 to 12/31/2010	4	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	10,292,972.26	1,111,870.31
01/01/2011 to 12/31/2011	4	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	11,726,395.32	1,246,528.91
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2035 Fund - Units	10,230,957.05	1,142,765.77
01/01/2011 to 12/31/2011	4	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	77,673,523.12	1,015,498.18
01/01/2010 to 12/31/2010	4	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	8,107,989.01	890,258.34
01/01/2009 to 12/31/2009	4	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	8,688,361.36	1,046,648.35
01/01/2006 to 12/31/2006	2	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	1,132,631.68	107,588.61
01/01/2008 to 12/31/2008	4	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	4,992,530.80	523,350.01
01/01/2007 to 12/31/2007	4	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	2,305,623.65	199,021.44

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2040 Fund - Units	9,050,972.56	1,028,971.23
01/01/2009 to 12/31/2009	2	MFS McLean Budden LifePlan Retirement 2045 Fund - Units	4,897,201.58	429,016.81
01/01/2010 to 12/31/2010	3	MFS McLean Budden LifePlan Retirement 2045 Fund - Units	2,956,149.82	255,380.81
01/01/2011 to 12/31/2011	4	MFS McLean Budden LifePlan Retirement 2045 Fund - Units	4,603,106.57	403,834.41
01/01/2008 to 12/31/2008	1	MFS McLean Budden LifePlan Retirement 2045 Fund - Units	1,950,708.35	195,070.83
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2045 Fund - Units	5,240,743.64	484,309.13
01/01/2008 to 12/31/2008	1	MFS McLean Budden LifePlan Retirement 2050 Fund - Units	1,946,205.66	194,620.56
01/01/2009 to 12/31/2009	2	MFS McLean Budden LifePlan Retirement 2050 Fund - Units	13,195,730.63	269,635.35
01/01/2011 to 12/31/2011	3	MFS McLean Budden LifePlan Retirement 2050 Fund - Units	2,694,665.61	221,959.01
01/01/2010 to 12/31/2010	3	MFS McLean Budden LifePlan Retirement 2050 Fund - Units	1,706,442.88	141,017.40
01/01/2012 to 12/31/2012	4	MFS McLean Budden LifePlan Retirement 2050 Fund - Units	3,037,248.71	263,684.10
01/01/2009 to 12/31/2009	41	MFS McLean Budden Long Term Fixed Income Fund - Units	134,242,502.42	13,029,712.84
01/01/2006 to 12/31/2006	45	MFS McLean Budden Long Term Fixed Income Fund - Units	201,593,152.89	18,655,212.30
01/01/2007 to 12/31/2007	48	MFS McLean Budden Long Term Fixed Income Fund - Units	211,201,636.12	19,805,130.23
01/01/2008 to 12/31/2008	49	MFS McLean Budden Long Term Fixed Income Fund - Units	181,766,713.30	17,394,822.32
01/01/2010 to 12/31/2010	38	MFS McLean Budden Long Term Fixed Income Fund - Units	177,484,306.35	16,099,752.18
01/01/2011 to 12/31/2011	40	MFS McLean Budden Long Term Fixed Income Fund - Units	126,240,822.66	11,232,336.42
01/01/2012 to 12/31/2012	40	MFS McLean Budden Long Term Fixed Income Fund - Units	140,459,336.91	12,233,474.11
01/01/2011 to 12/31/2011	146	MFS McLean Budden Money Market Fund - Class A - Units	503,681,501.11	50,368,150.11
01/01/2010 to 12/31/2010	117	MFS McLean Budden Money Market Fund - Class A - Units	499,599,136.29	49,959,913.63
01/01/2009 to 12/31/2009	150	MFS McLean Budden Money Market Fund - Class A - Units	2,014,061,190.65	201,406,119.07
01/01/2008 to 12/31/2008	237	MFS McLean Budden Money Market Fund - Class A - Units	600,635,595.84	60,063,559.58

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2007 to 12/31/2007	211	MFS McLean Budden Money Market Fund - Class A - Units	578,600,953.25	57,860,095.32
01/01/2006 to 12/31/2006	156	MFS McLean Budden Money Market Fund - Class A - Units	315,585,743.61	31,556,574.36
01/01/2012 to 12/31/2012	131	MFS McLean Budden Money Market Fund - Units	302,969,349.29	30,296,934.93
01/01/2012 to 12/31/2012	4	MFS McLean Budden Responsible Balanced Fund - Units	3,355,307.36	397,538.07
01/01/2012 to 12/31/2012	10	MFS McLean Budden Responsible Canadian Equity Fund - Units	2,971,440.12	356,376.48
01/01/2012 to 12/31/2012	7	MFS McLean Budden Responsible Fixed Income Fund - Units	3,689,592.44	347,705.03
01/01/2012 to 12/31/2012	11	MFS McLean Budden Responsible Global Research Fund - Units	19,240,892.41	3,214,050.23
01/01/2012 to 12/31/2012	24	MFS McLean Budden Short Term Fixed Income Fund - Units	6,793,052.78	677,299.17
01/01/2012 to 12/31/2012	57	MFS McLean Budden U.S. Equity Core Fund - Units	688,691,780.16	68,982,344.25
01/01/2012 to 12/31/2012	8	MFS McLean Budden U.S. Equity Core Pension Fund - Units	4,676,255.94	56,904.56
03/19/2013	17	Micromem Technologies Inc. - Units	439,231.00	2,691,200.00
03/22/2013	4	Miocene Metals Limited - Units	25,000.00	500,000.00
07/01/2012 to 08/01/2012	1	Monarch Structured Credit Fund Ltd. (Series III) - Units	2,839,769.63	N/A
03/01/2013 to 03/04/2013	2	Move Trust - Notes	8,894,966.89	2.00
03/06/2013	1	MRC Global Inc. - Common Shares	43,318,800.00	24,500,000.00
02/14/2013	1	Neovia Logistics Intermediate Holdings LLC & Neovia Logistics Intermediate Finance Corporation - Notes	10,008,000.00	5,000.00
03/15/2013	11	Pelangio Exploration Inc. - Common Shares	1,540,000.00	11,000,000.00
03/04/2013	4	Radian Group Inc. - Common Shares	5,354,960.00	650,000.00
03/04/2013	1	Radian Group Inc. - Note	102,980.00	1.00
03/22/2013	2	Rainy River Resources Ltd. - Common Shares	29,619.60	10,000.00
02/13/2013	2	ROI Capital - Units	1,738,729.00	1,738,729.00
03/05/2013	2	ROI Capital/2154197 Ontario Inc. & Bejamin Hospitality Inc. - Units	577,678.00	577,678.00
03/06/2013	2	ROI Capital/2276844 Ontario Limited - Units	215,600.00	215,600.00
02/26/2013	2	ROI Capital/Argus Hospitality Group Ltd. - Units	1,520,536.66	1,520,536.66

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
03/01/2013	2	ROI Capital/Castlepoint Studio Partners Limited - Units	21,955.07	21,955.07
02/26/2013	2	ROI Capital/JD Development King St LP - Units	186,105.00	186,105.00
02/19/2013	3	ROI Capital/Newmarket Golden Space Inc. & Newmarket Gorham LP - Units	1,040,460.00	1,040,460.00
02/21/2013	1	ROI Capital/St. Regis (Canada) Inc. - Units	500,000.00	500,000.00
02/12/2013	1	ROI Capital/St.Regis (Canada) Inc. - Units	500,000.00	500,000.00
02/28/2013	5	Royal Bank of Canada - Notes	2,792,000.00	27,920.00
03/15/2013	1	Royal Bank of Canada - Notes	2,038,600.00	20,000.00
03/26/2013	34	Shoreline Energy Corp. - Common Shares	938,518.00	268,148.00
03/01/2013	86	Skyline Commercial Real Estate Investment Trust - Trust Units	9,594,250.00	959,425,000.00
03/27/2013	1	Solarvest BioEnergy Inc. - Common Shares	100,000.00	400,000.00
02/15/2013	5	Starwood Property Trust, Inc. - Notes	19,133,000.00	19,000.00
07/01/2012 to 12/31/2012	3	State Street Institutional US Government Money Market Fund - Units	84,171,494.11	83,446,098.78
01/04/2012 to 10/31/2012	131	Topaz Multi Strategy Fund - Units	73,117,463.00	1,029,039.42
02/28/2013	23	Tornado Medical Systems, Inc. operating as Tornado Spectral Systems - Common Shares	3,009,098.00	1,823,707.00
02/28/2013	1	UBS-Barclays Commercial Mortgage Trust 2013-C5 - Certificate	33,899,111.51	1.00
03/01/2013 to 03/06/2013	5	Vital Alert Communication Inc. - Common Shares	532,500.00	10,650.00
02/28/2013	1	Walker River Resources Corp. - Common Shares	45,000.00	250,000.00
03/07/2013	38	Walton AZ Coolidge Landing Investment Corporation - Common Shares	880,580.00	88,058.00
03/07/2013	58	Walton CA Highland Falls Investment Corporation - Common Shares	1,125,960.00	28,149.00
03/01/2013	1	Wealth Minerals Ltd. - Common Shares	100,000.00	3,445,500.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Bank of Montreal
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated March 25, 2013
NP 11-202 Receipt dated March 26, 2013
Offering Price and Description:
$2,000,000,000.00 - Medium Term Notes (Principal At Risk Notes)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Promoter(s):
-
Project #2032126

Issuer Name:
Banro Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 26, 2013
NP 11-202 Receipt dated March 26, 2013
Offering Price and Description:
U.S.$70,000,000.00
Canadian dollar equivalent of U.S.$20,000,000 - U.S.$40,000,000
* Common Shares
Price: C$ * per Common Share; and

U.S.$30,000,000 - U.S.$50,000,000
* Series A Preference Shares
Price: U.S.$25.00 per Series A Preference Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Promoter(s):
-
Project #2032784

Issuer Name:
Dynamic U.S. Dividend Advantage Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 25, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
Series A, E, F, FH, FI, H, I, T Shares
Underwriter(s) or Distributor(s):
GCIC Ltd.
Promoter(s):
GCIC Ltd.
Project #2035860

Issuer Name:
HealthLease Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 27, 2013
NP 11-202 Receipt dated March 27, 2013
Offering Price and Description:
$60,030,000.00 - 5,800,000 Units Price: $10.35 per Offered Unit
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Dundee Securities Ltd.
GMP Securities L.P.
Raymond James Ltd.
Promoter(s):
-
Project #2034322

Issuer Name:
Mackenzie Floating Rate Income Fund
Mackenzie Strategic Bond Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 27, 2013
NP 11-202 Receipt dated March 27, 2013
Offering Price and Description:
Offering Series A, F, F6, O, O6, SC, S6 and T6 securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
MACKENZIE FINANCIAL CORPORATION
Project #2034066

Issuer Name:
Manulife Floating Rate Senior Loan Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 27, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
Maximum: $ * - * Units
Price: $10.00 per Class A Unit and US$10.00 per Class U Unit
Minimum Purchase: 100 Class A Units or Class U Units
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Manulife Securities Incorporated
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Mackie Research Capital Corporation
Promoter(s):
Manulife Asset Management Limited
Project #2036028

Issuer Name:
Moneda LatAm Growth Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 27, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
Maximum: * - * Units
Price: $10.00 per Unit
Minimum Purchase: $1,000 (100 Units)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Burgeonvest Bick Securities Limited
Dundee Securities Ltd.
Manulife Securities Incorporated
Promoter(s):
Scotia Managed Companies Administration Inc.
Project #2035735

Issuer Name:
Nautilus Minerals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 28, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
$40,000,000.00
RIGHTS TO SUBSCRIBE FOR UP TO 200,000,000 COMMON SHARES AT A PRICE OF $0.20 PER COMMON SHARE
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2036432

Issuer Name:
NEI Northwest Enhanced Yield Equity Corporate Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 27, 2013
NP 11-202 Receipt dated April 1, 2013
Offering Price and Description:
Series A, F and I Shares
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
Northwest and Ethical Investments L.P.
Project #2037399

Issuer Name:
Norbord Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 28, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
$108,900,000.00
3,300,000 Common Shares
Price: $33.00 per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2036067

Issuer Name:
Bank of Nova Scotia, The
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated March 26, 2013
NP 11-202 Receipt dated March 26, 2013
Offering Price and Description:
$1,000,000,000.00 - Senior Notes (Principal at Risk Notes)
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #2024295

Issuer Name:
Cen-ta Real Estate Ltd.
Gro-Net Financial Tax & Pension Planners Ltd.
Type and Date:
Final Long Form Prospectus dated March 27, 2013
Receipted on March 27, 2013
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2018548; 2018543

Issuer Name:
Cortex Business Solutions Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated March 27, 2013
NP 11-202 Receipt dated March 27, 2013
Offering Price and Description:
$7,200,200.00 - 38,920,000 Units Price: $0.185 per Unit
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
Wolverton Securities Ltd.
Stonecap Securities Inc.
Promoter(s):
-
Project #2029276

Issuer Name:
First Asset Advantaged Morningstar U.S. Consumer Defensive Index Fund
(formerly, First Asset Advantaged Morningstar U.S. Consumer Defensive Index Fund)
(Units)
Principal Regulator - Ontario
Type and Date:
Amended and Restated Long Form Prospectus dated March 22, 2013 to the Long Form Prospectus dated February 27, 2013
NP 11-202 Receipt dated March 26, 2013
Offering Price and Description:
Maximum: $100,000,000 - 10,000,000 Units
Price: $10.00 per Unit
Minimum Purchase: 200 Units
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
TD Securities Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
GMP Securities L.P.
Desjardins Securities Inc.
Macquarie Private Wealth Inc.
Dundee Securities Ltd.
Manulife Securities Incorporated
Promoter(s):
First Asset Investment Management Inc.
Project #2008738

Issuer Name:
Foundation Equity Portfolio
Foundation Tactical Balanced Portfolio
Foundation Tactical Conservative Portfolio
Foundation Tactical Growth Portfolio
Foundation Yield Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 28, 2013
NP 11-202 Receipt dated April 1, 2013
Offering Price and Description:
Series A, Series F and Series O Units
Underwriter(s) or Distributor(s):
Portfolio Strategies Securities Inc.
Promoter(s):
PORTFOLIO STRATEGIES SECURITIES INC.
Project #2003817

Issuer Name:
Gulfstream Acquisition 1 Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated March 28, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
$250,000.00 2,500,000 COMMON SHARES Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Charles Shin
Project #2010969

Issuer Name:
Horizons Enhanced Income Equity ETF
Horizons Enhanced Income Energy ETF
Horizons Enhanced Income Financials ETF
Horizons Enhanced Income Gold Producers ETF
Horizons Enhanced Income US Equity (USD) ETF
Horizons Enhanced Income International Equity ETF
Horizons Enhanced US Equity Income ETF
Horizons Active S&P/TSX 60 Index Covered Call ETF
(Class E Units and Advisor Class Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 22, 2013
NP 11-202 Receipt dated March 26, 2013
Offering Price and Description:
Class E Units @ Advisor Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
ALPHAPRO MANAGEMENT INC.
Project #2014968

Issuer Name:
POCML 2 Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated March 28, 2013
NP 11-202 Receipt dated April 1, 2013
Offering Price and Description:
$300,000.00
2,000,000 Common Shares
PRICE: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
-
Project #2025436

Issuer Name:
Ridgewood Canadian Bond Fund
Ridgewood Tactical Yield Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 27, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
Ridgewood Capital Asset Management Inc.
Promoter(s):
Ridgewood Capital Asset Management Inc.
Project #2017453

Issuer Name:
Sun Life BlackRock Canadian Equity Fund (Series A, T5, T8, F and I Units)
Sun Life BlackRock Canadian Balanced Fund (Series A, T5, F and I Units)
Sun Life MFS McLean Budden Canadian Bond Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden Balanced Growth Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden Balanced Value Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden Canadian Equity Growth Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden Canadian Equity Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden Canadian Equity Value Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden Dividend Income Fund (Series A, D, F and I Units)
Sun Life MFS McLean Budden U.S. Equity Fund (Series A, D, F and I Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated March 28, 2013
NP 11-202 Receipt dated March 28, 2013
Offering Price and Description:
Series A, Series T5, Series T8, Series D, Series F and Series I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
SUN LIFE GLOBAL INVESTMENTS (CANADA) INC.
Project #2018112

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Financière des Professionnels - Fonds D'investissement Inc. / Professionals' Financial - Mutual Funds Inc.	Investment Fund Manager	March 28, 2013
Consent to Suspension (Pending Surrender)	Hershaw & Associates Investment Counsel Inc.	Portfolio Manager Exempt Market Dealer	March 28, 2013
New Registration	GHS Securities Canada Ltd.	Investment Dealer	April 1, 2013
New Registration	M5V Advisors Inc.	Portfolio Manager Exempt Market Dealer	April 1, 2013

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