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## ORAL REASONS FOR APPROVAL OF A SETTLEMENT

*The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.*

### 1. OVERVIEW

- [1] Enforcement Staff of the Ontario Securities Commission (**Staff**) alleged, amongst other things, that Stableview Asset Management Inc. (**Stableview**) and Colin Fisher (Stableview and Mr. Fisher are collectively the **Respondents**) contravened the *Securities Act* (the **Act**) by making untrue statements about matters that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent statements from being false or misleading in the circumstances in which they were made and by failing in their duties as registrants, to deal fairly, honestly and in good faith with their clients.
- [2] Staff and the Respondents have jointly submitted it is in the public interest to approve a settlement agreement among the parties dated June 21, 2022 (the **Settlement Agreement**).
- [3] We agree. These are our reasons for approving the Settlement Agreement.

### 2. FACTS

- [4] The relevant facts and admissions, which are set out in detail in the Settlement Agreement, include:
- a. Stableview is registered as an investment fund manager, portfolio manager and exempt market dealer. Mr. Fisher, Stableview's principal and directing mind, is the sole officer, director and shareholder of Stableview. He is also Stableview's Chief Compliance Officer, Ultimate Designated Person and sole Advising Representative.
  - b. The Respondents advised their clients that certain investment parameters and restrictions designed to limit risk would be followed in managing the clients' accounts.

- c. The Respondents disregarded these restrictions and increasingly invested client monies in pooled investment funds holding debentures of a public company that did not constitute investment grade bonds. During the period the Respondents were investing client funds (via the pooled investment funds) in that company, the company was suffering from a deteriorating financial position.
- d. Stableview received fees from the company in which their money was invested. This conflict of interest was not disclosed to clients. As the sole owner of Stableview, Mr. Fisher benefited from Stableview's misconduct.
- e. The Respondents did not advise their clients about the breaches of certain investment parameters and restrictions applicable to their accounts. In addition, they failed in their duties as registrants, to deal fairly, honestly and in good faith with their clients.
- f. On June 9, 2020, Grant Thornton Limited was appointed receiver of Stableview and the investment funds managed by Stableview. The receivership remains in effect.

### **3. THE SETTLEMENT AGREEMENT**

#### **3.1 Approval is in the Public Interest**

[5] We have reviewed the Settlement Agreement in detail and have had the benefit of a confidential settlement conference, held by video conference, with the parties' counsel. We asked questions of counsel and heard their submissions.

[6] Our obligation at this hearing is to determine whether the negotiated result reflected in the Settlement Agreement falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the Settlement Agreement.<sup>1</sup>

[7] The Settlement Agreement is the product of negotiation between Staff and the Respondents. When considering settlements for approval, the Tribunal respects

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<sup>1</sup> *Research in Motion Limited (Re)*, 2009 ONSEC 19 at paras 44–46.

the negotiation process and accords significant deference to the resolution reached by the parties.<sup>2</sup>

[8] The terms under which Staff and the Respondents have agreed to settle this matter are detailed in the Settlement Agreement and need not be repeated here. They include:

- a. Mr. Fisher shall:
  - i. pay an administrative penalty of \$750,000;
  - ii. disgorge to the Commission \$300,000;
  - iii. pay costs in the amount of \$270,000; and
  - iv. pay installments of at least \$50,000 to the Commission at least every twelve months from today's date, until the ordered amounts are paid in full;
- b. Mr. Fisher is subject to permanent market participation bans; and
- c. Stableview, commencing on the date its receivership is wound up by court order, will be subject to permanent market participation bans.

[9] In arriving at our decision, we have applied the relevant factors from the non-exhaustive list of factors the Tribunal has identified as relevant to sanctions orders in general.<sup>3</sup>

[10] These breaches of Ontario securities law are serious. Establishing investment parameters is an essential part of the client/registrant relationship. Registrants have a duty under securities law to respect these parameters. The integrity of Ontario's capital markets is significantly undermined by registrants who disregard investment parameters, fail to ensure that their representations about compliance with applicable investment parameters do not become false and misleading, and fail to deal fairly, honestly and in good faith with their clients.

[11] Mr. Fisher has been registered with the Commission since 2008. Registrants are expected to have a high level of awareness of securities law requirements and

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<sup>2</sup> *Katanga Mining Limited (Re)*, 2018 ONSEC 59 at para 18.

<sup>3</sup> *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at paras 23–26; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at paras 25–26.

the importance of those requirements to the functioning of the capital markets.<sup>4</sup> Therefore, breaches of securities law requirements by a registrant, such as Mr. Fisher, are serious.

- [12] The Respondents benefited from the misconduct. Stableview received management fees as well as compensation from the company in which client funds were invested. As Stableview's sole shareholder, Mr. Fisher benefited from these payments and both Staff and the Respondents are in agreement that Mr. Fisher's benefit was consistent with the amount ordered for disgorgement.
- [13] This settlement will, in our view, achieve specific and general deterrence. The permanent market participation bans will prevent Mr. Fisher from returning to the industry he has worked in since 2008 and prevent him from earning a living in his profession of choice. This will protect the public and promote confidence in Ontario's capital markets. In addition, the Settlement Agreement sends a strong message to registrants that investment parameters must be respected, that conflicts of interest are to be properly disclosed and that transparency and good faith are cornerstones of the registrant-client relationship.

### **3.2 Mitigating factors**

- [14] As mitigating factors, we have considered that:
- a. Mr. Fisher has been continuously registered with the Commission since January 1, 2008. He is also registered in Alberta and British Columbia. He has no prior disciplinary record with any securities regulatory authority.
  - b. Mr. Fisher was forthright in his interviews with the Commission. He candidly admitted from the outset of the investigation to exceeding the clients' investment parameters and regulatory leverage provisions.
  - c. Mr. Fisher consented to the appointment of a receiver over Stableview and its pooled investment funds.
  - d. Mr. Fisher cooperated with the administration of the Stableview receivership. This assisted the receiver with its decision-making process.

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<sup>4</sup> *MRS Sciences Inc*, 2014 ONSEC 14 at para 88.

[15] In addition, Mr. Fisher is impecunious. While a respondent's ability to pay can be a relevant factor in determining appropriate sanctions, it is not a predominant or determining factor.<sup>5</sup> The Panel have reviewed Mr. Fisher's Statement of Financial Condition, which the Panel agrees shall remain confidential for the reason that the desirability of avoiding disclosure of Mr. Fisher's personal financial matters outweighs adherence to the principle that adjudicative records should be available to the public. On the basis of this review, the Panel is satisfied of Mr. Fisher's impecuniosity and also that installment payments as a feature of the order is appropriate in the circumstances.

### **3.3 Monetary Sanctions**

#### **3.3.1 Administrative Penalty**

[16] Staff cited several cases for our consideration. While previous decisions are helpful to our assessment of whether the Settlement Agreement falls within a reasonable range of outcomes, they are of limited value in determining the appropriate length of a market participation ban or the amount of an administrative penalty.<sup>6</sup>

[17] The cases Staff cited involved respondents who made deliberate misrepresentations to investors, failed to disclose conflicts of interest and breached the obligation to deal fairly, honestly and in good faith with clients.<sup>7</sup> These decisions assisted us in determining that the Settlement Agreement fell within a reasonable range of outcomes.

[18] We conclude that the \$750,000 administrative penalty against Mr. Fisher is appropriate given the different types, repetition and severity of the misconduct. The amount is within the range of the precedents we considered. We also conclude the amount will act as a deterrent to Mr. Fisher and other like-minded individuals.

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<sup>5</sup> *Sabourin (Re)*, 2010 ONSEC 10 at para 60.

<sup>6</sup> *Money Gate Mortgage Investment Corp (Re)*, 2021 ONSEC 10 at para 11 (**Money Gate 2021**).

<sup>7</sup> *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40; *Money Gate 2021*; *Coinsquare Ltd (Re)*, 2020 ONSEC 19 (**Coinsquare**); *Caldwell Investment Management Ltd (Re)*, 2019 ONSEC 25 (**Caldwell**).

### **3.3.2 Disgorgement**

- [19] The Tribunal has authority to order disgorgement of any amounts obtained from non-compliance with Ontario securities law. The purpose of disgorgement is to ensure that respondents do not benefit from their misconduct, and to provide specific and general deterrence.<sup>8</sup> The Tribunal has found a disgorgement order to be appropriate in circumstances where an investment fund manager used investor funds in a manner inconsistent with Ontario securities law and statements made to investors.<sup>9</sup>
- [20] In this instance, the parties have agreed that Mr. Fisher will disgorge \$300,000 from the approximate \$1.6 million in management fees Stableview earned since the inception of the pooled investment funds, the subject of this matter, and to the date of the Stableview receivership.
- [21] There are several approaches to calculating the “amounts obtained” from non-compliance with Ontario securities law for the purposes of a disgorgement order. Where amounts obtained were in contravention of Ontario securities law, but there was a legitimate underlying investment business, disgorgement is calculated based on the amounts obtained by the respondents and used for their personal benefit.<sup>10</sup> The parties submit, and we agree, that this is the appropriate approach in this instance because Stableview operated a legitimate investment management business, it earned management fees from that business, and also incurred and paid legitimate business expenses in relation to the business. The parties are agreed that Mr. Fisher, as the sole director, officer and shareholder, personally benefited from those fees to the amount of the disgorgement order.

### **3.3.3 Payment Plan**

- [22] The parties have agreed that, while significant monetary sanctions are warranted, a payment plan is appropriate given Mr. Fisher’s financial situation, and that it is fair and realistic. The administrative penalty should reflect sanctioning factors even where the Commission may not be able to currently

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<sup>8</sup> *MP Global Financial Ltd (Re)*, 2012 ONSEC 35 at paras 46, 49 (***MP Global***).

<sup>9</sup> *Money Gate 2021* at para 46.

<sup>10</sup> *MP Global* at para 49.



recover the amount ordered.<sup>11</sup> In this case, we conclude the agreed monetary sanctions fall within the reasonable range of sanction outcomes. We accept the parties' negotiated assessment that the installment plan is fair and realistic.

### **3.3.4 Costs**

[23] Mr. Fisher has agreed to pay costs in the amount of \$270,000. The parties have agreed that this is a fraction of the costs Staff has incurred in this matter. Settlements on similar matters have had costs awards ranging from \$190,000 to \$300,000.<sup>12</sup> We agree that the costs agreed to are within a reasonable range and appropriate in this instance.

### **3.4 Non-monetary sanctions**

[24] With respect to the non-financial sanctions, Stableview (once the receivership is wound up) and Mr. Fisher will be permanently banned from participating in Ontario's capital markets. There are limited carveouts permitting Mr. Fisher to have a personal investment account and to act as a director or officer of an issuer, other than a reporting issuer or registrant, only once all the monetary sanctions in this matter have been paid in full.

[25] We conclude the permanent market participation bans are appropriate. The misconduct here was serious and occurred while Mr. Fisher was a registrant. We conclude that he should not hold future positions of trust in the capital markets. In addition, Mr. Fisher held senior positions within Stableview that carried with them heightened responsibilities for Stableview's activities. The permanent market participation ban reflects the fact that Mr. Fisher failed to bring to bear the diligence and judgment required of those roles.<sup>13</sup>

[26] The parties have agreed that Mr. Fisher be reprimanded. Reprimands censure misconduct and reinforce the importance of compliance with Ontario securities law.<sup>14</sup> We find that a reprimand of Mr. Fisher is appropriate, given the seriousness of the conduct over the period of time and considering that he is a

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<sup>11</sup> *Money Gate 2021*, at para 72; *Miner Edge Inc (Re)*, 2021 ONSEC 31 at para 98.

<sup>12</sup> *El-Bouji (Re)*, 2020 ONSEC 8 (\$190,000); *Caldwell* (\$250,000); *Coinsquare* (\$300,000).

<sup>13</sup> *Quadrex (Re)*, 2017 ONSEC 3 at para 381, citing *Sterling Grace & Co Ltd*, 2014 ONSEC 24 at para 255.

<sup>14</sup> *Maple Leaf Investment Fund Corp*, 2012 ONSEC 8 at para 28.

registrant and also considering that he held senior positions within Stableview that carried with them heightened responsibilities for Stableview's activities.

**4. CONCLUSION**

[27] In our view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances. The Settlement Agreement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.

[28] For these reasons, we conclude that it is in the public interest to approve the Settlement Agreement. We will, therefore, issue an Order substantially in the form attached to the Settlement Agreement.

[29] Mr. Fisher is hereby reprimanded.

Dated at Toronto this 24th day of June, 2022

*"M. Cecilia Williams"*

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M. Cecilia Williams

*"Sandra Blake"*

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Sandra Blake

*"Andrea Burke"*

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Andrea Burke