ONTARIO SECURITIES COMMISSION

BETWEEN:

TECHOCAN INTERNATIONAL CO. LTD. and HAIYAN (HELEN) GAO JORDAN

Applicants

-and-

ONTARIO SECURITIES COMMISSION

Respondent

NOTICE OF APPLICATION

(Pursuant to s.144 of the Ontario Securities Act and Rule 15 of the Rules of Procedure)

TAKE NOTICE that the Applicants, Techocan International Co. Ltd. and Haiyan (Helen) Gao Jordan, will make an application to the Ontario Securities Commission (the "Commission") pursuant to s.144 of the Securities Act, R.S.O. 1990, c. S.5 as am. (the "Act") at the offices of the Commission located at 20 Queen St. W., 17th floor, in the City of Toronto, on a date to be determined by the Commission.

AND TAKE NOTICE THE APPLICATION IS FOR an order varying the terms of an Order made against the Applicants dated March 24, 2017 in order to fairly redress the gross disparity and disproportionality to the Order subsequently made by the Commission in a related hearing on April 24, 2017 as against co-Respondents in the same proceeding.

THE FACTUAL GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

1. On March 23, 2016, a Notice of Hearing and Statement of Allegations were issued[1] alleging, among other things, that the Applicants, together with Marianne Godwin ("Godwin") and Dave Garnet Craig ("Craig") engaged in unregistered trading, and an illegal distribution of securities of MM Café Franchise Inc. ("MMCF"). It was further alleged that in connection with the distribution of the same securities, Godwin and Craig perpetrated a fraud on investors in respect of the investment of $5.1 million in MMCF.

2. Although various other "allegations" were made by Staff as against the Applicants and other named Respondents in connection with the distribution of securities of other issuers, all of these allegations were subsequently abandoned by Staff of the Ontario Securities Commission ("Staff").[2]

3. Further to an Order dated November 15, 2016, the Commission ordered the hearing to commence on April 20, 2017 and to proceed thereafter for approximately 20 hearing days.

4. On March 24, 2017, the Commission approved a Settlement Agreement dated March 24, 2017[3] (the "Jordan Settlement") between the Applicants and Staff and issued an Order in accordance with the Jordan Settlement.[4] Further to the Settlement Agreement, the Applicants acknowledged they had engaged in unregistered trading and an illegal distribution in respect of the securities of MMCF contrary to Ontario securities law. A term of the settlement also required that the Applicant Jordan agree to testify as a witness for Staff in respect of the continuing proceedings as against Godwin and Craig relating to MMCF.

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[1] Exhibit A to the Affidavit of Kathryn Ginn.
[2] An Amended Statement of Allegations ("SOA") was issued dated April 29, 2016. A Notice of Withdrawal was issued on July 26, 2016 withdrawing all allegations made against named respondents with the exception of the Applicants, Godwin and Craig. An Amended Amended Statement of Allegations was issued dated July 26, 2016. See: Exhibit B to the Affidavit of Kathryn Ginn.
[3] Exhibit C to the Affidavit of Kathryn Ginn.
[4] Exhibit D to the Affidavit of Kathryn Ginn.

5. Among the mitigating factors noted in the Jordan Settlement was that the Applicants fully cooperated with Staff, have not previously been found to have contravened the Act and that the Applicants did not engage in any dishonest conduct or knowingly contravene the Act.

6. Following negotiations as between counsel for the Applicants and Staff, the terms of the Jordan Settlement imposed five-year bans in respect of trading and the acquisition of securities (subject to specified carveouts), being a director or officer of an issuer (subject to carve outs), and obtaining registration. No issue is taken in respect of these "bans" for the purposes of this application.

7. In addition to the "bans" the Applicants were ordered to pay an administrative penalty of $40,000, disgorgement of $110,000 and costs of $15,000 resulting in a net monetary sanction to be paid by the Applicants of $165,000.

8. On April 18, 2017, the Commission issued a Notice of Hearing[5] advising that it intended to hold a hearing on April 24, 2017 to consider whether to approve a settlement agreement between Staff and Godwin and Craig.

9. On April 24, 2017, the Commission issued an Order[6] approving the Settlement Agreement[7] entered into between Staff and Godwin and Craig. Further to the Settlement Agreement dated April 13, 2017 (the "Godwin/Craig Settlement") it was acknowledged that Godwin and Craig engaged in an illegal distribution of securities. The allegations of fraud and unregistered trading were abandoned by Staff.

10. The terms of the Godwin/Craig Settlement imposed five-year bans on Godwin and Craig, capable of being reduced to two years if certain conditions were complied with.

[5] Exhibit E to the Affidavit of Kathryn Ginn.
[6] Exhibit F to the Affidavit of Kathryn Ginn.
[7] Exhibit G to the Affidavit of Kathryn Ginn.

11. In addition to the "bans," Godwin and Craig were each order to pay costs of $1,000. No administrative penalty was imposed. No order for disgorgement was imposed. In contrast to the net monetary sanction required to be paid by the Applicants of $165,000, the net monetary sanction required to be paid by each of Godwin and Craig was $1,000.

12. The Commission issued and published "Oral Reasons for Approval of a Settlement"[8] in respect of the Godwin/Craig Settlement dated April 24, 2017. The Commission described the conduct at issue as "serious". The Commission noted that "the sanctions agreed to by the parties are not severe", noting that "no administrative penalty is provided for and the agreed amount of costs is nominal". Among the mitigating factors noted in the Oral Reasons is that Godwin and Craig cooperated with Staff, they had not previously been found to have breached the Act, they were not previously registered with the Commission and there is no evidence that they knowingly breached the Act. It was also noted that Godwin and Craig have limited financial resources. In the Commission's Oral Reasons no mention is made to the Jordan Settlement, nor are any reasons provided that would explain the significant disparity and disproportionality in the monetary sanctions imposed as against Godwin/Craig when compared to the monetary sanctions imposed as against the Applicants.

13. On April 25, 2017 counsel for the Applicants wrote to the Director of Enforcement[9] (the "Director") to request a meeting to discuss the Jordan Settlement and the Godwin/Craig Settlement, noting the following:

> As is readily apparent from the two orders made by the OSC (copies of which are attached), there is a gross discrepancy in the manner which Staff and the OSC dealt with my client as distinct from the manner in which Staff and the OSC dealt with the other two respondents which simply put is unfair. It is, simply put, impossible to reconcile the disparity in the sanctions in a reasonable and fair manner. Parties who were alleged to have perpetrated a fraud receive monetary sanctions totalling $1,000. In contrast, a party who is not alleged to have perpetrated a fraud and did not receive (or spend) $5.1 million of investor money, is ordered to pay monetary sanctions totalling $165,000.

[8] Exhibit G to the Affidavit of Kathryn Ginn.
[9] Exhibit H to the Affidavit of Kathryn Ginn containing an email chain between counsel for the Applicants and the Director of Enforcement commencing April 25, 2017 and ending July 6, 2017.

14. The email to the Director requesting the meeting was copied to the two Staff counsel who had carriage of the proceedings.

15. On May 9, 2017[10] counsel for the Applicants attended a meeting with the Director at the offices of the Commission, at which time the issues noted in the April 25, 2017 email were discussed. At the conclusion of the meeting, the Director advised that he would get back to counsel for the Applicants as to what if anything could be done to address the disparity of treatment as between the Applicants and Godwin and Craig.

16. Having received no response, on May 26, 2017[11] counsel for the Applicants wrote to the Director further to the meeting on May 9, asking if the Director "had an opportunity to consider Staff's position respecting the steps that may be taken to redress the gross disparity and disproportionality as between the two settlement agreements in this matter".

17. Having received no response, on June 7, 2017[12] counsel for the Applicants wrote again to the Director asking for Staff's position respecting the matter.

18. Having received no response, on June 30, 2017[13] counsel for the Applicants wrote again to the Director noting that, having raised this matter by email dated April 25 followed by the meeting on May 9, "it does not seem unreasonable in the circumstances to have expected a response by June 30". The Director was advised that counsel would "proceed accordingly".

19. On July 6, 2017[14] the Director sent an email to counsel for the Applicants advising as follows:

> Staff have discussed your concerns internally and we remain of the view that the process leading up to the settlements was fair and ultimately the settlement in the

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*

Techocan matter were in the public interest and as such were approved by the Commission. Staff do not intend to take any further steps in this matter.

20. Notably, the Director failed in any way to offer any explanation to the Applicants that may reasonably explain why, in the circumstances of this matter, the Applicants were ordered to pay monetary sanctions that were 165 times greater than what Godwin and Craig were ordered to pay.

21. As noted in counsel for the Applicants April 25 email to the Director[15], as the Applicants were co-Respondents further to the Notice of Hearing issued by Staff, the Applicants were aware not only of the allegations being made against Godwin and Craig, including the allegation of fraud, but were also aware (having received the disclosure) of the evidence Staff intended to rely on to prove those allegations. Moreover, as noted in the April 25 email, at the time of entering into the Jordan Settlement, Staff not only confirmed its intention to proceed with those allegations, but also demanded as a term of the Jordan Settlement that the Applicant Jordan agree to testify against Godwin and Craig as Staff witnesses.

22. Among the disclosure made by Staff preceding the Settlements was a Will Say statement of Kelly Everest[16], a Staff Senior Forensic Accountant who prepared a source and use analysis of the approximately $5.1 million raised by MMCF, a company which according to the Godwin/Craig Settlement was incorporated by Godwin, who served as Chief Executive Officer and Director and Craig, who served as Chief Development Officer and director. Ms. Everest's will say contained a section entitled "MMCF Funds Used by Godwin and Craig" referring to the fact that hundreds of thousands of dollars obtained as a result of the illegal distribution of shares of MMCF were used by Godwin and Craig.

[15] *Ibid.*
[16] Exhibit I to the Affidavit of Kathryn Ginn (excerpt only).

THE LEGAL GROUNDS FOR THE APPLICATION ARE AS FOLLOWS:

A. Jurisdiction to make an Order under section 144 of the *Securities Act*

23. Pursuant to section 144(1) of the Act the Commission has the jurisdiction to revoke or vary a decision of the Securities Commission. Section 144[17] of the Act reads as follows:

> 144(1) The Commission may make an order revoking or varying a decision of the Commission, on the application of the Executive Director or a person or company affected by the decision, if in the Commission's opinion the order would not be prejudicial to the public interest.

24. There are three guiding principles that the Commission will consider in determining whether or not to vary or grant a s.144 application. First, the Commission should revoke or vary a previous order of the Commission where there is manifest unfairness to the applicant, or where the facts and circumstances clearly demonstrate that an order should not stand. Second, the Commission must consider all of the facts and circumstances pertaining to an order. Third, the applicant bears the onus of showing that revoking or varying an order is justified and not prejudicial to the public interest.[18]

25. In assessing the fairness of a settlement, the Commission will consider whether or not a reasonable person would have agreed to the settlement based on the information that was known to the applicant. The Commission will not grant an applicant relief under s.144 of the Act where the applicant's agreement to the terms of a settlement was "voluntary, unequivocal, and informed".[19] It is the position of the Applicants that the Applicants agreement to the Jordan Settlement was not informed, as the Applicants were never informed of Staff's intention to settle with the co-Respondents Godwin and Craig for only a fraction (1/165th) of the monetary sanctions demanded of the Applicants.

26. An applicant need not show that a settlement was negotiated in bad faith to obtain relief under s.144 of the Act. Logic and fairness must govern an analysis as to whether or not a

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[17] *Securities Act*, RSO 1990, c S 5, s 144.
[18] *Rankin v Ontario Securities Commission*, 2013 ONSC 112 at para 17.
[19] *Ibid* at paras. 19, 46.

settlement should be set aside.[20] Logic and fairness demand that the Jordan Settlement be varied.

27. Staff have an obligation to disclose all relevant information to a respondent in a proceeding. A settlement may be manifestly unfair if Staff fails to disclose material information prior to settlement. To obtain relief under s.144 of the Act, an applicant must show that Staff misrepresented a fact, or omitted a material fact, or that there was a material fact unknown to the Commission at the original proceeding.[21]

28. An applicant seeking to vary or revoke a settlement pursuant to s.144 of the Act on the grounds of manifest unfairness arising from non-disclosure of material information must show that had they known the undisclosed information, the outcome of the proceeding likely would have been different. The Commission will not grant an applicant relief under s.144 of the Act where undisclosed information was not crucial to the settlement or likely to affect the outcome of a proceeding.[22]

29. In the instant application, the information unknown to the Applicant (and to the Commission) at the time of approving the Jordan Settlement was that Staff was prepared to settle proceedings against the co-Respondents, Godwin and Craig, for a monetary sanction of $1,000, a monetary sanction that was 165 times less than the monetary sanctions demanded by Staff, and ordered by the Commission, against the Applicants.

30. The Commission should grant relief under s 144 of the Act where new facts emerge or new law is enacted that would change the effect of an original order or settlement. Where fresh evidence is discovered that would have affected the outcome of the original proceeding and was not discovered at the time of that proceeding, "it is obvious that a decision cannot stand."[23] Had Staff disclosed that it was prepared to settle proceedings against Godwin and

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[20] *Re AIT Advanced Information Technologies Corp.*, 2008 CarswellOnt 5938 at para 3.
[21] *Rankin, supra*, at para. 18; *Re X Inc.*, 2010 CarswellOnt 9214 at para 23.
[22] *Ibid,* at para 45.
[23] *Re Juniper Fund Management Corp.*, 2011 CarswellOnt 13030 at para 33; *Re Kostelesky*, 2017 ABASC 44 at para 20; *Re X Inc, supra*, at para 32.

Craig for a monetary sanction of $1,000 the Applicants never would have agreed, as part of the Jordan Settlement, to pay $165,000 in monetary sanctions. Moreover, given the gross disparity and disproportionality as between the Godwn/Craig Settlement and the Jordan Settlement, it is "obvious" that the Commission's decision approving the Jordan Settlement cannot stand.

31. Section 144 of the Act confers discretion on the Commission to set aside a settlement agreement where it is in the public interest to do so. The Commission will not second guess a prior public interest finding unless a new fact or circumstance emerges that was not previously considered by the Commission.[24] In the instant application the "new fact" that emerged that was not known at the time the Commission approved the Jordan Settlement was that Staff was prepared to settle proceedings against the co-Respondents on grossly disparate and disproportionate terms.

32. Section 144 of the Act is not a substitute for an appeal. An applicant cannot use s.144 of the Act as a backdoor attempt to re-hear an issue or as an alternative to appealing a decision. If a s.144 application is effectively an appeal of a prior decision or settlement, it will be rejected as being contrary to the public interest.[25]

33. This Application is not an appeal. A term of the Jordan Settlement (para. 36) in fact required the Applicants to waive all rights to an appeal of this matter under the Act. By inducing the Applicants to waive any right of appeal as a term of the Jordan Settlement while failing to inform the Applicants of material information clearly relevant to the decision to settle, is manifestly unfair. Moreover, by the time the Applicants learned of the material information, the Godwin/Craig Settlement dated April 24, 2017, assuming there had been no waiver as a term of the Jordan Settlement, the appeal period had lapsed.

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[24] *Rankin, supra*, at para 25; *Kostelesky, supra*, at para 27.
[25] *Kostelesky, supra*, at para 20, 24; *Re X Inc., supra,* at para 35.

B. Sanctions must accord with the rules of natural justice and procedural fairness

(i) Sanctions must be proportionate

34. Sanctions must be proportionate to the circumstances and conduct of each party. Determining proportionate sanctions depends on the specific circumstances of a case. The Commission must take into account all relevant circumstances in assessing proportionate sanctions. Relevant circumstances include what each person knew or ought to have known, what they intended or believed, steps taken to determine the legitimacy of an investment scheme, and the role of each party in offering or selling those schemes.[26]

35. Parties who by their conduct are more responsible for illicit activity should receive more substantial penalties than those with less extensive involvement in the same activity. The Commission has imposed disgorgement and administrative penalties on parties with a greater role in illicit activity above and beyond the penalty imposed on other parties to the same activity. A party may also receive a higher penalty than other parties to the same conduct if that party has a history of regulatory misconduct.[27]

36. The conduct engaged in by the Applicants is set out in the Jordan Settlement. The conduct engaged in by the co-Respondents Godwin and Craig is set out in the Godwin/Craig Settlement. Curiously, despite the detailed assertions respecting the conduct of Godwin and Craig as set out in Staff's SOA, including allegations that Godwin and Craig deceived investors when inducing them to invest $5.1 million in MMCF, none of those facts were placed before the Commission at the time of approving the Godwin/Craig Settlement. Similarly, although detailed assertions respecting the use of investor funds by Godwin and Craig were also set out in Staff's SOA, none of those facts appear to have been placed before the Commission.[28]

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[26] *Re First Global Ventures*, 2008 CarswellOnt 6483 at para 39; *Re Merax Resources Management Ltd.*, 2012 CarswellOnt 15721 at para 43; *Re Sabourin et al*, 2010 CarswellOnt 3840 at para 56.

[27] *Re Sabourin et al, supra*, at paras 70, 76; *Re First Global Ventures, supra*, at para 56; *Re Merax Resource Management Ltd., supra*, at para 82.

[28] In accordance with paragraph 39 of the Godwin/Craig settlement, the Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. There is no indication in either the Order approving the Godwin/Craig

37. For example, while the Godwin/Craig Settlement notes that neither Godwin nor Craig were previously registered and that they relied on a third-party adviser to manage investor relations, facts which were relied on by the Commission in their Oral Reasons to support a finding that Godwin and Craig performed a "limited role", the finding is completely belied by the disclosure provided to the Applicants and the allegations contained in the SOA, where Staff expressly alleged that Godwin and Craig engaged in the business of trading by: meeting with and making presentations to potential investors; creating promotional materials about MMCF that were provided to potential investors; accepting and signing the subscription agreements submitted by investors; controlling and being the signatories on MMCF's bank accounts which received investors funds for the purchase of MMCF shares; and compensating the Applicants to solicit and investors and sell shares of MMCF.

38. More particularly, in the promotional materials created by Godwin and Craig for MMCF[29], Godwin and Craig are described as follows:

> **Marilyn Godwin, Chief Executive Officer**
>
> - Leads Corporate Communications, Consumer and Investor Relations
> - Entrepreneur & Investment Banker: Real Estate, Entertainment, New Media, Internet Equities
> - Founding Partner, Income Trust Investor Relations, acquired by Canada's Largest Corp. Communications Firm
> - Vice President Strategy & Corporate Development, Global Publisher, Ranked No. 1 Media Financial Analyst
>
> **Dave Craig, Chief Development Officer**
>
> - Leads Business Development, In-Store Guest Experience, Environmental Design

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Settlement or in the Oral Reasons issued by the Commission approving the settlement that any additional facts were submitted at the settlement hearing.

[29] Exhibit J to the Affidavit of Kathryn Ginn.

- Present Senior Business Development Executive at top 20 ranked global franchisor

39. While it may be open to Staff to withhold relevant facts from the Commission when submitted a settlement agreement for approval by the Commission, it is inappropriate and unfair to do so when the result of doing so is to cause the Commission to approve a settlement agreement which is completely disparate and disproportional to a settlement agreement approved by the Commission as against other Respondents to the same proceeding. This appears to be precisely what Staff has done in order to convince the Commission to approve the Godwin/Craig Settlement notwithstanding the gross disparity and disproportionality to the Jordan Settlement.

40. The forensic analysis conducted by Staff's forensic accountant of the use of funds by Godwin and Craig made it clear that hundreds of thousands of dollars were used for the personal benefit of Godwin and Craig. However, this fact was also omitted from the Godwin/Craig Settlement approved by the Commission. As a consequence, neither Godwin or Craig were ordered to make any disgorgement of such funds despite their acknowledgement that such money (i.e. forming part of the $5.1 million raised on behalf of MMCF) was obtained in contravention of Ontario Securities law. In contrast, the Jordan Settlement required the Applicants to disgorge not only funds received from the $5.1 million used by the Applicants but also funds received by the Applicants for the benefit and use of third parties. As noted in the Joran Settlement, of the total of $110,000 paid in commissions to the Applicants for referring investors to Godwin and Craig, $54,250 was paid by the Applicants to agents and was not used by or for the benefit of the Applicants. Despite this fact, the Applicants were required as a term of the settlement to make disgorgement of the full $110,000.

41. A similar disparity exists in respect of the administrative penalty and costs. While the Applicants admitted to the same breach of the Act admitted to by the co-Respondents (i.e. a breach of s.53(1)) (although for reasons that are unknown Staff not only abandoned the allegation of fraud as against Godwin and Craig, but also abandoned the allegation of unregistered trading as against Godwin and Craig), the Applicants were required to pay an

administrative penalty of $20,000 per breach while no administrative penalty was imposed as against Godwin and Craig. In respect of costs, while the Applicants were ordered to pay $15,000 towards Staff costs, Godwin and Craig were ordered to pay $1,000 each.

(ii) Disparate sanctions must be justified

42. As is the case in criminal proceedings, disparate sanctions imposed as against co-Respondents in connection with the same matter must be justified[30]. Despite being invited to reasonably explain to the Applicants the justification for Staff's disparate approach to sanctions, Staff refused to justify in any way the gross disparity. Moreover, despite being aware of the disparity in sanctions between the Jordan Settlement and the Godwin/Craig Settlement (one member of the panel on the Jordan Settlement was also on the panel approving the Godwin/Craig Settlement), no justification for the gross disparity in sanctions was provided by the Commission.

(iii) Parties must be given an opportunity to be heard

43. By proceeding in the manner described above, Staff have denied the Applicants procedural fairness. Procedural fairness requires that a party be given notice of a potential sanction and an opportunity to be fully heard at a sanctions hearing.[31] At no time did Staff inform the Applicants, either before or after entering into the Jordan Settlement, that Staff intended to settle the proceedings against Godwin and Craig for a monetary sanction of $1,000.

44. Procedural fairness encompasses the duty to negotiate in good faith. A misrepresentation by Commission Staff, which may also include the failure to state a fact that is required to be stated or a fact that is necessary to make the statement not misleading, may breach the rules of natural justice and amount to procedural unfairness if it causes a misunderstanding between parties. A misunderstanding need not arise out of bad faith to breach the rules of natural justice; it may be sufficient for one party to misunderstand an element of a proceeding where the misunderstanding results in prejudice to that party, for example by

[30] *R v LM*, 2008 2 SCR 163 at para.17; *R v Blazeiko*, [2000] O.J. No. 627 at para. 1(Ont.C.A.); *R v Theriault*, 2005 CarswellOnt 5167 at para. 2-3

[31] *Re Merax Resource Management Ltd., supra*; *Northern Securities Inc. v Ontario (Securities Commission)*, 2015 ONSC 3641 at para. 37; *Broers v Real Estate Council of Alberta*, 2010 ABQB 497 at para 78.

resulting in a heavier fine.[32] As noted in the Applicant counsel's email to the Director dated April 25, 2017, at the time of entering into the Jordan Settlement, Staff not only said nothing about intending to settle allegations against Godwin and Craig for a total monetary sanction of $1,000, but Staff also advised they intended to proceed with the allegations of fraud (in addition to the allegations of unregistered trading and illegal distribution) for which Staff secured, as a term of the Jordan Settlement, the Applicants agreement to testify against Godwin and Craig.

C. Ability to pay is not determinative of an appropriate sanction

45. While the ability to pay a monetary sanction is a relevant factor in assessing an appropriate sanction, the Commission has repeatedly held it is neither a predominant nor determining factor. The Commission is well aware that it routinely imposes monetary sanctions in the public interest notwithstanding a respondent's inability to pay. A party's ability to pay is only one factor to be considered in determining an appropriate sanction.[33]

46. More particularly, the "limited financial resources" of Godwin and Craig referred to by the Commission in its Oral Reasons (at para. 12) cannot and does not justify the gross disparity and disproportionality of the monetary sanctions imposed against the Applicants as compared to the monetary sanctions imposed against Godwin and Craig.

ORDER REQUESTED:

47. The Applicants are seeking an order pursuant to s.144 varying the monetary sanctions in the Jordan Settlement so as to redress the gross disparity and disproportionality in comparison to the sanctions imposed in the Godwin/Craig Settlement. It is proposed that this be accomplished by varying the following terms of the Jordan Settlement:

    a. Reducing the administrative penalty from $40,000 to $10,000;
    b. Reducing the disgorgement order from $110,000 to $55,750; and

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[32] *Danzig v British Columbia (Securities Commission),* 1996 CanLII 2495 at para. 21-23 (BCCA)
[33] *Re Sabourin et al., supra,* at para 60; *Re Merax Resource Management Ltd., supra,* at para 77; *Rezwealth Financial Services* (2014) 37 OSCB 6731 at para 70; *Gold-Quest International* (2010) 33 OSCB 11179 at para 99.

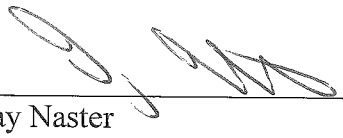
c. Reducing the costs award from $15,000 to $5,000.

47. By giving effect to this proposed outcome, the monetary sanctions as against the Applicants will total $70,750 and still represent a monetary sanction 70 times greater than that imposed further to the Godwin/Craig Settlement. The proposed order if made would continue to give effect to principles of deterrence and will also give effect to whatever differences may exist as between the circumstances of the Applicants and Godwin/Craig. Most importantly, the proposed order would redress the gross disparity and disproportionality in the respective monetary sanctions in a manner which is fair to the Applicants and is not inconsistent with the public interest.

48. What must be stressed is that by agreeing to an early resolution of allegations in a manner consistent with the public interest, the Applicants were reasonably entitled to expect that any subsequent sanction agreed to by Staff and/or imposed by the Commission as against the co-Respondents, whether by settlement or following a contested hearing, would have due regard for the principles of disparity and proportionality. The terms of the Jordan Settlement clearly informed the Applicants' reasonable expectations in that regard. The terms of the Godwin/Craig Settlement were clearly inconsistent with those reasonable expectations.

49. The palpable unfairness resulting from the Godwin/Craig Settlement must be redressed in a fair and reasonable manner, consistent with the public interest. If not addressed, the clear message is that there is no incentive for a respondent to a Commission proceeding to reach an early resolution and enter into a settlement agreement prior to and independent of other respondents to the same proceeding. Doing so will not result in any benefit to the Respondent and may, as in the instant matter, clearly be prejudicial to their interests. It is submitted that such message would be contrary to the due administration of Commission proceedings, and the public interest.

ALL OF WHICH is respectfully submitted by,



Jay Naster

Counsel to the Applicants

Dated: August 14, 2017