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

-and-

IN THE MATTER OF
MERIDIAN RESOURCES INC. AND STEVEN BARAN

Hearing Date:	**February 24, 2003**		
Panel:	**Paul M. Moore, Q.C.**	**-**	**Vice-Chair (Chair of the Panel)**
	Kerry D. Adams	**-**	**Commissioner**
Counsel:	**Karen Manarin**	**-**	**For the Staff of the Ontario Securities Commission**
	Richard Williams	**-**	**Agent for Meridian**
	Steven Baran	**-**	**Self-Represented**

DECISION AND REASONS

I. The Proceeding

[1] This proceeding was a hearing under section 127 of the *Securities Act*, R.S.O., 1990, c. S. 5 (the Act) in the matter of Meridian Resources Inc. (Meridian) and Steven Baran pursuant to a notice of hearing dated July 31, 2002 and the related statement of allegations of staff of the Commission, to consider whether it is in the public interest to make one or more of the orders outlined in the notice of hearing.

[2] In her opening statement, counsel for staff suggested that the hearing be divided into two parts, one to hear evidence and argument concerning staff's allegations, and the other to hear argument, if staff establishes its allegations, as to what orders should be made under section 127 of the Act. The suggestion was agreeable to Baran.

[3] We did not accept staff's suggestion.

[4] A section 127 proceeding is an administrative one, not a criminal or civil action. The paramount question, from beginning to end, that the Commission must decide is whether it is in the public interest for it to make one or more of the orders permitted in subsection 127(1).

[5] Subsection 127(4) provides that no order shall be made under section 127 without a hearing, subject to section 4 of the *Statutory Powers Procedure Act*.

[6] The purpose of this hearing is to afford the respondents an opportunity to be heard and to help the Commission to decide whether making the orders requested by staff and referred to in the notice of hearing would be in the public interest.

[7] In some cases, it may be convenient for the hearing required by subsection 127(4) to be divided as suggested by staff. In the past, this has been done occasionally by the Commission on request; but this has been an exception, and is not necessarily desirable.

[8] We saw no good reason in this case for dividing this hearing as suggested by counsel for staff.

II. Overview of Staff's Allegations

[9] Staff alleged, in essence, that Meridian and Baran acted contrary to Ontario securities law and the public interest in that:

(1) Meridian and Baran engaged in the conduct described in the agreed facts.

(2) Baran made representations that are prohibited by section 38(1) of the Act by stating in a letter that he would refund the purchase price of Meridian shares.

(3) Baran engaged in conduct which constituted "trading" in securities without being registered in accordance with section 35(1) of the Act by selling Meridian shares (shares).

(4) Baran, as his ownership of shares changed, failed to file reports of insider trading within the required time period as required by section 107(2) of the Act.

III. Agreed Facts

[10] The parties agreed to the following facts.

[11] Baran is the President and a director of Meridian.

[12] Meridian is a diversified company which, in the past, has been involved in mining projects in Sudbury, in harvesting timber resources in Guyana and in an internet company.

[13] Meridian is a reporting issuer in Ontario whose shares traded on the Canadian Dealers Network until July of 2000.

[14] In May of 2001, the Commission issued a temporary cease trade order, pursuant to section 127(1) and 127(5) of the Act against Meridian for failure to file audited financial statements, which have subsequently been filed. The temporary cease trade order is still in effect.

[15] Baran has never been registered in any capacity under the Act.

[16] In approximately 1999, Baran responded to an advertisement regarding financing and met with the president (the president) of an investment corporation (the investment corporation) located in Laval, Quebec. The president offered loans to clients who had funds locked-in a self-directed registered retirement savings plan (RRSP). It was agreed that the president would introduce clients who may be interested in having funds in these self-directed RRSPs converted into shares of Meridian and then the president would arrange to loan back to the clients a portion of the funds withdrawn from their self-directed RRSP. Baran would deliver Meridian shares from his own holdings to the clients at $0.50 per share. It was agreed that the funds would be paid to Meridian. It was also agreed that Meridian would retain $0.20 per share and transfer the balance of the funds to the investment corporation, who would forward the money to the clients, pursuant to the arrangement between the president and the clients. All aspects of the transaction with respect to Meridian were conducted under the direction of Baran.

[17] During 1999, the president referred Ms. G. to Baran. Ms. G. wanted to borrow money from her locked-in self-directed RRSP. On September 9, 1999, Ms. G. used $12,000 from her RRSP to purchase 24,000 shares of Meridian at a cost of $0.50 per share. A bank (the bank) held the funds as trustee and administrator. On Baran's instructions, the funds were transferred from Ms. G.'s RRSP account at the bank and

given to Meridian. Meridian retained $4,800, which represented $0.20 per share, and the balance, $7,200, was paid to the investment corporation, in accordance with the arrangement referred to in paragraph 16.

[18] At the time that Baran delivered the Meridian shares to the bank for Ms. G.'s account, their market value was $0.05 per share.

[19] Baran cancelled Meridian shares in his own name and had them re-issued in the name of the bank, in trust for Ms. G.'s RRSP.

[20] The president also referred Ms. R. to Baran. On September 20, 1999, Ms. R. used $17,000 in her RRSP to purchase 34,000 shares of Meridian at a cost of $0.50 per share. The bank also held these funds. On Baran's instructions, the funds were transferred from Ms. R.'s RRSP account at the bank and given to Meridian. Meridian retained $6,800, which represented $0.20 per share, and the balance, $10,200, was paid to the investment corporation in accordance with the arrangement referred to in paragraph 16.

[21] At the time that Baran delivered the Meridian shares to the bank for Ms. R's account, their market value was $0.05 per share.

[22] Once again, Baran cancelled the Meridian shares in his own name and had them re-issued in the name of the bank in trust for Ms. R.'s RRSP.

[23] In November of 1999, Ms. S. of Nova Scotia, contacted the president. Ms. S. wanted to borrow money from her locked-in self-directed RRSP. The president referred Ms. S. to Baran. As a result, Ms. S. contacted Baran and they discussed the eligibility of Meridian shares as an investment in Ms. S.'s RRSP.

[24] In a letter on Meridian letterhead dated November 25, 1999, Baran advised Ms. S. that,

> we hereby give you our irrevocable commitment to buy back your purchased shares @ $0.20 per share provided that your agreed upon terms of financing with [the investment corporation] have been fully complied with and the loan is fully repaid.

[25] Ms. S. did not purchase shares of Meridian.

[26] Baran failed to file reports of insider trading, as required pursuant to section 107(2) of the Act, within the required time period, as his ownership of Meridian shares changed.

IV. Evidence at the Hearing

[27] The parties relied on the agreed facts and no witness was called at the hearing.

[28] However, Baran represented himself and provided us with a submission document containing various documents. Baran did not give sworn testimony and was not subjected to cross-examination.

[29] Baran's submission document contained an unsworn statement by Baran which read as follows:

> **SUMMARY**
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> A proposed private placement was intended to be financed by myself personally as soon as firm commitments were in place for the minimum amount of $150,000.00 which was a requirement of Policy 5.2 of the OSC regulations as noted in the 1995 publication and I understood to be the case in 1999. It was intended that I would deliver previously issued and free trading shares from my own personal holdings as collateral to an investor on an interim basis with all proceeds paid directly to Meridian Resources Inc. (the "Company"). In effect those shares represented a loan by myself to the Company to facilitate the proposed private placement. This was intended as a swap arrangement sometimes referred to as a "Gypsy Swap." This term was used by a CDNX corporate officer and apparently is recognized as acceptable practice. The intention was to file a Form 23 Material Change and any insider report at the time the full amount of the financing was committed or money in place. It was anticipated by [the investment corporation], a company based in Quebec, who agreed to undertake the proposed private placement, that the transaction would be completed in a relatively short period. No shares were ever issued from the Company treasury. The small amount of money generated from the failed financing remains as an outstanding loan payable to me. I received no compensation from the transactions that materialized and in fact lost money since the shares I loaned to the Company were purchased by me at a higher price. The proposed financing was necessary for the continued viability of the Company and to commence diamond production on a propert in Guyana S.A.
>
> When it became clear that the minimum amount of the financing would not materialize the proposed private placement transaction was cancelled. The filing of my insider reports for the two small transactions were unintentionally overlooked. The contacts with those two investors were initiated by themselves personally and were not solicited in any way. The transferred shares in question represented less than 0.5% of my personal holdings and did not affect control of the Company. The public interest was not harmed in any way. On all previous occassions the insider reports by me were filed within the required time.
>
> The contact with a potential investor, Ms. [S.], a client of [the investment corporation] was initiated by herself. She telephoned me directly on a few occasions and requested (demanded) a letter indicating my irrevocable commitment to return her money if the transaction did not materialize. In effect this letter was a Statutory Right of Recission. The text of the letter was dictated by herself. For reasons unknown [the investment corporation] refused to deal with her. She became extremly agitated and called me several times demanding that I personally undertake the transaction with her. I refused since she was a client of [the investment corporation] and circumvention is not my way of doing

business. No transaction ever took place. Ms. [S.] had no reason whatsoever to complain about myself or Meridian Resources Inc. Any complaints by her are frivolous and vexatious. I have not been provided with a copy of her complaint to adequately refute any of her allegations against myself or Meridian Resources Inc.

At all times I only had the interest of the shareholders in mind. I have been and still am the angel investor to the Company in order to keep it active. Since Bre-X there is absolutely no interest in mining ventures undertaken by junior exploration companies particularly in any area outside of North America. The brokerage community, if interested at all, preferred transactions above $2,000,000.00. The Company was desperate to obtain funding for its diamond and gold production project in Guyana, S.A. The pro-forma financial projections indicated potential gross profits of C$0.45 per share with nominal capital funding. Meridian Resources Inc. had the opportunity to become a successful and profitable junior mining company which is a rare development in the junior mining industry.

Recently the CDNX and OSC recognized the difficulty that junior companies are experiencing in obtaining any sort of financing. They authorized private placements of $100,000.00 without the use of a memorandum or prospectus with no restriction on the number of investors.

The shares of Meridian Resources Inc. are an approved investment for RRSP accounts.

Registration by myself, to the best of my knowledge, is not required for a director of a company to seek or arrange financing. I believe that sections 35(1)2 and 35(21) of the Securities Act and Regulations permit such activities as well.

The Cease Trade Order that is still in effect resulted from the late filing of the audited financial statements for the year ended November 30, 2000. The auditor had completed the audit and at the meeting to discuss notes to the audit he revealed without prior notification that his fee would be increased. This requirement was unexpected and not justified since he had already doubled his fees from previous years. The increased fee was not justified since the company was virtually inactive. He refused to provide the audit until his fee was paid in advance. The Company terminated his services and undertook to locate another auditor whose fee was not excessive. During this interval the audit was not submitted within the required period and the Cease Trade Order was issued. An audit was filed in September 2001 and the Company annual meeting was held in November 2001. And application to have the Cease Trade Order revoked was submitted to the Ontario Securities Commission in October 2001. The OSC staff revealed for the first time that I and the Company were under investigation and recommended that the application be withdrawn until the matter was resolved. At the time of the issuance of the Cease Trade Order the shares of the Company were not listed for trading on the CDNX due to excessive delays by that organization to approve projects that the Company was undertaking. Property deposits and engineers fees were paid. This money was forfeited when the shares could not be listed within the time frame for the transfer from the CDN to the CDNX. In my opinion the CDNX was totally at fault for this development.

[30] Another document in the submission document was a letter dated February 25, 2002 from Baran to Commission staff. This letter indicated that Baran had donated the shares owned by him to Meridian as a loan to facilitate a proposed $150,000 private placement through the investment corporation and that the beneficiaries of Ms. R.'s and Ms. G.'s RRSP accounts had each signed private placement forms for a combined total of $11,600 representing $0.20 per share.

[31] However, a copy of the subscription agreement with Ms. G. included in the submission document indicated that the total amount of funds that she was to pay under the agreement amounted to $12,000, being the equivalent of $0.50 per share.

[32] In the February 25 letter Baran stated, "I am not aware of any regulations that prohibit directors of public corporations from soliciting or arranging private placement financings on behalf of the corporation or that registration as a security broker is required."

V. Analysis of the Evidence

[33] Although Baran spoke on his own behalf and was not sworn, nor subjected to cross-examination, we accepted his submission document and his oral submissions as evidence to assist us in understanding Baran's mindset and motivation concerning the events in question.

[34] Even accepting Baran's submission as fact, which we do not, it does not justify his actions in any way.

[35] Clearly, the private placement exemptions – including the $150,000 exemption – were not available to Meridian at the time. The "placements" that occurred were each for less than $150,000. Even if it was permissible to aggregate placements to various RRSP accounts in order to achieve the $150,000 amount, which it was not, the two placements together fell short of $150,000.

[36] In fact, it was Baran who sold his shares to the RRSP accounts for $0.50 per share.

[37] Although Baran argued that he only loaned the shares to Meridian, he acknowledged that the shares were transferred from his name to the purchasers and that Meridian did not issue any treasury shares.

[38] The cancellation of shares registered in Baran's name and the reissuance of such shares by Meridian in the name of the trustee of the RRSPs was a mechanical process by which the transfer of the shares from Baran to the trustee of the RRSPs was evidenced. The trustee paid for the Meridian shares out of funds in the RRSP accounts. Although the agreed facts suggest that the trustee was acting on Baran's instructions, we assume that the trustee was also acting on the instructions of the beneficiaries of the RRSP accounts.

[39] Baran caused the funds (the proceeds) paid out of the RRSP accounts to be paid to Meridian.

[40] There was no clear evidence as to how the proceeds were accounted for between Baran and Meridian. Since Baran suggested that the shares were loaned by Baran to Meridian, perhaps the proceeds were a loan by Baran to Meridian, or Meridian may have been Baran's agent to hold the proceeds for his account. (However, it is not necessary for our decision to answer that question.)

[41] Meridian kept $0.20 per share of the proceeds and caused an amount equal to $0.30 per share of the proceeds to be paid to the investment corporation.

[42] It was not clear whether the payment of $0.30 per share by Meridian to the investment company was a loan by Meridian or Baran to the investment company or the payment of a fee to the investment corporation as compensation for the arrangements with it. The investment corporation was, according to the arrangement, supposed to loan to the beneficiaries of the RRSPs an amount equal to the $0.30 per share paid by Meridian to the investment corporation. We had no evidence as to the terms of these loans or whether they were actually made.

[43] Mr. Williams suggested that Baran acted without authority when he acted on behalf of Meridian. There was no evidence to support his submission. Baran was the president and a director of Meridian. According to Baran, Meridian was a family operation with just one outside director. If Baran acted on behalf of Meridian without proper authority, that would suggest that Meridian was not addressing proper corporate governance considerations relevant to a public company. In fact, evidence suggested that Baran may have been operating Meridian without a clear understanding of the separate legal responsibilities of Baran and Meridian.

VI. Conclusions

[44] Staff established each of its allegations. The terms of the transactions were abusive of the capital markets.

[45] Baran needed to be registered to sell his shares or needed an exemption, such as the trading solely through a registered dealer exemption found in clause 10 of section 35(1). So did Meridian, even if it was acting as agent for Baran in selling shares. They were not registered and had no exemption available.

[46] Meridian co-operated with Baran to facilitate the transactions and acted contrary to the public interest.

[47] Baran acted without regard for and with little understanding of the Act and Meridian assisted in this.

[48] Baran's conduct as a director and officer of Meridian showed a careless disregard or a fundamental lack of understanding of the basic roles of an officer and a director of a reporting issuer and of the need to carefully delineate the activities of a corporation from those of the persons who control it. This indifference or lack of understanding are principal reasons why we believe it is necessary for preventive and protective purposes that Baran not be a director or officer of a reporting issuer for a period of time. In addition, his failure to carefully delineate between the activities and role of Meridian and his role in selling his shares to the investors are reasons for a cease trade order.

[49] Finally, we believe that without the order we are making today it is likely that Baran and Meridian would continue to disregard Ontario securities law.

VII. Sanctions

[50] We conclude that it is in the public interest to order

a) pursuant to clause 2 of subsection 127(1) of the Act that trading (i) by Meridian in any securities of Meridian, and (ii) by Baran in securities of any reporting issuer in which Baran, his wife, any of his children, and any other person with whom Baran has an agreement or understanding in respect of investment in the reporting issuer, individually or considered together, hold more than 5% of any class of securities, cease for 5 years;

b) pursuant to clause 6 of subsection 127(1) of the Act that Meridian and Baran be reprimanded;

c) pursuant to clause 7 of subsection 127(1) of the Act that Baran resign all positions that he holds as an officer or director of a reporting issuer;

d) pursuant to clause 8 of section 127(1) of the Act that Baran be prohibited from becoming or acting as a director or officer of a reporting issuer for 7 years.

DATED at Toronto this 6th day of May, 2003.

"Paul M. Moore"	" Kerry D. Adams"
Paul M. Moore	Kerry D. Adams