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

– and –

IN THE MATTER OF
GLEN HARVEY HARPER

HEADNOTE

Sentencing – Principles – Insider Trading – Orders in the Public Interest – Cease Trade Order – Prohibition from Acting as Officer and Director

Harper was charged and convicted under s. 122 of the *Ontario Securities Act*, R.S.O., 1990, c. S.5, as amended, (the "Act") on two counts of insider trading. Harper was found guilty of both counts on July 21, 2000 and was sentenced to a period of one year imprisonment for each offence to be served concurrently and to a total fine of $3,951,672. Harper appealed both his conviction and sentence, which was subsequently reduced to six months imprisonment on each count, to be served concurrently and the fine was reduced to $2 million and a surcharge of $400,000 as prescribed by section 60.1 of the *Provincial Offences Act*.

Subsequently, the Commission issued a Notice of Hearing dated January 12, 2004, pursuant to section 127 of the Act. The hearing was held before the panel on March 19, 2004 and staff requested that the panel make two orders in the public interest. The first order requested was that Harper be prohibited from becoming or acting as a director or officer of any issuer. The second order requested was that trading in any securities by Harper cease and staff requested that the duration of such orders extend for a period of a minimum of 15 years.

Held: The panel held that their jurisdiction under s.127 of the Act to make orders in the public interest is not an add-on or top-up authority applicable only where there has not been a breach of the law, or, if there has been a breach, where no other action has been taken under other provisions of the law. Rather it is their complete and independent jurisdiction under s.127. The panel noted that Harper's improper trading was over a period of five months, and during that period, Harper engaged in deceit upon the capital markets and upon the investors of Golden Rule Resources Inc. Furthermore, the panel pointed out that Harper is an individual with an untarnished work record, save for the five months of dishonourable conduct, and that Harper has paid his debt to society through the courts. However, from a prophylactic perspective, the panel stated, they could not be satisfied that, absent the orders they were making, he would not improperly use material insider information again, given the opportunity. Taking everything into account, Harper should not be left to freely trade in the capital markets. In view of his past conduct, protective and prophylactic orders should be made, which would also send the message that any like-minded individuals in circumstances similar to Harper's during his five months of trading, if they conduct themselves as Harper did, may be subject to similar prophylactic consequences regarding their access to the capital markets. The panel in its order allowed for two limited carve-outs that they felt were justifiable in the particular circumstances as not likely to put the market at risk.

The panel ordered that: (1) pursuant to clause 8 of s.127(1), Harper be prohibited for 15 years from becoming or acting as a director or officer of any reporting issuer; and (2) pursuant to clause 2 of s.127(1), trading in

any securities by Harper cease for a period of 15 years, with the exception that Harper be permitted to trade (a) for his own account or any account in which he or he and his wife have the only beneficial interest (including any registered retirement savings plan account), (i) in debt securities, (ii) in securities of reporting issuers whose market capitalization exceeds $500 million at the time of acquisition, and (iii) in securities of any issuer that is not a reporting issuer; and (b) for 90 days from the date of the order in order to dispose of securities owned at the date thereof by him or his registered retirement savings plans.

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

– and –

IN THE MATTER OF
GLEN HARVEY HARPER

Hearing:	**March 19, 2004**		
Panel:	**Paul M. Moore, Q.C.**	**-**	**Vice-Chair of the Commission (Chair)**
	Paul K. Bates	**-**	**Commissioner**
	Suresh Thakrar	**-**	**Commissioner**
Counsel:	**Jay Naster**	**-**	**For the Staff of the Ontario Securities Commission**
	Brian Greenspan	**-**	**For Glen Harvey Harper**
	Peter Copeland		

DECISION AND REASONS

I. The Proceedings

[1] This matter appears before the Commission as the result of a Notice of Hearing dated January 12, 2004. The Notice of Hearing, issued pursuant to section 127 of the Ontario *Securities Act* R.S.O., 1990, c. S.5, as amended, (the "Act"), asks for a determination:

(a) whether in the opinion of the Commission, it is in the public interest to make an order pursuant to section 127(1) clause 2 of the Act, that trading in any securities by Glen Harvey Harper cease permanently or for such period as may be specified by the Commission;

(b) whether in the opinion of the Commission, it is in the public interest to make an order pursuant to section 127(1) clause 7 of the Act, that Glen Harvey Harper resign one or more positions that he holds as a director or officer of an issuer;

(c) whether in the opinion of the Commission, it is in the public interest to make an order pursuant to section 127(1) clause 8 of the Act, that Glen Harvey Harper be prohibited from becoming or acting as a director or officer of any issuer; and

(d) such further orders as the Commission may deem appropriate.

II. Factual Background to the Proceedings

[2] Glen Harvey Harper ("Harper") was a founder of Golden Rule Resources Inc. ("Golden Rule"). In the period January 1997 to May 1997, he was the President of Golden Rule and a member of the board of directors. Golden Rule was a junior mineral exploration company with a head office in Calgary, Alberta. It had been listed on the Toronto Stock Exchange since 1984.

[3] Pursuant to an information sworn on March 23, 1999, Harper was charged under s.122 of the Act with two counts of insider trading, that:

(i) On or between the 3rd day of January, 1997 and the 6th day of March, 1997, at the City of Toronto, being a person in a special relationship with Golden Rule Resources Inc. ("Golden Rule"), a reporting issuer in the Province of Ontario listed and posted for trading on the Toronto Stock Exchange, did sell securities of Golden Rule, to wit: 227,600 shares for $2,058,580 more or less, with the knowledge of a material fact with respect to Golden Rule that had not been generally disclosed contrary to ss. 76(1) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c.S.5, as am.;

and further that,

(ii) On or between the 14th day of March, 1997 and the 6th day of May, 1997, at the City of Toronto, being a person in a special relationship with Golden Rule, a reporting issuer in the Province of Ontario listed and posted for trading on the Toronto Stock Exchange, did sell securities of Golden Rule, to wit: 197,102 shares for $1,983,889 more or less, with the knowledge of a material fact with respect to Golden Rule that had not been generally disclosed contrary to ss.76(1) and 122(1)(c) of the *Securities Act*, R.S.O. 1990, c.S.5, as am. (the "Act").

[4] Following a four week trial before Mr. Justice P. A. Sheppard of the Ontario Court of Justice, Toronto Region, Harper was found guilty as charged on both counts on July 21, 2000.

[5] Harper was sentenced by Mr. Justice Sheppard to a period of one year imprisonment for each offence to be served concurrently and to a total fine of $3,951,672 on September 18, 2000. Harper appealed both his conviction and sentence. The Commission brought a cross-appeal as to sentence.

[6] On January 7, 2002 Harper's appeal from conviction was dismissed by Mr. Justice F. Roberts of the Superior Court of Justice (Toronto Region). Harper's appeal from sentence was allowed. The term of imprisonment was reduced to six months on each count, to be served concurrently. The fine was reduced to $2 million on the grounds that the trial judge erred in calculating the fine according to the loss avoidance provisions contained within s.122(4) of the Act. A cross-appeal as to sentence brought by the Commission was dismissed by Roberts J. on that same day.

[7] The Commission sought leave to appeal the decision of Roberts J. respecting the sentence imposed regarding both the term of imprisonment and the quantum of fine. Leave to appeal was sought pursuant to s.131 of the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended (the "POA"). On January 21, 2002 Chief Justice R. McMurtry granted leave to appeal the sentence but only with regards to the issue of the quantum of fine.

[8] The Court of Appeal agreed with the Commission that Sheppard J. was correct in utilizing the loss avoidance provisions contained within s.122(4) of the Act in calculating the quantum of the fine. However, the Court of Appeal was of the opinion that the quantum calculation should not have included the proceeds from the sale of shares to which Harper was not a beneficial owner. The facts indicated that along with the shares that Harper held personally, he sold shares in the account of both his wife and in the account of Jaguar Exploration Corp. which was a company that held the shares in trust for Harper's children. The Court of Appeal adjusted the loss avoidance calculations accordingly and did not include the proceeds from the sales of the shares held by Harper's wife or the trust. The Court of Appeal chose not to interfere with the $2 million fine as imposed by Roberts J., and noted that in addition to the fine, Harper was also required to pay a $400,000 surcharge as prescribed by s.60.1 of the POA.

[9] Counsel for staff presented the convictions on both counts as the evidence which made out the allegations against Harper in these proceedings. The convictions are clearly admissible as evidence under ss.15.1 of the *Statutory Powers Procedure Act* R.S.O. 1990, c.S.22, as amended, (the "SPPA"), and as per ***Re Woods*** (1995), 18 O.S.C.B. 4635.

[10] We note that Sheppard J. made a number of findings of fact which are set out in his 30-page Reasons for Judgement. We further note that none of these findings were ever disturbed by either the Summary Conviction Appeal Court or the Court of Appeal. All of the findings were relied upon by staff in this proceeding and they are summarized by Sheppard J. on page 30 of his reasons, as quoted below:

> **CONCLUSION**
>
> This court has found above that the evidence establishes beyond a reasonable doubt that Harper is guilty as charged. The evidence before the Court supports a finding that, by any geological or investor standard, the 800 soil samples and the 37 Teck samples were material facts, and that Harper had knowledge of those facts at a time that he admits he was trading in shares of Golden Rule. The Court rejects Harper's claim that he did not believe that the 800 soil samples and the 37 Teck samples were material facts, and has found on the evidence his alleged belief to be neither genuine, nor reasonable. The Court has found that the evidence establishes that rather than disclosing this material information to the public, Harper held it back from public view. Many appropriate moments to share the material information with the public were shown in the evidence. Instead of providing complete information, Harper disclosed only selected information that supported the stated Golden Rule proposition that Stenpad potentially hosted a multi-million ounce gold deposit. At the same time, Harper sold into the public market millions of dollars of Golden Rule shares for his own or his immediate family's personal gain.

III. The Issue

[11] Counsel for staff now appears before the Commission and requests that the Commission make two orders in the public interest. The first order requested is that Harper be prohibited from becoming or acting as a director or officer of any issuer. The second order requested is that trading in any securities by Harper cease. Counsel requests that the duration of such orders extend for a period of a minimum of 15 years.

IV. The Position of the Parties

1. Staff's Position

a) Breach of Fiduciary Duties

[12] Counsel for staff points to the most aggravating feature of the case which is Harper's breach of his fiduciary duties to Golden Rule and its shareholders while an officer and director. In order to flush out the nature of this breach, a review of the facts is required.

[13] At the relevant period, Harper was the President and Chairman of the board of directors of Golden Rule. He occupied the same positions with Hixon Gold Resources Inc. ("Hixon"), a public company controlled by Golden Rule, which owned 46% of Hixon's shares as of September 30, 1996. During the relevant period, shares of Hixon were listed and posted for trading on the Vancouver Stock Exchange.

[14] On June 3, 1996, Hixon issued a press release announcing that it had acquired an interest in a property, the Stenpad Concession ("Stenpad"), located in Ghana, West Africa. The release also indicated that Golden Rule had acquired an option to acquire a 50% interest in the property and that the initial prospecting, geological mapping and sampling on the property identified several gold mineralization anomalies. Golden Rule shares had opened for trading on June 3, 1996, at $2.69.

[15] The next press release issued by Golden Rule in respect of Stenpad was on October 3, 1996, where Golden Rule reported that significant gold values had been identified as a result of exploration at Stenpad during the summer months. On October 3, 1996, Golden Rule shares had opened for trading at $2.15. Over the previous year, Golden Rule shares had traded in the range of $1.05 to $3.35.

[16] Between October 3, 1996 and March 27, 1997, Golden Rule continued to release information regarding the results of exploration at Stenpad, including extremely positive assay results from both trench and soil sampling. As early as October 25, 1996, Golden Rule advised the public that "the gold zone has the potential to host a multi-million ounce deposit." During this six month period, the price of Golden Rule shares rose to peaks of $13.80 on January 27, 1997 and $12.40 on March 14, 1997. With approximately 24.3 million shares outstanding as of September 30, 1996, Golden Rule's market capitalization rose from approximately $52.2 million on October 3, 1996 to a high of approximately $335.3 million on January 27, 1997.

[17] Between January 3, 1997 and May 6, 1997, Golden Rule obtained additional assay results that were not disclosed to the public, specifically:

- assay results of approximately 800 soil samples received by Golden Rule on January 2 and 3, 1997, relating to a geo-chemical survey being conducted by Golden Rule on the Stenpad property (the "800 samples"); and,

- assay results of 37 trench samples taken by Teck Exploration Ltd. ("Teck") and received by Golden Rule on March 12, 1997 as a result of due diligence conducted by Teck in respect of the Stenpad property (the "Teck samples").

[18] No later than 3:51pm on January 2, 1997, Harper had knowledge that the 800 samples, which related to wide areas of the property, had returned extremely low results in contrast to the extremely positive soil sample results that had been previously disclosed.

[19] On March 12, 1997, Harper had knowledge that the Teck samples, taken from the same locations as the Golden Rule samples that had previously yielded extremely positive results, returned low values. The

results from the 800 samples and the Teck samples were material information that was not generally disclosed to the public. The trial judge did not accept that Harper had held an honest and reasonable mistaken belief regarding the materiality of the 800 samples and the Teck samples.

[20] Between January 3, 1997 and May 6, 1997, Harper conducted trades of Golden Rule shares on behalf of the following persons and companies:

- shares personally held: 101,400 shares were sold for $929,465; 600,000 shares were purchased on the market for $304,250; 184,000 shares were purchased for $377,200 through the exercise of an option;

- Brigand Resources Inc. (a company wholly owned by Harper): 50,000 shares were purchased on January 30, 1997 for $479,575 and subsequently sold on March 14, 1997 for $595,555;

- Debbie Harper (Harper's wife): 5,000 shares were sold on January 27, 1997 for $65,165; 25,000 shares were purchased on May 5, 1997 for $156,600 and subsequently sold on May 6, 1997 for $221,765; and,

- Jaguar Exploration Corp., (a company whose shares were owned by Debbie Harper in trust for the Respondent's four children): 243,302 shares were sold for $2,295,684.50; on February 6, 1997, 10,000 were purchased for $101,000.

[21] Disclosure was finally made on May 15, 1997. On that day, Golden Rule issued a press release relating to the Stenpad results obtained separately by the Ghana Minerals Commission and by CME Consulting Ltd., an independent consultant sponsored by the Ghana Minerals Commission. The press release indicated that the CME and Mineral Commission results were "significantly different" from results previously obtained. On July 15, 1997, Golden Rule issued a press release relating to the initial results of a diamond drilling program, as well as further trench samples and soil sample results. With respect to the soil samples, which had been obtained as a result of check sampling, it was reported that the results were "significantly less than the very high results previously announced from reconnaissance sampling" and that the earlier results were "unreliable". Neither the May 15, 1997 press release nor the July 15, 1997 press release referred to the results of either the 800 samples or the Teck samples.

[22] Counsel for staff underscores that when illegal insider trading is accompanied by a breach of fiduciary duty it is a particularly egregious matter. Counsel indicates that as an officer and director of a public corporation, Harper owed a duty to act honestly and in good faith with a view to acting in the best interests of the corporation. This includes the duty to place the interests of the corporation ahead of any personal interests that Harper may have had. Counsel notes that serving as an officer and director is a voluntary privilege assumed by a select few. Those duties are owed as a matter of law to the corporation. Indirectly, they are for the benefit of the corporation's shareholders and the investing public in general.

[23] Harper abused his duty. He used inside information for his own personal advantage and this is an aggravating factor in assessing the appropriate sanctions.

b) Intentional Misleading of the Public Over a Span of Time

[24] Harper continued to withhold information about the results of the 800 samples even though the company issued numerous press releases that provided many opportunities for the release of this information.

[25] Pages 22/23 of Sheppard J.'s judgment outlines the following instances of continuous disclosure on the part of Golden Rule where the results of the 800 samples were purposefully withheld and investors misled:

January 7, 1997	Press release – trench results
January 10, 1997	Press release – trench results
January 10, 1997	Scotia Capital report on Golden Rule (draft reviewed by Harper on January 8th)
January 21, 1997	Harper presents to analysts/investors in Toronto
January 22, 1997	Harper presents to analysts/investors in Vancouver
January 22, 1997	Press release (claims there are "no additional results on the Stenpad property")
January 30, 1997	A soil geochemistry map provided to the Ghana Minerals Commission showing an area marked "no soil data" where in fact a number of the 800 samples were drawn.
Jan./Feb./Mar./Apr. 1997	Monthly newsletters to investors.
February 5, 1997	Press release that is misleading. The 72 samples being described are not indicated as being "re-samples" from the area of the original 800 sample because of the failure to disclose the 800 samples. Hence the reader could only conclude that the samples being described were the only samples taken from that area, which was not the case.

[26] Counsel for staff indicates that Harper continually used his position and influence to withhold the negative results. Not only did Harper remain mute on these matters but he intentionally misled the investing public.

c) Lack of Honest and Reasonable Belief

[27] Counsel for staff refers to page 27 of Sheppard J.'s decision where it is clearly indicated that the judge rejected Harper's defence that he had a reasonable belief in the lack of materiality of the samples due to his reliance on the opinion of the project geologist, Dr. Mark Nebel. Harper's claim to have had a reasonable and honest mistaken belief in respect of those samples was neither honest nor reasonable.

d) Harper Had Total Control of the Material Information

[28] The facts of the case indicate that Teck expressed interest in acquiring a position in Golden Rule in early 1997 after reading Golden Rule's inspiring press releases of October/November 1996.

[29] Teck and Harper then entered into a confidentiality agreement prior to any due diligence evaluations that would be undertaken by Teck. On February 27, 1997, Teck and Harper agreed to the following clause of the confidentiality agreement:

> ***Insider Information***
> Teck acknowledges that applicable securities laws prohibit any person who has material, non-public information concerning a corporation or its properties or business prospects from purchasing or selling securities of such corporation or from communicating such information to any other

person or entity under circumstances in which it is reasonably foreseeable that such person or entity is likely to purchase or sell such securities.

[30] Teck's due diligence was to be performed between March 7th and 12th at the site. Sampling was taken in the trenches next to where Golden Rule had taken their sample. Thirty-seven samples were collected and analyzed. A witness at the trial, Mr. G. Farquharson, was qualified to give expert evidence on issues relating to appraisal, evaluations and feasibility studies. Farquharson indicated that the Teck sample gold assay certificate results showed only one-tenth the gold levels that the previously reported Golden Rule samples at the same locations had shown.

[31] Sheppard J. noted on page19 of his decision that in a one-week period after becoming aware of at least 33 of the 37 Teck assay results, Harper sold $1,345,630 of Golden Rule shares and bought none. These sales all occurred around the $10.00 to $11.0 per share range. This occurred, not withstanding the confidentiality agreement with Teck.

[32] In his submissions, counsel for staff notes that while Teck was held to the confidentiality agreement, Harper succeeded in burying the material facts from the investing public for over six months while he actively sold shares and continued to facilitate the duping of the investing public.

[33] Counsel for staff submits that Harper's ability to control the information being released to the public in respect of Golden Rule is a particularly aggravating feature of the case. Counsel submits that Harper used his position as an officer and director of the corporation to create a misleading picture of the status of the company and because of this he was able to trade on the market and avoid a great deal of loss in the value of the shares for himself and his family.

[34] Counsel for staff concedes that Harper is 60 years of age and that it is unlikely that he will re-offend.

2. Respondent's Position

[35] Counsel for the respondent indicated that pursuant to proceedings initiated under s.122 of the Act, Harper has been tried, convicted and sentenced. The sentence of six months imprisonment to be served concurrently and a fine of two million dollars has been paid. Furthermore, a surcharge of $400,000 remains outstanding. With regard to the surcharge that remains outstanding, counsel for the respondent indicates in his submissions to us that the matter was only recently affirmed by the Ontario Court of Appeal and there is no indication that it will not be satisfied.

[36] Counsel for the respondent argues that one cannot surgically remove proceedings pursuant to s.122 of the Act from proceedings pursuant to s.127. He notes that both sections were drafted by the legislators to lay under Part XXII of the Act which deals with enforcement. With this in mind, counsel for the respondent notes that a very strong message has already been sent in the case of his client to like-minded individuals who would engage in insider trading.

[37] Harper concedes through his counsel that his actions which render him before this tribunal, should involve his loss of the privilege of participating as an officer or director in the capital markets for a period of fifteen years. Counsel adds that in the course of being banned as an officer or director from any reporting issuer, Harper will never again be in a position similar to the one that put him in possession of inside information. Devoid of that knowledge and devoid of that opportunity, counsel argues, Harper will never be in the position to become involved in insider trading in the future. Counsel submits that his client currently holds no positions as officer or director of a reporting issuer or any company.

[38] Furthermore, counsel for the respondent cautions that the message to be sent for general deterrence is

a message strictly confined within the context of the facts of the case.

[39] Counsel for the respondent notes that prior to the charges that led to the s.122 proceedings, Harper enjoyed a distinguished business career that spanned 35 years. He notes that the period of misconduct, while grave, spanned the course of five months. He adds that his client served a six month jail sentence, paid two million dollars in fines and has lost his right to practice his chosen profession through disciplinary actions initiated by the Association of Professional Engineers, Geologists and Geophysicists of Alberta. Finally, counsel for the respondent indicates to us that Harper's remorse is implicit within his concession that he should never again assume the privilege of serving as an officer or director of a reporting issuer.

[40] Counsel for the respondent filed 39 letters of reference for Harper from family, friends and business colleagues. The letters spoke highly of Harper and were persuasive as to his good character and general business ethics.

[41] Counsel for the respondent provided us with evidence that Harper has two separate registered retirement savings plans that contain equities and debt instruments. Counsel submits that if the panel is to apply a cease trade order without carve-outs for the registered plans, the funds would be frozen and at the mercy of the market for the duration of the order which would function as a penalty to his client.

[42] Counsel indicated that Harper has few assets outside the registered plans. Should the panel decide to impose a cease trade order upon Harper, a small grace period would be required for him to be out of the market completely.

[43] Counsel for the respondent also provided us with a notice of assessment from Revenue Canada dated May 2003 , showing that Harper had unused capital losses in the amount of $1,890,031 that may be carried forward. Counsel submits that should Harper be prohibited for the next 15 years from trading in the capital markets, the likelihood of this unused capital loss ever being utilized, while arguably not impossible, would be limited. Counsel submits that such a restriction upon his client would also operate as a penalty.

V. Analysis

1. The Public Interest Jurisdiction Under s.127

[44] Our jurisdiction under s.127 of the Act to make orders in the public interest is not an add-on or top-up authority applicable only where there has not been a breach of the law, or, if there has been a breach, where no other action has been taken under other provisions of the law. We have a complete and independent jurisdiction under s.127 of the Act. It is our only and complete jurisdiction under s.127. The public interest jurisdiction is framed by the two purposes of the Act which are set out in s.1.1 and expressed by Iacobucci J. in the following passage from ***Committee for the Equal Treatment of Asbestos Minority Shareholders v. OSC***, [2001] 2 S.C.R. 132:

> However, the public interest jurisdiction of the OSC is not unlimited. Its precise nature and scope should be assessed by considering s.127 in context. Two aspects of the public interest jurisdiction are of particular importance in this regard. First, it is important to keep in mind that the OSC's public interest jurisdiction is animated in part by both of the purposes of the Act described in s.1.1 namely "to provide protection to investors from unfair, improper or fraudulent practices" and "to foster fair and efficient capital markets and confidence in capital markets". Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment

> of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered.
>
> Second, it is important to recognize that s.127 is a regulatory provision. In this regard, I agree with Laskin J.A. that "[t]he purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets" (page272). This interpretation of s.127 powers is consistent with the previous jurisprudence of the OSC in cases such as ***Canadian Tire, supra***, aff'd (1987), 59 O.R.(2d) 79 (Div.Ct.); leave to appeal to C.A. denied (1987), 35 B.L.R. xx, in which it was held that no breach of the Act is required to trigger s.127. It is also consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual's moral faults: see ***R. v. Wholesale Travel Group Inc.***, [1991] 3 S.C.R. 154, at page 219.

[45] Consistent with the preventive nature of the public interest jurisdiction of s.127, we are mindful of the need to act protectively in order to ensure the smooth functioning of the capital markets in Ontario. Our jurisdiction to achieve this goal is described in ***Re Mithras Management Ltd.***, [1990], 13O.S.C.B. 1600 , at pages 1610-1611:

> [T]he 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 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 so doing, we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient after all.

2. Relevant Considerations

[46] In ***Re Woods***, the Commission noted the first two considerations that must be made when determining appropriate sanctions in the public interest. The first is whether or not the respondent is likely to re-offend. The second consideration is whether or not the conduct of the respondent is such to bring into question the integrity and reputation of the capital markets in general.

[47] We have considered the relevant factors that have had, or may have, an impact on the respondent and may influence his future conduct, as laid out in ***Re M.C.J.C. Holdings and Michael Cowpland*** [February 22, 2002] 25 O.S.C.B. 1133 ("**Cowpland**"):

- the size of the profit or loss avoidance from the illegal conduct: which in this case was approximately $3.59 million. See ***R. v. Glen Harvey Harper***, (September 18, 2000), Sheppard J. at page 16 (prior to the addition of the factor of .1).

- the size of the financial sanction or voluntary payment: which in this case was $2 million plus the

$400,000 provincial surcharge that remains outstanding.

- the effect of sanctions on the livelihood of the respondent: we accept the submissions of counsel for the respondent that Harper was forced to liquidate most of his assets in order to meet the criminal financial penalties.

- the restraint any sanction may have on the ability of the respondent to participate without check in the capital markets.

[48] Harper was properly fined, according to the provisions of s.122 of the Act, only in respect of trading for his own account, and not in respect of his trading for the accounts of his family. We do not intend to compensate, through orders under s.127, for any shortfall in fines that could have resulted under s.122 had that section extended to profits or losses avoided from trading by Harper for accounts not beneficially owned by him. However, in considering the magnitude of Harper's improper conduct and the appropriateness of orders under s.127, we have taken into account the benefits to such accounts. Harper had the sole control over whether or not the material information in the Stenpad properties would be disclosed.

[49] The behaviour in this case was particularly egregious. We reiterate our earlier repudiation of insider trading in ***Cowpland*** at page 1135:

> Illegal insider trading by its very nature is a cancer that erodes public confidence in the capital markets. It is one of the most serious diseases our capital markets face. If we do not act in the public interest by sending an appropriate message in appropriate circumstances, then we fail in doing our duty.

[50] Harper's improper trading was over five months. During that period, Harper engaged in deceit upon the capital markets and upon the investors of Golden Rule.

[51] At 60 years of age and with an untarnished work record, save for the five months of dishonourable conduct, there have been no other matters that have brought him before the courts or this Commission. He has paid his debt to society through the courts. However, from a prophylactic perspective, we cannot be satisfied that, absent the orders we are making, he would not improperly use material insider information again, given the opportunity.

[52] Taking everything into account, Harper should not be left to freely trade in the capital markets. In view of his past conduct, protective and prophylactic orders should be made. They will also send the message that any like-minded individuals in circumstances similar to Harper's during his five months of trading, if they conduct themselves as Harper did, may be subject to similar prophylactic consequences regarding their access to the capital markets.

[53] Counsel for the respondent concedes that Harper should be prohibited from acting as a director or officer of any issuer for 15 years. Counsel for staff also requests a cease trade order for 15 years. Since Harper is 60 years of age, 15-year bans would keep Harper out of the market, in effect, for the rest of his remaining business life.

[54] Harper should be cease traded for a period of 15 years and prevented from acting as a director and officer of any reporting issuer for a similar period. However, taking into account opportunities that gave rise to past problems with Harper and the reduction of opportunity to acquire inside information as a director or officer of a reporting issuer resulting from orders we are making, we are allowing two limited carve-outs that are justifiable in the particular circumstances as not likely to put the market at risk.

VI. The Order

[55] Accordingly, being of the opinion that it is in the public interest to do so, we are ordering that

(1) Pursuant to clause 8 of s.127(1), Harper is prohibited for 15 years from becoming or acting as a director or officer of any reporting issuer.

(2) Pursuant to clause 2 of s.127(1), trading in any securities by Harper cease for a period of 15 years, with the exception that Harper be permitted to trade

(a) for his own account or any account in which he or he and his wife have the only beneficial interest (including any registered retirement savings plan account),

(i) in debt securities,

(ii) in securities of reporting issuers whose market capitalization exceeds $500 million at the time of acquisition, and

(iii) in securities of any issuer that is not a reporting issuer; and

(b) for 90 days from the date of the order in order to dispose of securities owned at the date thereof by him or his registered retirement savings plans.

DATED at Toronto this 8th day of April, 2004.

"Paul M. Moore"

_____ _____"Paul K. Bates"_____

Paul M. Moore, Q.C. **Paul K. Bates**

_____Suresh Thakrar"_____

Suresh Thakrar