Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

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

- and -

IN THE MATTER OF
DAVID CATHCART

HEARING HELD PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT

SETTLEMENT HEARING RE: DAVID CATHCART

HEARING:	Friday February 27, 2009	
PANEL:	Wendell S. Wigle	- Commissioner and Chair of the Panel
	Margot C. Howard	- Commissioner
APPEARANCES:	Ian Smith	- for Staff of the Ontario Securities Commission
	David Cathcart	- for himself

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

Chair:

[1] This was a hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") for the Ontario Securities Commission (the "Commission") to consider whether it is in the public interest to approve a proposed Settlement Agreement between Staff of the Commission ("Staff") and the respondent David Cathcart ("Cathcart" or the "Respondent").

[2] We have considered the submissions of Staff and Cathcart and we have decided to approve the Settlement Agreement as being in the public interest. These are our oral reasons in this matter.

[3] The facts and circumstances agreed to by Staff and Cathcart are set out in the Settlement Agreement. These facts are not findings of fact by this Panel, rather, they are facts agreed to by Staff and Cathcart for purposes of this settlement. In approving the Settlement Agreement, we relied on the facts in the agreement and those facts represented to us at the hearing today (see: *Re Rankin* (2008), 31 O.S.C.B. 3303 at para. 5).

[4] The conduct at issue relates to Cathcart's execution of trades in securities of Hucamp Mines Ltd. ("Hucamp"). Specifically:

(1) Cathcart's failure to act in a manner that was duly diligent by placing shares of Hucamp into the account of Almasa Distribution FZCO ("Almasa"), a private investment company, without the authorization of Almasa or Almasa's principals; and

(2) Cathcart's trading in Hucamp shares, at the instruction of John Illidge ("Illidge"), who was the President and CEO of Hucamp from March 1996 until May, 2001.

[5] Cathcart was a registered representative with Rampart Securities Inc. ("Rampart"), a Toronto brokerage house, from December 1999 to August 2001.

[6] Cathcart was also a registered representative with St. James from May 1996 to November, 1999, and with Northern Securities Inc. from November to December, 1999.

[7] Hucamp, a junior mining company, was a reporting issuer in Ontario until becoming dormant in early 2002. Until October 9, 2000 common shares in Hucamp were quoted on the Canadian Dealing Network ("CDN"). From October 10, 2000 until early 2002 when trading was halted, common shares in Hucamp were listed for trading on the CDNX Exchange.

[8] Hucamp's public file reflects a non-brokered private placement dated November 4, 2000 which was announced to the public by press release on October 10, 2000. Hucamp announced that "it has agreed to a non-brokered private placement of up to" 1.5 million flow through common shares at $1.30 per share.

[9] As at December 31, 2000, 500,000 shares had been issued to one placee: Almasa. These shares were deposited in the Almasa account at Rampart by Cathcart at the direction of Illidge. Cathcart was the registered representative on the Almasa account at Rampart. Neither Almasa nor Almasa's principals authorized the purchase of these shares.

[10] By participating in the conduct described above, Cathcart failed to act in a manner that was duly diligent.

[11] In 2000 and 2001, the market in Hucamp was subjected to abusive trading practices in the accounts of Illidge, Patricia McLean ("McLean"), Stafford Kelley ("Kelley") and Devendranauth Misir ("Misir") (collectively, the "Other Respondents"). Cathcart was the registered representative on, and executed the trading in, accounts owned or controlled by Illidge, McLean, Misir and others, which accounts traded in the shares of Hucamp. Each of the Other Respondents engaged in some of the conduct described below and, on instructions from Illidge, Cathcart engaged in all of the conduct described below or permitted it to occur, both advertently and inadvertently, in accounts on which he was the registered representative. In so doing, Cathcart allowed himself to be used in engaging in the following conduct:

(1) he controlled the market for Hucamp shares and manipulated or attempted to manipulate the market price for Hucamp shares;

(2) he engaged in trading for the purpose of creating a false appearance of trading volume in and demand for Hucamp shares;

(3) he engaged in trades in Hucamp shares between the Other Respondents;

(4) he dominated trading in Hucamp shares;

(5) he engaged in trading of Hucamp shares by using nominee accounts at Rampart and elsewhere; and,

(6) he both bought and sold Hucamp shares through jitney trades.

[12] By entering into the Settlement Agreement, Cathcart has recognized that he acted contrary to the public interest. Cathcart has accepted sanctions, including a cease trade order, a prohibition from acting as a director or officer and a prohibition from acting as a registrant.

[13] Before we go to our order, we would like to briefly refer to the law as it applies to the consideration of the Settlement Agreement before the Panel.

[14] The Commission's mandate in upholding the purposes of the Act, as set of in section 1.1 of the Act, is:

(1) to provide protection to investors from unfair, improper or fraudulent practices; and

(2) to foster fair and efficient capital markets and confidence in the capital markets.

[15] The role of the Commission is set out in *Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 at 1610-1611:

> …the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In 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. …

[16] We are guided by the sanctioning factors listed in *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc*. (1998), 21 O.S.C.B. 7743, which Staff referred to in their submissions.

[17] In addition, appropriate sanctions need to take into account the specific circumstances of each case (*Re M.C.J.C. Holdings and Michael Cowpland*, *supra* at 1134-1135).

[18] As established in *Re Sohan Singh Koonar et al*. (2002), 25 O.S.C.B. 2691, the role of the Commission Panel in reviewing a settlement agreement is not to substitute its own sanctions for what is proposed in the settlement agreement. Instead, the Commission should ensure that the agreed sanctions in the settlement agreement are within acceptable parameters.

[19] This is what we as a Panel have done in approving this Settlement Agreement. In considering the respondent's position as stated in the Settlement Agreement, we are of the view that the sanctions set out in the Settlement Agreement are within the acceptable parameters.

[20] Therefore, we order that:

(1) the Settlement Agreement attached to this Order is hereby approved;

(2) under section 127 of the Act:

a. The Respondent shall be banned from trading in or acquiring any securities for a period of 5 years with the exception that the Respondent will be permitted to trade in securities in one RRSP account in his name and one non-RRSP account in his name, each account to be held at a full service dealer registered with the Commission (which accounts have been identified by the Respondent in writing for Staff of the Commission), if:

(i) the securities are listed on the Toronto Stock Exchange, the TSX Venture Exchange, the New York Stock Exchange, NASDAQ or the Chicago Board Options Exchange; or

(ii) the securities are listed in section 35(2) clauses 1 and 2 of the Act; and

(iii) neither the Respondent nor any member of his family is an insider, partner or promoter of the issuer of the securities; and

(iv) the Respondent does not own directly or indirectly more than one percent of the outstanding securities of the issuer of the securities.

b. Any exemptions contained in Ontario securities law shall not apply to the Respondent for a period of 5 years; and,

c. The Respondent shall be permanently banned from becoming or acting as an officer or director of any registrant or reporting issuer, and,

d. The Respondent shall be permanently banned from becoming or acting as a registrant.

[21] In conclusion, we find that together, all the sanctions imposed in this matter provide adequate specific and general deterrence, which the Supreme Court has established is an important regulatory objective for securities commissions (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672).

[22] Deterrence is achieved through: (1) the imposition of a permanent ban from becoming or acting as an officer or director of any registrant or reporting issuer; and (2) the imposition of a permanent ban from becoming or acting as a registrant.

[23] In addition, as Cathcart's misconduct relates to trading, in our view imposing a cease trade order also deters Cathcart and like minded individuals from engaging in similar conduct in the future.

[24] We also note that both sides worked together to negotiate and narrow the issues in dispute.

[25] Though the regulatory sanctions agreed to in the Settlement Agreement may be below what we might have imposed after a hearing on the merits, we note this was not a hearing on the merits, this is a negotiated Settlement Agreement. We also recognize that Cathcart should be given credit for cooperation with Staff and that by settling, Commission resources have been conserved. Therefore, we find that the sanctions are acceptable and fall within acceptable parameters.

[26] Accordingly, we approve the Settlement Agreement as being in the public interest.

Approved by the Chair of the Panel on March 12, 2009.

"*Wendell S. Wigle*"

Wendell S. Wigle