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 SHALLOW OIL & GAS INC., ERIC O'BRIEN, ABEL DA SILVA, GURDIP SINGH GAHUNIA also known as MICHAEL GAHUNIA, ABRAHAM HERBERT GROSSMAN also known as ALLEN GROSSMAN, MARCO DIADAMO, GORD McQUARRIE, KEVIN WASH, and WILLIAM MANKOFSKY

AND

IN THE MATTER OF GORD McQUARRIE

REASONS AND DECISION ON SETTLEMENT

Hearing: May 12, 2009

Decision: May 19, 2009

Panel: Wendell S. Wigle, QC -Commissioner and Chair of the Panel
Suresh Thakrar, FICB -Commissioner

Appearances: Matthew Boswell -For the Ontario Securities Commission

Gord McQuarrie -Self-represented

REASONS AND DECISION ON SETTLEMENT

[1] This proceeding arises out of a Notice of Hearing issued on June 11, 2008 in relation to the Statement of Allegations issued by Staff of the Ontario Securities Commission ("Staff") on June 10, 2008. Staff alleges that Gord McQuarrie ("McQuarrie") and others contravened the *Securities Act* , R.S.O. 1990, c. S.5, as amended (the "Act") and acted contrary to the public interest in relation to the illegal trading and distribution of securities of Shallow Oil & Gas Inc. ("Shallow Oil"), the corporate respondent, between September 24, 2007 and February 27, 2008.

[2] On April 21, 2009, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing giving notice that the Commission would be asked to consider whether it is in the public interest to approve a settlement agreement entered into between Staff of the Commission and the respondent McQuarrie on May 10, 2009 (the "Settlement Agreement").

[3] This is not a hearing on the merits with respect to Staff's allegations against McQuarrie. It is not our role to look behind the terms of the Settlement Agreement, or to set it aside and impose the sanctions we might have considered imposing after a hearing on the merits. Our role in this settlement approval hearing is to determine whether the agreed sanctions are within acceptable parameters and consistent with the Commission's public interest mandate (*Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691 at 2692).

[4] In keeping with the Commission's practice in settlement approval hearings, we have heard oral submissions from Staff and McQuarrie this afternoon *in camera*, pursuant to paragraph 9(1)(b) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended, in order to ensure that if we cannot approve the Settlement Agreement, Staff and McQuarrie are free to continue discussing the matter without fear that any hearing on the merits will be prejudiced by submissions made in an open hearing for purposes of settlement approval.

[5] As we have concluded that the Settlement Agreement is within acceptable parameters and consistent with our mandate of protecting investors from unfair, improper or fraudulent practices and fostering fair and efficient capital markets and confidence in the capital markets, we find that the public interest will be served by our approving the Settlement Agreement, and we do approve it.

[6] The Settlement Agreement is based on certain facts agreed to by Staff and McQuarrie for the purpose of the settlement. The Agreed Facts are set out at paragraphs 4 to 34 of the Settlement Agreement, which include the following:

> McQuarrie contacted investors or potential investors by telephone and used the alias Gord Sinclair when speaking with investors or potential investors on the telephone.
>
> McQuarrie was initially a qualifier at Shallow Oil, however, not long after he started Grossman promoted him to the job of a salesperson of Shallow Oil securities.
>
> . . . .

McQuarrie advised potential investors and investors, with the intention of effecting trades, that Shallow Oil was about to be listed on a stock exchange . . .

(Settlement Agreement, paras. 23, 24 and 27).

[7] McQuarrie admits and acknowledges that by engaging in the conduct described in the Agreed Facts, he contravened Ontario securities law by:

a. trading in Shallow Oil securities without being registered by the Commission to trade in securities, contrary to subsection 25(1)(a) of the Act;

b. trading in Shallow Oil securities in circumstances where the trading constituted a distribution and where no preliminary prospectus and prospectus had been filed and receipts issued by the Director, contrary to subsection 53(1) of the Act; and

c. making prohibited representations, with the intention of effecting a trade in Shallow Oil, that securities of Shallow Oil would be listed on a stock exchange, contrary to subsection 38(2) of the Act.

[8] McQuarrie admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law in the three ways just described.

[9] The principles that guide the Commission in exercising its public interest jurisdiction are well established.

[10] As the Commission stated in *Re Mithras Management*:

The role of the 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 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.

Re Mithras Management (1990), 13 O.S.C.B. 1600, at pp. 1610-1611

[11] Appropriate sanctions should be proportionate to the specific circumstances of each case. The factors to be considered in determining appropriate sanctions include:

a. the seriousness of the allegations proved;

b. the respondent's experience in the marketplace;

c. the level of a respondent's activity in the marketplace;

d. whether or not there has been a recognition of the seriousness of the improprieties; and

e. whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets.

Re Belteco Holdings Inc. (1998), 21 O.S.C.B. 7743, at para. 25
Re M.C.J.C. Holdings and Michael Cowpland (2003), 26 O.S.C.B. 1106, at para. 55

[12] In this case, we considered the following factors in determining that the sanctions agreed to in the Settlement Agreement are in the public interest.

[13] McQuarrie admits that he engaged in conduct that was contrary to sections 25, 53 and 38 of the Act and contrary to the public interest. By entering into the Settlement, he recognized the seriousness of his misconduct.

[14] Further, we find that McQuarrie should have known, from his involvement in the capital markets for over 20 years, that he could not trade in securities without being registered with the Commission. The Commission has recognized the importance of ensuring that market participants meet the minimum registration, qualification and conduct requirements of the Act (*Re Momentas Corp.* (2006), 29 O.S.C.B. 3170, at para. 46).

[15] On the other hand, we note McQuarrie's prior record of involvement in the capital markets without any alleged violations.

[16] Moreover, Staff did not allege that McQuarrie was a directing mind or had any principal role in the Shallow Oil operation. He was a salesperson. According to the Agreed Facts, he was involved in 8 trades between November 26, 2007 and January 14, 2008, and 6 of the 8 sales or attempted sales in which he was involved were for $1,000. Of the two other trades, one investor invested $25,000, and another invested 5,000, though the Agreed Facts state, in relation to the latter trade: "McQuarrie did not receive any commission payment for this sale and does not recall making the trade. Shallow Oil documents list McQuarrie as the salesperson on this trade." (Settlement Agreement, para. 30, footnote) According to the Agreed Facts, McQuarrie received $2,500 in commissions as a result of his involvement in sales of Shallow Oil securities.

[17] According to the Agreed Facts, Allen Grossman (one of the other respondents in the Shallow Oil matter) told McQuarrie in the job interview that Shallow Oil was fully licensed by the Commission and licensed to sell shares, and that Kevin Wash (another respondent in the Shallow Oil matter) told McQuarrie at the beginning of his employment that the people involved with Shallow Oil were also involved in "bringing out" Amerigo. McQuarrie looked up Amerigo on the internet and discovered it was listed on the TSX. This also led him to believe Shallow Oil was legitimate. (Settlement Agreement, paras. 21-22) However, we note that the Agreed Facts do not reflect that McQuarrie took any independent steps to ensure that his conduct did not contravene the *Securities Act*.

[18] We place significant weight on McQuarrie's admissions and his acknowledgment that his conduct contravened the *Securities Act* and was contrary to the public interest. We note, as well, that he attended at the Commission for a voluntary interview and co-operated with Staff. By

entering into this Settlement Agreement, McQuarrie has saved the Commission the cost of a hearing on the merits and sanctions hearing with respect to Staff's allegations against him.

[19] We find that the proposed sanctions will serve as a general deterrent by signalling to like-minded people that the misconduct at issue will not be countenanced by the Commission.

[20] Specifically, we note that McQuarrie will be ordered to disgorge the entire amount of the commissions he received for selling Shallow Oil securities – $2,500 – pursuant to paragraph 10 of subsection 127(1) of the Act.

[21] The administrative penalty of $500 pursuant to paragraph 9 of subsection 127(1), and the costs order of $500, pursuant to subsection 127(1), are within acceptable parameters, considering McQuarrie's limited involvement, his admission of wrongdoing and his willingness to co-operate with the Commission.

[22] Given McQuarrie's history of using the telephone for illegal trading and distribution, including prohibited representations, it is appropriate, in our view, that he be permanently prohibited from telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or class of securities, pursuant to paragraph 37(1)(b) of the Act.

[23] The agreed order also includes, pursuant to subsection 127(1) of the Act, a 4-year ban on McQuarrie (i) trading in any securities (paragraph 1 of subsection 127(1)); (ii) acquiring any securities (paragraph 2.1 of subsection 127(1)); (iii) becoming or acting as a director or officer of any issuer, registrant, or investment fund manager (paragraphs 8, 8.2 and 8.4 of subsection 127(1)); or (iv) becoming or acting as a registrant, as an investment fund manager or as a promoter (paragraph 8.5 of subsection 127(1)), and states that any exemptions in Ontario securities law do not apply to McQuarrie for 4 years (paragraph 3 of subsection 127(1)). We accept the parties' joint submission that a 4-year ban, rather than a permanent ban, is appropriate.

[24] The Settlement Agreement is approved.

DATED in Toronto this 19th day of May 2009.

"Wendell S. Wigle"	*"Suresh Thakrar"*
Wendell S. Wigle, QC	Suresh Thakrar, FICB