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
PETER SABOURIN, W. JEFFREY HAVER, GREG IRWIN,
PATRICK KEAVENEY, SHANE SMITH, ANDREW LLOYD, SANDRA DELAHAYE,
SABOURIN AND SUN INC., SABOURIN AND SUN (BVI) INC.,
SABOURIN AND SUN GROUP OF COMPANIES INC.,
CAMDETON TRADING LTD. AND CAMDETON TRADING S.A.

REASONS AND DECISION ON SANCTIONS AND COSTS

(Sections 127 and 127.1 of the *Securities Act*)

Hearing:	August 31, 2009	
Decision:	June 4, 2010	
Panel:	James E. A. Turner	- Vice-Chair and Chair of the Panel
	David L. Knight, F.C.A.	- Commissioner
	Carol S. Perry	- Commissioner
Appearances:	Yvonne Chisholm Cullen Price	- For the Ontario Securities Commission
	James Camp	- For W. Jeffrey Haver
	Alistair Crawley	- For Shane Smith, Andrew Lloyd and Sandra Delahaye
	Greg Irwin	- Self-represented

No one appeared for Peter Sabourin, Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd., or Camdeton Trading S.A.

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I. BACKGROUND

[1] This was a bifurcated hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against Peter Sabourin ("**Sabourin**"), W. Jeffrey Haver ("**Haver**"), Greg Irwin ("**Irwin**"), Shane Smith ("**Smith**"), Andrew Lloyd ("**Lloyd**"), Sandra Delahaye ("**Delahaye**"), and Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A. (the "**Corporate Respondents**"). Haver, Irwin, Smith, Lloyd and Delahaye are collectively referred to as the "**Individual Respondents**", and, for greater certainty, Sabourin is not included in the definition of "Individual Respondents". All of such persons are collectively referred to as the "**Respondents**".

[2] The hearing on the merits was held over thirteen days from April 7, 2008 to April 25, 2008, and the decision on the merits was issued on March 20, 2009 (the "**Merits Decision**").

[3] Following the release of the Merits Decision, we held a separate hearing on August 31, 2009 to consider submissions from Staff of the Ontario Securities Commission ("**Staff**") and the Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**").

[4] These are our reasons and decision as to the appropriate sanctions and costs to be ordered against the Respondents. Our Sanctions and Costs Order is appended.

II. THE MERITS DECISION

[5] In a Statement of Allegations dated December 7, 2006, Staff alleged that the offer and sale of investment schemes by the Respondents and Patrick Keaveney ("**Keaveney**") between August 2001 and December 2006, constituted trades in securities without registration and distributions of securities without the filing of a prospectus, in contravention of sections 25 and 53 of the Act. It was alleged that this conduct also constituted trading in securities that was contrary to the public interest.

[6] We concluded in the Merits Decision that Sabourin and the Corporate Respondents, and each of the Individual Respondents, breached sections 25 and 53 of the Act and acted contrary to the public interest. However, we found that there was insufficient evidence to conclude that Keaveney did so and we dismissed the allegations against him.

[7] Our reasons for reaching these conclusions are summarized in paragraphs 369 to 375 of the Merits Decision as follows:

> [369] We find that the investors who testified, and many other investors, were offered and sold investments with Sabourin and Sun and Camdeton between August 2001 and December 2006. Investors were led to believe, based on the representations made to them, that they would profit from

substantial returns on their investments with little or no risk and with no active involvement on their part. Many of them were encouraged to mortgage their homes, draw down their lines of credit or collapse their RRSPs in order to invest. An amount of up to $33.9 million was invested in the investment schemes and investors lost most of their money. We note that the investment schemes had attributes similar to the characteristics of a prime bank investment scheme as described in paragraph 50. The investment schemes were a sham and the representations made to investors were lies. Sections 25 and 53 of the Act are intended to protect the public from such illegitimate schemes.

[370] We find that Sabourin concocted and orchestrated the investment schemes and sold sham investments, directly and through Irwin, Haver, Smith, Lloyd, Delahaye and others. He was the directing and controlling mind of Sabourin and Sun and Camdeton and directed everything, including where funds went, how investments were processed and what information and payments were sent to investors. He solicited and sold investments he knew to be a sham, lied to and misled investors, and misappropriated investors' funds. Based on the evidence, it appears that at least $3.3 million (Canadian) and $200,000 (US) was received by Sabourin or paid to third parties for his benefit. We also find that the Corporate Respondents contravened sections 25 and 53 of the Act and acted in a manner contrary to the public interest and harmful to the integrity of Ontario capital markets.

[371] We find that Irwin accepted money from investors, helped investors complete application forms, prepared welcome letters and corresponded with investors, helped set up the off-shore companies, created and updated investors' online accounts, and exercised signing authority over the corporate bank accounts. We find that Irwin, because of his close working relationship with Sabourin, was in the best position of the individual respondents (apart from Sabourin himself) to recognize that the investment schemes were not legitimate. Although he questioned the use of investor funds, he accepted Sabourin's explanations and passed on Sabourin's reassurances to investors. We find that he misled Staff. Irwin received between $438,000 and $1.4 million from his involvement with Sabourin and Sun and Camdeton.

[372] Haver, a former registrant, admitted that he contravened sections 25 and 53 of the Act. We find that Haver solicited clients to invest, met with clients, including some who were referred by Smith, Lloyd and Delahaye and other sales agents, explained the investment schemes, provided promotional material, received clients' investment cheques, helped clients complete the paperwork and passed that material on to the Sabourin and Sun office, sent out welcome letters and other correspondence, and acted as the point of contact between investors and Sabourin when investors had problems with their investments. Haver also dealt with Smith, Lloyd and

Delahaye and other sales agents, entered into contracts with them and paid their commissions. We find that as a former registrant, Haver knew or ought to have known that he was selling securities in breach of the Act. It appears he received funds for his benefit of at least $345,000 from his involvement with Sabourin and Sun and Camdeton.

[373] Smith, Lloyd and Delahaye, the sales agents, admitted that they contravened sections 25 and 53 of the Act. They solicited clients to invest, met with clients to provide promotional material and explain the investment schemes, helped clients complete the required paperwork and received clients' investment cheques. They terminated their registrations so as to be able to sell the investment schemes, and continued to sell them even after being interviewed by the Commission. We find that as former registrants, they knew or ought to have known that they were selling securities in breach of the Act. We find that Smith was paid commissions of at least $1 million, Lloyd received at least $266,000, and Delahaye received at least $70,000, over the period of their involvement with Sabourin and Sun and Camdeton.

[374] We find that Haver, Smith, Lloyd and Delahaye continued to sell the investment schemes after learning that the Commission was making enquiries and conducting interviews. We also find that Irwin and Smith misled Staff during their interviews. In addition, Lloyd told investors to ignore any enquiries from the Commission regarding Sabourin and Sun.

[375] We are satisfied that Staff presented clear and convincing proof, based upon cogent evidence, that Sabourin, Irwin, Haver, Smith, Lloyd, Delahaye and the Corporate Respondents:

(i) contravened section 25 of the Act by trading in securities without registration in circumstances where no exemption was available;

(ii) contravened section 53 of the Act by distributing securities for which no preliminary prospectus or prospectus was filed or receipted by the Director in circumstances where no exemption was available; and

(iii) acted contrary to the public interest and in a manner harmful to the integrity of Ontario capital markets.

[8] We will consider our findings and conclusions in the Merits Decision in determining the appropriate sanctions and order as to costs in the circumstances.

III. SANCTIONS AND COSTS REQUESTED BY STAFF

[9] Staff requests the following sanctions and costs orders against the Respondents.

Cease trade and other prohibition orders

[10] Staff seeks an order:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that each of the Respondents cease trading in securities permanently;

(b) pursuant to clause 2.1 of subsection 127(1), that each of the Respondents be prohibited permanently from acquiring any securities;

(c) pursuant to clause 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply permanently to each of the Respondents;

(d) pursuant to clause 7 of subsection 127(1), that each of Sabourin and the Individual Respondents resign all positions he or she may hold as a director or officer of an issuer; and

(e) pursuant to clause 8 of subsection 127(1), that each of Sabourin and the Individual Respondents be prohibited permanently from becoming or acting as a director or officer of any issuer.

Reprimand

[11] Staff seeks an order, pursuant to clause 6 of subsection 127(1), reprimanding each of the Respondents.

Administrative Penalties

[12] Staff seeks an order, pursuant to clause 9 of subsection 127(1), requiring the Respondents to pay administrative penalties in the following amounts:

(a) $200,000 to be paid by Sabourin and each of the Corporate Respondents;

(b) $150,000 to be paid by each of Haver, Irwin and Smith; and

(c) $100,000 to be paid by each of Lloyd and Delahaye.

Disgorgement

[13] Staff seeks an order, pursuant to clause 10 of subsection 127(1), requiring each of the Respondents to disgorge to the Commission all amounts obtained as a result of their non-compliance with Ontario securities law, such amounts to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. The specific disgorgement orders sought are as follows.

[14] Staff seeks an order that Sabourin and the Corporate Respondents disgorge $27.9 million to the Commission, on a joint and several basis, being the total amount obtained by them as a result of their non-compliance with Ontario securities law. That amount is determined by

subtracting from the up to $33.9 million total amount obtained from investors, $6 million that appears to have been re-paid to investors (paragraphs 176 and 177 of the Merits Decision).

[15] Staff submits that Irwin should be jointly and severally responsible for the entire amount of $27.9 million obtained by Sabourin and the Corporate Respondents from investors because of what Staff describes as his "direct and sustained involvement throughout the relevant period". In the alternative, Staff seeks a disgorgement order of $599,000 against Irwin, being the amount of $438,000 that we concluded was received by him as salary and the amount of $161,000 which Irwin received and could not explain (paragraph 220 of the Merits Decision).

[16] Staff submits that Haver should be ordered to disgorge $19,624,779, being the entire amount obtained by him from investors as a result of his unlawful conduct, including the unlawful conduct carried out under his supervision by Smith, Lloyd and Delahaye. In the alternative, Staff seeks a disgorgement order against Haver in the amount of $2.6 million, being the amount Staff alleges was paid to Haver and his company, Nickel and Sun (paragraph 275 of the Merits Decision).

[17] Staff submits that Smith should be ordered to disgorge the entire amount obtained by him from investors as a result of his unlawful conduct, including the unlawful conduct carried out under his supervision by sales agents including Lloyd and Delahaye. Staff submits that the total amount obtained from investors by Smith and his agents was $14,352,423. Alternatively, Staff submits that Smith should be ordered to disgorge the amount of his commissions, which we found to be at least $1 million (paragraph 312 of the Merits Decision).

[18] Staff submits that Lloyd and Delahaye should be ordered to disgorge the entire amounts they obtained from investors, being $4,740,897 in the case of Lloyd and $1,996,140 in the case of Delahaye. Alternatively, Staff submits that Lloyd should be ordered to disgorge his commissions, which amounted to at least $266,000 (paragraph 339 of the Merits Decision) and that Delahaye should be ordered to disgorge her commissions of at least $70,000 (paragraph 364 of the Merits Decision).

Staff's Conclusion on Sanctions

[19] Staff submits that the sanctions orders requested by it are necessary in the public interest to protect investors and the Ontario capital markets from future misconduct by the Respondents. Staff submits that such orders are appropriate given the misconduct of the Respondents in this matter and the serious breach by them of key provisions of the Act.

Costs

[20] Staff also seeks an order for investigation and hearing costs pursuant to section 127.1 of the Act. Staff submits that the Respondents should be ordered to pay $182,493.75 on a joint and several basis, which amount Staff submits represents only a portion of the costs related to the investigation and hearings related to this matter.

IV. THE POSITIONS OF THE RESPONDENTS

A. Sabourin and the Corporate Respondents

[21] Sabourin and the Corporate Respondents did not appear at or participate in the hearing on the merits or the Sanctions and Costs Hearing.

B. Irwin

[22] In his written and oral submissions at the Sanctions and Costs Hearing, Irwin expressed his sympathy to the investors who were hurt as a result of the investment schemes and his regret about his own involvement. He accepts that what happened was wrong and that he "should have asked more questions, investigated further, stopped working for Sabourin, and … taken further steps when red flags came up".

[23] Irwin does not contest Staff's request that he be reprimanded, that he be prohibited from trading and acquiring securities, that any available exemptions under the Act not apply to him permanently, that he resign from any position as a director or officer of an issuer and that he be permanently prohibited from becoming or acting as a director or officer of an issuer.

[24] Accordingly, Irwin contests only Staff's request for an administrative penalty, disgorgement order and costs order. He submits that the total monetary amount sought by Staff is disproportionate to his conduct, especially compared with the other Respondents, and that he is financially unable to pay more than a limited financial penalty.

[25] With respect to the proportionality of sanctions, Irwin asks the Commission to consider the following factors:

(a) his limited securities knowledge, especially compared with Haver, Smith, Lloyd and Delahaye, who were former registrants (Irwin describes himself as a store clerk and educated computer programmer before he met Sabourin);

(b) his limited involvement with investors (Irwin described his role as that of an "administrative assistant" who was not involved in selling the investments and who simply referred investor enquiries on to Sabourin);

(c) his culpability, which he accepts and characterizes as that of an "unwitting tool" of Sabourin; and

(d) his lack of intention to profit from the scheme (he submits that he received only a salary and bonus consistent with his role as administrative assistant, and did not receive or expect to receive any sales commissions).

[26] Further, Irwin submits that once Sabourin disappeared and it became apparent to Irwin "just how wrong his scheme was", he co-operated with Staff, attending and providing information when requested, and he provided information to the Ontario Provincial Police in the fall of 2007.

[27] In an affidavit submitted to us, Irwin states that he and his wife are insolvent as a result of his involvement with Sabourin. There is apparently a judgment against him for $1,466,000 in favour of a Sabourin investor, which he states he will never be able to satisfy. He has liquidated his assets, including those owned jointly with his wife, totaling approximately $300,000. Irwin also says that his legal fees have exceeded $100,000. Further, he notes that he has no prior history or record of improper conduct relevant to these proceedings, and that he will never be involved in the capital markets again, as is made clear by his full acceptance of the imposition of the non-financial sanctions referred to above. Accordingly, Irwin submits that imposing the administrative penalty requested by Staff would not be in the public interest.

[28] With respect to disgorgement, Irwin disputes Staff's submission that he should be held jointly and severally responsible for the $27.9 million obtained by Sabourin and the Corporate Respondents from investors pursuant to the investment schemes. In response to Staff's alternative request that he disgorge his salary of $438,000 plus funds unaccounted for of $161,000, Irwin submits there was no evidence as to what, if any, amounts he obtained as a result of his non-compliance with Ontario securities law. He notes that Staff does not suggest, and there is no evidence, that he shared in the profits of the investment schemes or that his salary was not appropriate for the limited administrative role he played.

[29] With respect to costs, Irwin submits that he attempted to settle this matter with the Commission, challenging only the requested financial sanctions. Accordingly, Irwin says that no costs order should be made against him.

C. Haver

[30] Through his counsel, Haver expressed his regret "that his misplaced belief in the legitimacy of Sabourin's scheme and his resulting conduct resulted in harm to investors in Sabourin's scheme and to the capital markets generally. He accepts that his credulity in the face of red flags that should have alerted him to investigate more diligently make it appropriate that he be removed from any involvement in the capital markets."

[31] Consequently, Haver does not contest Staff's request that he be reprimanded, that he be prohibited from trading and acquiring securities, that any available exemptions under the Act not apply to him permanently, that he resign from any position as a director or officer of an issuer and that he be permanently prohibited from becoming or acting as a director or officer of an issuer.

[32] Haver contests only Staff's request for an administrative penalty, disgorgement order and costs order. He submits that in all of the circumstances, including his current very limited financial resources, he should not be ordered to pay more than $15,000, which is the amount that he reasonably expects to be able to pay.

[33] Haver submits that the monetary orders requested by Staff are not necessary for specific or general deterrence and appear to punish him for Sabourin's misconduct. Haver notes that we found that Sabourin "concocted and orchestrated the investment schemes and sold sham investments, directly and through Irwin, Haver, Smith, Lloyd, Delahaye and others" and that Sabourin "solicited and sold investments he knew to be a sham, lied to and misled investors, and

misappropriated investors' funds". In contrast, we found that Haver, "ignored the facts before him, did not ask the right questions (or blithely accepted the answers to the questions he asked) and ignored red flags that should have alerted him to investigate more diligently" and we concluded that "as a former registrant, Haver knew or ought to have known that he was selling securities in breach of the Act." In the circumstances, Haver submits that it is not appropriate for the administrative penalty proposed by Staff for Sabourin to be only $50,000 more than the administrative penalty proposed for him, given their very different levels of culpability and, in particular, the fact that Sabourin was the architect and prime beneficiary of the investment schemes.

[34] Haver accepts our findings as to his culpability, but submits that his belief in the legitimacy of Sabourin's investment schemes was the result of, and reinforced by, the following factors: he was introduced to Sabourin by his mentor, Gordon Edwards, who endorsed the investment schemes; his father, who held a Ph.D. in economics, met with Sabourin and was convinced of the legitimacy of the investment schemes; and his lawyer advised him that the rates of return were higher than normal but not unrealistic.

[35] For the same reason, Haver submits that it is not in the public interest that he should be liable to pay any disgorgement or costs jointly and severally with Sabourin or with Irwin or Smith, both of whom he submits were more culpable than he was. Haver notes that Staff stated, at the start of the hearing, that "this is not a collusion case. … It's not an acting jointly or in concert case …".

[36] Further, Haver submits that he co-operated with Staff, in contrast to Sabourin, who absconded with investors' money and did not participate in this proceeding. Haver notes that, at the outset of the hearing on the merits, he admitted that he contravened sections 25 and 53 of the Act. During his testimony, he repeatedly expressed his remorse for the damage caused by his actions.

[37] With respect to any possible disgorgement order against him, Haver relies on *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Re Limelight***") at paragraph 48, where the Commission adopted the position of the United States Securities and Exchange Commission that disgorgement "is an equitable remedy designed to deprive respondents of all gains flowing from their wrong, rather than to compensate the victims of the fraud". Haver submits that disgorgement is generally ordered against the architects of the scheme, as it was in *Re Limelight*. Haver says that "there's certainly never been a decision where disgorgement has been ordered against people like [him] on a joint and several basis".

[38] Accordingly, Haver submits that in determining the amount of any disgorgement order, the Act puts the focus on the amounts obtained by each respondent, not the amounts lost by investors. Further, Haver relies on the Commission's holding in *Re Limelight* that "it would be unfair and inconsistent with the principles underlying the disgorgement remedy for the aggregate amount ordered to be disgorged by Canadian securities regulators or courts to exceed the amounts obtained by [the respondents] from investors" (*Re Limelight*, *supra*, at paragraph 63). Haver submits that any disgorgement order made against him should not, therefore, include amounts he paid to sales agents such as Smith, Lloyd and Delahaye.

[39] Haver submits that, in determining the appropriate sanctions, ability to pay is a factor that should be given serious weight, although it is not the only factor or even a predominant factor. He relies in this respect on the decisions in *Re Zuk* (2007), 30 O.S.C.B. 3201, *Re Rankin* (2008), 31 O.S.C.B. 3303, and *Re Kasman and Anderson* (2009), 32 O.S.C.B. 5729. In response to Staff's submissions on this issue, Haver notes that in the two cases relied on by Staff for the proposition that ability to pay is not relevant in determining sanctions, the orders were issued against the architect of the scheme (*Hogan v. British Columbia (Securities Commission)*, 2005 BCCA 53, and *Re Anderson*, 2007 BCSECCOM 350). In contrast, he notes that in *Re Cornwall* (2008), 31 O.S.C.B. 4840 at paragraph 94, the Commission considered as mitigating factors in ordering costs against the respondent Cook, that she admitted her wrongdoing and recognized the seriousness of her actions, she was not an architect of the scheme (though she was "a necessary part" of it), and she was not closely involved with investors.

[40] In support of his submission that he will not be able to pay the monetary amounts sought by Staff, Haver filed an affidavit which states, amongst other things, that his liabilities (at the time of the Sanctions and Costs Hearing) exceed his assets by over $200,000, as shown on the net worth statement attached to his affidavit. Haver states in his affidavit that he believes he will be able to borrow between $10,000 to $15,000 from friends and relatives to pay any financial sanctions imposed by the Commission.

[41] Further, Haver states in his affidavit that, on March 20, 2008, he wrote to Staff and offered to accept the following sanctions in order to settle this matter: a twenty-year registration ban under subsection 127(1)8.5; a twenty-year cease trade order under subsection 127(1)2, except that after three years, he would be permitted to trade securities through a registered dealer in his registered retirement savings plan ("**RRSP**"); an order under subsection 127(1)3 that any exemptions contained in Ontario securities law shall not apply to him for twenty years; a reprimand under subsection 127(1)6; a twenty-year ban on becoming or acting as a director or officer of any issuer, registrant or investment fund manager under subsections 127(1)8, 8.2 and 8.4; and an order under subsection 127(1)10 that he disgorge $20,000 to the Commission. Haver submits that his settlement proposal is relevant in considering Staff's request for a costs order.

[42] Finally, Haver submits that the costs sought by Staff do not indicate what amounts should relate to him rather than the other Respondents, and he submits that the joint and several order requested by Staff is not appropriate in a case that was not pleaded as a "joint and in concert" case.

D. Smith, Lloyd and Delahaye

[43] Counsel for Smith, Lloyd and Delahaye (the "**Sales Agents**") does not take issue with Staff's request for trading bans, but submits that there should be carve-outs for personal trading in an RRSP. Counsel submits that there is no reason to believe the Sales Agents will take advantage of such carve-outs to the detriment of investors or the capital markets.

[44] Further, in response to Staff's request that the trading and market participation bans be permanent, the Sales Agents accept that significant bans will be ordered, but suggest that we may wish to consider the appropriate duration of such bans.

[45] With respect to disgorgement, the Sales Agents submit that Staff would not be seeking to hold them jointly and severally responsible to pay any disgorgement order if sufficient assets of the principals – Sabourin and the Corporate Respondents – were available. The Sales Agents submit that the focus of the Act is on the amounts obtained by each Respondent as a result of his or her non-compliance with Ontario securities law, not the total amount raised from investors. Accordingly, the Sales Agents submit that the relevant amount is the amount each Respondent earned as commissions for selling the investment schemes to investors.

[46] Further, in determining the amount of any disgorgement order, the Sales Agents submit that the individuals who introduced investors to Sabourin from August 2001 to the fall of 2004 (the "Sabourin and Sun Period" discussed at paragraphs 73 and 75 to 96 of the Merits Decision) and who likely received commissions for doing so, were not named as respondents in this matter; indeed, Staff called one of them, Robert Pope, as a witness at the hearing on the merits.

[47] Smith submits that there is a lack of clear evidence to definitively establish the amounts he obtained from investors, and while he acknowledges our conclusion that he likely received more, we were satisfied that he "was paid commissions of at least $1 million over the period of his involvement …" (paragraph 311 of the Merits Decision).

[48] Lloyd submits that while we found that he received "at least $266,000 in commissions" (paragraph 339 of the Merits Decision), those commissions went into a corporate account and were split equally with his father. He submits that evidence was not contested by Staff.

[49] Delahaye submits that any disgorgement order against her should take into account that she and her fiancé invested $80,000 in the investment schemes, which we found "may equal the full amount of the commissions that were paid to her" (paragraph 367 of the Merits Decision) and she says that her investment was made in May 2006, which was "fairly late in the day in the context of the relevant period … before this was all shut down".

[50] With respect to administrative penalties, the Sales Agents submit that any amounts ordered should be considered together with any disgorgement order, so that the financial sanctions ordered, when viewed in totality, are proportionate to the conduct in question.

[51] Finally, the Sales Agents submit that any costs order should take into account that the hearing on the merits was completed in just over two weeks due in part to the level of cooperation between the parties that participated in the hearing. Further, the Sales Agents acknowledged at the start of the hearing on the merits that they had distributed securities without being registered in breach of the Act.

V. SANCTIONS

A. The Law on Sanctions

[52] The Commission's mandate is (i) to provide protection to investors from unfair, improper or fraudulent practices; and (ii) to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).

[53] In imposing sanctions, the Commission's objective is not to punish past conduct. Rather, the Commission must act in a protective and preventative manner to restrain future conduct that may be harmful to investors or the capital markets. As stated by the Commission in *Re Mithras Management Ltd*:

> …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; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611)

[54] The Supreme Court of Canada has described the Commission's public interest jurisdiction as follows:

> The purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission*), [2001] 2 S.C.R. 132 at paragraph 43)

[55] In addition, the Commission should consider general deterrence as an important factor when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paragraph 60, the Supreme Court of Canada stated that "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[56] In determining the appropriate sanctions in this matter, we must ensure that the sanctions imposed are proportionate to the conduct of each Respondent (*Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 ("***Re M.C.J.C. Holdings***") at paragraph 26). As we stated in the Merits Decision:

> In our view, fairness requires us, in imposing sanctions, to consider all of the relevant circumstances. Those circumstances will include what the various Respondents knew or ought to have known, what they intended or believed, what steps they took to determine the legitimacy of the investment schemes, and what their role was in offering and selling those schemes to investors.
>
> (Paragraph 71 of the Merits Decision)

[57] The Commission has previously identified the following as some of the factors that the Commission should consider when imposing sanctions:

(a) the seriousness of the conduct and the breaches of the Act;

(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 recognition by a respondent of the seriousness of the improprieties;

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

(f) the size of any profit obtained or loss avoided from the illegal conduct;

(g) the size of any financial sanction or voluntary payment;

(h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(i) the reputation and prestige of the respondent;

(j) the remorse of the respondent; and

(k) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at page 7746; and *Re M.C.J.C. Holdings*, *supra*, at paragraph 26)

[58] Overall, the sanctions we impose must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future and by sending a clear message to the Respondents and to others participating in our capital markets that the types of illegal activities and abusive practices identified in this matter will not be tolerated.

[59] In imposing administrative penalties and disgorgement, we will consider the overall financial sanctions imposed on each Respondent.

[60] We accept that ability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed. We do not accept that as a predominant or determining factor, but it is clearly relevant in the total mix of factors and considerations.

B. Findings and Conclusions as to Sanctions

(i) Specific Factors Applicable in this Matter

[61] In considering the factors referred to in paragraphs 56 and 57, we find the following specific factors and circumstances to be relevant in this matter, based on our findings in the Merits Decision (which are summarized at paragraph 7 of these reasons):

(a) the conduct of Sabourin and the Corporate Respondents was clearly egregious. As noted above, Sabourin and the Corporate Respondents solicited and sold investments they knew to be a sham, lied to and misled investors, and misappropriated up to $27.9 million of investors' funds. In doing so, Sabourin and the Corporate Respondents breached a number of key provisions of the Act intended to protect investors from just such conduct. These actions and activities caused severe financial harm to investors and to the integrity of Ontario's capital markets and were clearly contrary to the public interest;

(b) Haver, Irwin, Smith, Lloyd and Delahaye knew or ought to have known that they were selling securities in breach of the Act;

(c) Haver and the Sales Agents represented to investors that there was little or no risk in the investments, some meetings were held in potential investors' homes and a number of the investors were encouraged to mortgage their homes, draw down lines of credit or collapse their RRSPs in order to invest;

(d) excessive commissions of up to 24% per year on the accumulating account balances of investors were paid to Haver and the Sales Agents and those commissions were not disclosed to investors;

(e) Haver, Irwin, Smith, Lloyd and Delahaye failed to exercise sufficient due diligence with respect to the investment schemes;

(f) Haver and the Sales Agents were former registrants and knew or ought to have known their conduct was inappropriate and in breach of the Act;

(g) Irwin had no previous financial industry experience but was in the best position of the Individual Respondents to know that the investment schemes were a sham;

(h) Haver and the Sales Agents continued to sell the investment schemes after learning that the Commission was making enquiries and conducting interviews. Lloyd told investors to ignore any enquiries from the Commission;

(i) Irwin and Smith misled Staff during their interviews; and

(j) it appears likely that investors have lost most of their investment and there is little hope for any recovery. That has had a devastating effect on a number of the investors from whom we heard evidence.

[62] We consider the matters referred to in clauses (a), (c), (d), (f), (h), (i) and (j) to be aggravating factors, to the extent such factors apply to an Individual Respondent. We also consider, with respect to Haver and Irwin, the mitigating factors identified in paragraphs 79 and 85 of these reasons.

(ii) Trading and Other Prohibitions

[63] As noted above, one of the Commission's objectives in imposing sanctions is to restrain future conduct that may be harmful to investors or the capital markets. In this case, we find that the public interest requires that the Respondents be restrained permanently from any future market participation. We note that the Individual Respondents are not contesting the imposition of substantial trading bans.

[64] In all of the circumstances, we have concluded that it is in the public interest to make the following orders:

(a) a permanent cease trade order against each of the Respondents (subject, in the case of the Individual Respondents, to a carve-out for trading in an RRSP);

(b) a permanent prohibition order against each of the Respondents acquiring any securities (subject, in the case of the Individual Respondents, to a carve-out for trading in an RRSP);

(c) a permanent removal of exemptions order against each of the Respondents;

(d) an order that each of Sabourin and the Individual Respondents resign all positions they hold as a director or officer of an issuer;

(e) an order that each of Sabourin and the Individual Respondents be prohibited permanently from becoming or acting as a director or officer of an issuer; and

(f) an order reprimanding each of the Respondents.

(iii) Disgorgement

[65] Subsection 127(1)10 of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. The disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence. It is not intended primarily as a means to compensate investors for their losses. However, subsection 3.4(2)(b) of the Act allows the Commission to order that amounts paid to the Commission in satisfaction of a disgorgement order or administrative penalty be allocated to or for the benefit of third parties.

[66] We agree that, as stated in *Re Limelight*, the Commission should consider the following factors when contemplating issuing a disgorgement order:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(c) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(d) whether the individuals who suffered losses are likely to be able to obtain redress by other means; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Re Limelight*, *supra*, at para. 52)

These factors are not exhaustive; they should be considered with the other factors referred to in paragraphs 56, 57 and 61 of these reasons.

[67] Staff has the onus to prove on the balance of probabilities the amount obtained by a respondent as a result of that respondent's non-compliance with the Act.

[68] The Commission commented in *Re Limelight* on how "amounts obtained" as a result of non-compliance with the Act should be determined. We agree with the following comment made in that decision:

> We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.
>
> (*Re Limelight*, *supra*, at para. 49)

[69] In our view, a disgorgement order is appropriate in these circumstances because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an

order will deter them and others from similar misconduct. In our view, it is appropriate that a disgorgement order in these circumstances relate to the full amount that we determined in the Merits Decision to have been obtained by each of the Respondents from investors.

[70] Having considered the relevant factors, we will order that Sabourin and the Corporate Respondents disgorge $27,900,000, on a joint and several basis. That amount represents the up to $33.9 million obtained by Sabourin and the Corporate Respondents from investors less the amount of $6 million that appears to have been returned to investors (paragraphs 176 and 177 of the Merits Decision). We impose joint and several liability on Sabourin and the Corporate Respondents because, as stated in the Merits Decision, Sabourin was the directing and controlling mind of the Corporate Respondents and it would be impossible to treat them separately (paragraph 187 of the Merits Decision). As stated at paragraph 370 of the Merits Decision, Sabourin concocted and orchestrated the investment schemes. Because of our view that the Individual Respondents are less culpable than Sabourin and the Corporate Respondents and played distinct roles in the investment schemes, we will not order that any of the Individual Respondents pay, on a joint and several basis, the amounts we order disgorged by Sabourin and the Corporate Respondents.

[71] The amounts obtained by Haver and the Sales Agents from investors appear to have been obtained as agents for Sabourin and the Corporate Respondents, and those amounts were paid to Sabourin and the Corporate Respondents. Haver and the Sales Agents were then paid commissions on the amount of their sales to investors. In the circumstances, there would be a significant element of double counting the amounts "obtained" if we took the position that all of the amounts obtained by Sabourin and the Corporate Respondents from investors were obtained both by them and by Haver and the Sales Agents for purposes of a disgorgement order. While that may be appropriate in other circumstances, that result does not seem to us to be fair to the Individual Respondents in this case. In the circumstances of this case, we find it appropriate to order disgorgement by the Individual Respondents only of the commissions they obtained after reflecting payment of commissions to other sales agents. In doing so, we should not be taken to have concluded that it will always be appropriate in making a disgorgement order to deduct commissions or other amounts that have been paid to third parties.

[72] We will order that Haver disgorge $345,000 (paragraph 277 of the Merits Decision), that Smith disgorge $1,000,000 (paragraph 312 of the Merits Decision), that Lloyd disgorge $266,000 (paragraph 339 of the Merits Decision) and that Delahaye disgorge $70,000 (paragraph 364 of the Merits Decision), each on a several basis.

[73] No disgorgement order is made against Irwin. Irwin did not sell the investment schemes to investors or receive commissions for doing so. His role was primarily administrative and he appears to have acted only at the specific direction of Sabourin. In the circumstances, we are not prepared to conclude that Irwin obtained any amounts as a result of his contraventions of the Act. In coming to that conclusion, we should not be taken to have concluded that a person paid a salary can never he held to have obtained, for purposes of subsection 127(1)10 of the Act, such amounts as a result of their non-compliance with the Act.

(iv) Administrative Penalties

[74] In our view, it is appropriate in this matter to impose substantial administrative penalties in addition to our disgorgement orders to ensure that the overall financial sanctions imposed on the Respondents deter others from similar conduct.

[75] The misconduct by each of the Respondents in this matter involved numerous serious breaches of the Act over a period of years. Under subsection 127(1)9 of the Act, we are entitled to impose an administrative penalty of not more than $1 million in connection with each failure to comply with the Act. In our view, as a matter of principle, a respondent who commits multiple breaches of the Act should know that continuing breaches of the Act will have consequences in terms of the sanctions ultimately imposed. At the same time, however, in imposing administrative penalties we must consider the specific conduct of each Respondent and the level of administrative penalties imposed in other similar cases. In this respect, we have carefully reviewed the decisions referred to us by Staff and counsel for the Sales Agents.

[76] In imposing the following administrative penalties, we have considered our findings in the Merits Decision, the respective roles of each Respondent in the illegal conduct involved in this matter, the extent of the involvement of each Respondent in selling the investment schemes to investors, and, in the case of Haver and Irwin, their current financial circumstances. In doing so, we recognize that the Individual Respondents were less culpable than Sabourin and the Corporate Respondents. We also note that Irwin's role was primarily administrative and did not involve the direct sale by him of securities to investors or the receipt of commissions.

[77] We will order that an administrative penalty of $1,200,000 be paid to the Commission by Sabourin and the Corporate Respondents, on a joint and several basis. A significant administrative penalty is appropriate given the egregious role of those Respondents (as summarized in paragraphs 369 and 370 of the Merits Decision and set forth in paragraph 7 of these reasons) that they pay the largest administrative penalty and that it be very substantial given their conduct and multiple breaches of the Act over a period of years.

[78] We will order that an administrative penalty of $150,000 be paid to the Commission by each of Haver and Smith, on a several basis.

[79] With respect to Haver, we consider the following mitigating factors:

(i) at the hearing on the merits, he admitted the allegations against him that he contravened section 25 and 53 of the Act, contesting only Staff's allegation that he participated in a prime bank investment scheme (paragraph 243 of the Merits Decision);

(ii) at the Sanctions and Costs Hearing, he expressed remorse and accepted Staff's request for a reprimand and market participation bans, contesting only Staff's request for a disgorgement order, administrative penalty and costs order; and

(iii) he states that he has no ability to pay any amount in excess of $10,000 to $15,000.

[80] However, we find that the public interest requires that we impose a significant administrative penalty on Haver because he was a former registrant who knew or ought to have known that he was selling securities in breach of the Act, and because he:

(i) entered into contracts with Smith, Lloyd and Delahaye, as sales agents, to sell the investment schemes, and paid their commissions;

(ii) was held out as an officer of Sabourin and Sun and Camdeton (as defined in the Merits Decision) and was the point of contact between those entities and his investors;

(iii) continued to sell the investments even after he became aware that the Commission was investigating; and

(iv) acknowledged that he received approximately $2.6 million from Sabourin and the Corporate Respondents before payments to sales agents and third parties.

(Paragraphs 275, 372 and 374 of the Merits Decision)

[81] We will also impose an administrative penalty of $150,000 on Smith because of Smith's role in training sales agents, such as Lloyd and Delahaye, and because he received commissions from their sales. We were particularly concerned that Smith was a former registrant and that he:

(i) initially sold the investments while he was still employed with a registrant and was not entitled to carry on any investment business except through his employer;

(ii) encouraged clients to collapse their RRSPs and mortgage their homes in order to invest in what was represented as a "guaranteed" return;

(iii) appears to have understood the securities law issues raised by the investment schemes, i.e. he encouraged sales agents to refer to an investment as an "opportunity" whereby an investor could "participate" or "establish a trust" and warned salespersons that they could "lose this tool" if they didn't preserve confidentiality;

(iv) made misleading and untrue statements to Staff in his interview with Staff in March, 2005; and

(v) continued to sell the investments even after he became aware that the Commission was investigating.

(Paragraph 313 of the Merits Decision)

In addition, we note that we were very skeptical of Smith's testimony that he exercised due diligence before getting involved in the investment schemes (paragraph 286 of the Merits Decision).

[82] We will order that an administrative penalty in the amount of $100,000 be paid to the Commission by each of Lloyd and Delahaye, on a several basis.

[83] We were particularly concerned that Lloyd was a former registrant and that he:

(i) initially sold the investments at a time when he was still employed with a registrant and was not entitled to carry on any investment business except through his employer;

(ii) told clients that they did not need to pay attention to a letter that they would be receiving from the Commission as part of the Commission's enquiries; and

(iii) continued to sell the investments even after he became aware that the Commission was investigating.

(Paragraph 340 of the Merits Decision)

[84] We were particularly concerned that Delahaye was a former registrant and that she:

(i) met investors in their homes, explained the investments, solicited sales of the investments, and recommended that some clients mortgage their homes and put all of their financial assets in the investments;

(ii) started selling the investments while she was employed with a registrant and was not entitled to carry on any investment business except through her employer; and

(iii) continued to sell the investments even after she became aware that the Commission was investigating.

(Paragraphs 364 and 365 of the Merits Decision)

[85] We will order that an administrative penalty of $50,000 be paid to the Commission by Irwin. With respect to Irwin, we consider the following mitigating factors:

(i) he had no prior financial industry experience and has never been registered with the Commission (paragraph 222 of the Merits Decision);

(ii) he was not primarily involved in selling the investment schemes to investors, but played a more limited administrative role;

(iii) at the hearing on the merits, he admitted the allegations against him that he had contravened sections 25 and 53 of the Act, and disputed only Staff's allegations about the extent of his involvement (paragraph 25 of the Merits Decision);

(iv) at the Sanctions and Costs Hearing, he agreed to the sanctions requested by Staff apart from the monetary orders;

(v) at the Sanctions and Costs Hearing, he clearly expressed his remorse; and

(vi) he states that he has no ability to pay any financial sanctions because he and his wife are insolvent as a result of his involvement with Sabourin, and there is a judgment against him that he will never be able to satisfy.

[86] However, we find that the public interest requires that we impose an administrative penalty on Irwin because:

(i) he was in the best position of the Individual Respondents to know that the investment schemes were a sham and he ignored red flags that should have alerted him to investigate more diligently;

(ii) he took no action when he became aware that the Commission was investigating; and

(iii) he misled Staff during his interview in June 2005.

(Paragraphs 223 and 224 of the Merits Decision)

(vi) Allocation of Amounts for the benefit of third parties

[87] As noted above, it appears likely that investors have lost most of their investment in the investment schemes sold by the Respondents and there is little hope for any recovery. While we consider it to be in the public interest to order disgorgement of amounts obtained and the payment of substantial administrative penalties, it would be unfair and inappropriate, in our view, if those orders had the effect of reducing the amounts that investors are able to recover from any of the Respondents.

[88] Accordingly, any amounts paid to the Commission in compliance with our disgorgement and administrative penalty orders shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment schemes, in accordance with subsection 3.4(2)(b) of the Act. Such amounts are to be distributed to investors who lost money as a result of investing in the investment schemes on such basis, on such terms and to such investors as Staff in its discretion determines to be appropriate in the circumstances. A distribution to investors shall be made only if Staff is satisfied that doing so is reasonably practicable in the circumstances and only if Staff concludes that there are sufficient funds available to justify doing so. If for any reason, Staff decides at any time or from time to time not to distribute any such amounts to investors, such amounts may, by further Commission order, be allocated to or for the benefit of other third parties. Any panel of the Commission may, on the application of Staff, make any order it considers expedient with respect to the matters addressed by this paragraph.

[89] The terms of paragraph 88 shall not give rise to or confer upon any person, including any investor (i) any legal right or entitlement to receive, or any interest in, amounts received by the Commission under our orders for disgorgement and administrative penalties, or (ii) any right to receive notice of any application by Staff to the Commission made in connection with that paragraph or of any exercise by the Commission of any discretion granted to it under that paragraph.

VI. COSTS

[90] Staff seeks an order for the payment of $182,493.75 of the costs of investigation and of the hearing in this matter against all of the Respondents, on a joint and several basis. Staff has submitted a bill of costs supporting that amount. We accept that the amount claimed by Staff represents only a portion of Staff's costs related to this proceeding.

[91] In our view, this hearing was necessitated by the conduct of Sabourin and the Corporate Respondents, who did not appear, and would have been necessary even if the Individual Respondents had not disputed a limited number of the allegations made by Staff against them and certain of the sanctions requested by Staff. The Individual Respondents made a number of admissions that shortened the length of the hearing on the merits. In our view, the Individual Respondents acted appropriately throughout the hearing and contributed to completing it as expeditiously as possible in the circumstances. The Individual Respondents should be given some credit for having done so.

[92] In the circumstances, we will order that Sabourin and the Corporate Respondents pay the costs of investigation and of the hearings in this matter in the amount of $130,000, on a joint and several basis. We will order that each of the Individual Respondents pay the costs of investigation and of the hearing in this matter in the amount of $10,000, on a several basis.

VII. CONCLUSION

[93] For the reasons discussed above, we have concluded that the sanctions set out in these reasons are proportionate to the respective culpability and conduct of each Respondent in the circumstances and are in the public interest. Our Sanctions and Costs Order is appended to these reasons.

Dated at Toronto, this 4th day of June, 2010.

"James E. A. Turner"

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James E. A. Turner

"David L. Knight"

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David L. Knight, F.C.A.

"Carol S. Perry"

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Carol S. Perry

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
PETER SABOURIN, W. JEFFREY HAVER, GREG IRWIN,
PATRICK KEAVENEY, SHANE SMITH, ANDREW LLOYD, SANDRA DELAHAYE,
SABOURIN AND SUN INC., SABOURIN AND SUN (BVI) INC.,
SABOURIN AND SUN GROUP OF COMPANIES INC.,
CAMDETON TRADING LTD. AND CAMDETON TRADING S.A.

ORDER

(Sections 127 and 127.1 of the *Securities Act*)

WHEREAS the proceeding in this matter was commenced before the Ontario Securities Commission (the "Commission") by a Statement of Allegations and Notice of Hearing dated December 7, 2006;

AND WHEREAS following a hearing, a decision on the merits was issued by the Commission on March 20, 2009;

AND WHEREAS following a subsequent hearing, a decision on sanctions and costs was issued by the Commission on June 4, 2010;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make the following order;

IT IS ORDERED that:

(a) pursuant to clause 2 of subsection 127(1) of the Act, each of Peter Sabourin ("Sabourin"), W. Jeffrey Haver ("Haver"), Greg Irwin ("Irwin"), Shane Smith ("Smith"), Andrew Lloyd ("Lloyd"), Sandra Delahaye ("Delahaye"), and Sabourin and Sun Inc., Sabourin and Sun (BVI) Inc., Sabourin and Sun Group of Companies Inc., Camdeton Trading Ltd. and Camdeton Trading S.A. (the "Corporate Respondents") shall cease trading in securities permanently, with the exception that each of Haver, Irwin, Smith, Lloyd and Delahaye are permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which they and/or their respective spouses have sole legal and beneficial ownership, provided that:

(i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

(ii) they do not own legally or beneficially (in the aggregate, together with their respective spouses) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) they carry out any permitted trading through a registered dealer and through trading accounts opened in their respective names only (and they must close any trading accounts that are not in their respective names only);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, each of the Respondents is prohibited permanently from acquiring any securities, except in the case of Haver, Irwin, Smith, Lloyd and Delahaye, to allow the trading in securities permitted by and in accordance with paragraph (a) of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to each of the Respondents permanently;

(d) pursuant to clause 6 of subsection 127(1) of the Act, each of the Respondents is reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, each of Sabourin, Haver, Irwin, Smith, Lloyd and Delahaye shall resign all positions he or she may hold as a director or officer of an issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, each of Sabourin, Haver, Irwin, Smith, Lloyd and Delahaye is prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 10 of subsection 127(1) of the Act, Sabourin and the Corporate Respondents shall jointly and severally disgorge to the Commission the amount of $27,900,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(h) pursuant to clause 10 of subsection 127(1) of the Act, Smith shall disgorge to the Commission the amount of $1,000,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(i) pursuant to clause 10 of subsection 127(1) of the Act, Haver shall disgorge to the Commission the amount of $345,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(j) pursuant to clause 10 of subsection 127(1) of the Act, Lloyd shall disgorge to the Commission the amount of $266,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(k) pursuant to clause 10 of subsection 127(1) of the Act, Delahaye shall disgorge to the Commission the amount of $70,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(l) pursuant to clause 9 of subsection 127(1) of the Act, Sabourin and the Corporate Respondents shall pay to the Commission, on a joint and several basis, an administrative penalty of $1,200,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(m) pursuant to clause 9 of subsection 127(1) of the Act, each of Haver and Smith shall pay to the Commission an administrative penalty of $150,000, on a several basis, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(n) pursuant to clause 9 of subsection 127(1) of the Act, each of Lloyd and Delahaye shall pay to the Commission, on a several basis, an administrative penalty of $100,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(o) pursuant to clause 9 of subsection 127(1) of the Act, Irwin shall pay to the Commission an administrative penalty of $50,000, to be allocated by the Commission in accordance with paragraph (p) of this Order;

(p) the amounts referred to in each of paragraphs (g) to (o) inclusive of this Order shall be allocated by the Commission to or for the benefit of third parties, including investors who lost money as a result of investing in the investment schemes that were the subject matter of this proceeding, in accordance with subsection 3.4(2)(b) of the Act; and

(q) pursuant to section 127.1 of the Act,

(i) Sabourin and the Corporate Respondents shall jointly and severally pay to the Commission, the Commission's costs of investigation and hearing of this matter in the amount of $130,000; and

(ii) each of Haver, Irwin, Smith, Lloyd and Delahaye shall pay to the Commission, on a several basis, the Commission's costs of investigation and hearing of this matter in the amount of $10,000.

Dated in Toronto, this 4th day of June, 2010.

"James E. A. Turner"

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James E. A. Turner

"David L. Knight"

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David L. Knight, F.C.A.

"Carol S. Perry"

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Carol S. Perry