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 NORSHIELD ASSET MANAGEMENT (CANADA) LTD., OLYMPUS UNITED GROUP INC., JOHN XANTHOUDAKIS, DALE SMITH AND PETER KEFALAS

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Act)

Hearing:	April 20, 2010	
Decision:	August 6, 2010	
Panel:	David L. Knight, F.C.A.	- Commissioner and Chair of the Panel
	Margot C. Howard, CFA	- Commissioner
Appearances:	Pamela Foy Amanda Heydon	- For Staff of the Commission
	Alistair Crawley	- For John Xanthoudakis and Dale Smith
	Peter Kefalas	- Self-represented
	No one appeared for Norshield Asset Management (Canada) Ltd. or Olympus United Group Inc.	

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REASONS AND DECISION ON SANCTIONS AND COSTS

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 Norshield Asset Management (Canada) Ltd. ("NAM"), Olympus United Group Inc. ("Olympus United Group"), John Xanthoudakis, Dale Smith and Peter Kefalas (collectively, the "Respondents").

[2] The Respondents were involved in an investment structure, referred to as the "Norshield Investment Structure", that resulted in the loss of most of the $159 million invested by 1,900 Canadian retail investors. Additional funds were raised from institutional investors at other levels of the Norshield Investment Structure.

[3] The hearing on the merits was heard over 16 days from October 27 to December 11, 2008, and on May 5 and 6, 2009.

[4] The Reasons and Decision for the hearing on the merits were issued on March 8, 2010 in *Re Norshield Asset Management* (2010), 33 O.S.C.B. 2139 (the "Merits Decision"), and a hearing was subsequently held on April 20, 2010 to consider submissions from Staff of the Commission ("Staff") and the Respondents regarding sanctions and costs (the "Sanctions and Costs Hearing").

[5] At the Sanctions and Costs Hearing, we heard from four witnesses called to testify by Staff, who gave evidence on how they were personally impacted by the failure of the Norshield Investment Structure.

[6] Following the Sanctions and Costs Hearing, we received additional written submissions from Staff and Mr. Xanthoudakis and Mr. Smith with regards to the availability of administrative penalties for a breach of the duty to deal fairly, honestly and in good faith with clients, pursuant to subsections 2.1(1) and (2) of OSC Rule 31-505.

[7] We find that it is in the public interest to order that the Respondents be subject to sanctions, as set out in the order we have issued along with these reasons and decision. We impose these sanctions for the reasons that follow.

II. THE MERITS DECISION

A. Our Findings on Staff's Allegations

[8] In the Merits Decision, the panel made the following findings:

(i) NAM, Olympus United, Mr. Xanthoudakis and Mr. Smith failed to deal fairly, honestly and in good faith with investors, contrary to subsections 2.1(1) and (2) of OSC Rule 31-505 – *Conditions of Registration*;

(ii) NAM and Olympus United Group failed to keep and maintain proper books and records in relation to the Norshield Investment Structure, contrary to section 19 of the Act and section 113 of Ontario Regulation 1015 of the Act;

(iii) as a consequence of their positions of seniority and responsibility and in their positions as officers and directors of NAM and Olympus United Group, Mr. Xanthoudakis and Mr. Smith authorized, permitted and acquiesced in the breaches of Ontario securities laws in (i) and (ii), above;

(iv) Mr. Xanthoudakis and Mr. Smith knowingly made statements and provided evidence and information to Staff that was materially misleading and failed to state facts which were required to be stated in an effort to hide violations of Ontario securities laws, contrary to clause (a) of subsection 122(1) of the Act; and

(v) Mr. Xanthoudakis, Mr. Smith and Mr. Kefalas engaged in a course of conduct that was abusive to and compromised the integrity of Ontario's capital markets and was contrary to the public interest.

(Merits Decision at para. 334.)

B. The Flow of Funds through the Norshield Investment Structure

[9] The Norshield Investment Structure was a multi-jurisdictional corporate structure that was designed to raise and manage retail and institutional funds. Retail investors were generally issued shares in Olympus United Funds Corporation ("Olympus United Funds"), which were issued pursuant to a series of offering memoranda for shares of Olympus United Funds marketed by Olympus United Group. Additional funds were raised from retail and institutional investors at another level in the Norshield Investment Structure. NAM provided portfolio management services to Olympus United Funds. Mr. Xanthoudakis and Mr. Smith held positions as officers and directors of many of the entities in the Norshield Investment Structure, including NAM and Olympus United Group, and the Merits Decision panel found that they were the directing minds of the overall Norshield Investment Structure.

[10] As described to investors in Olympus United Funds, they were to be provided access to a portfolio of hedge fund managers which they would have had difficulty accessing individually due to the minimum investment requirements of each hedge fund manager. In reality, investors' funds were not substantially allocated to a portfolio of hedge fund managers, as had been communicated to them.

[11] Instead, funds were eventually invested in Mosaic Composite (U.S.) Inc. ("Mosaic Composite"), a corporation which notionally divided its assets into "hedged assets" and "non-hedged assets". The hedged assets included an option purchased from the Royal Bank of Canada that increased or decreased in value based on the value of the underlying hedge fund portfolios (the "SOHO Option"). The bulk of the remaining assets were invested in a portfolio of equity investments through four Bahamian funds (the "Channel Funds").

[12] As summarized at paragraph 22 of the Merits Decision,

> Ultimately, the value of the investments in the Channel Funds and the other assets fell far short of the funds invested in them and there is little residual value

remaining for retail and institutional investors. The task of surfacing value has been complicated by missing or incomplete records, multiple jurisdictions, competing claims and intercorporate transfers.

III. SANCTIONS AND COSTS REQUESTED BY STAFF

A. Sanctions

Specific Sanctions Requested

[13] Staff is requesting that the following sanctions be ordered against the Respondents.

[14] With respect to NAM and Olympus United Group, Staff request:

(a) pursuant to clause 1 of subsection 127(1) of the Act, an order that the registration under the Act of each of NAM and Olympus United Group be terminated;

(b) pursuant to clause 1 of subsection 127(1) of the Act, an order that each of NAM and Olympus United Group be permanently prohibited from becoming registered under the Act;

(c) pursuant to clause 2 of subsection 127(1) of the Act, an order that each of NAM and Olympus United Group cease trading in securities permanently; and

(d) pursuant to clause 3 of subsection 127(1) of the Act, an order that any exemptions contained in Ontario securities law do not apply to each of NAM and Olympus United Group permanently.

[15] With respect to Mr. Xanthoudakis and Mr. Smith, Staff request:

(a) pursuant to clause 1 of subsection 127(1) of the Act, an order that Mr. Xanthoudakis's registration under the Act be terminated;

(b) pursuant to clause 1 of subsection 127(1) of the Act, an order that each of Mr. Xanthoudakis and Mr. Smith be permanently prohibited from becoming registered under the Act;

(c) pursuant to clause 2 of subsection 127(1) of the Act, an order that each of Mr. Xanthoudakis and Mr. Smith cease trading in securities permanently;

(d) pursuant to clause 3 of subsection 127(1) of the Act, an order that any exemptions contained in Ontario securities law do not apply to each of Mr. Xanthoudakis and Mr. Smith permanently;

(e) pursuant to clause 6 of subsection 127(1) of the Act, an order reprimanding each of Mr. Xanthoudakis and Mr. Smith;

(f) pursuant to clause 7 of subsection 127(1) of the Act, an order that each of Mr. Xanthoudakis and Mr. Smith resign all positions that they hold as a director or officer of an issuer;

(g) pursuant to clause 8 of subsection 127(1) of the Act, an order that each of Mr. Xanthoudakis and Mr. Smith be permanently prohibited from becoming or acting as a director or officer of any issuer; and

(h) pursuant to clause 9 of subsection 127(1) of the Act, an order requiring each of Mr. Xanthoudakis and Mr. Smith to pay the following administrative penalties, for allocation to or for the benefit of third parties:

- $1,000,000 in respect of their breaches of section 2.1 of OSC Rule 31-505 which required that they deal fairly, honestly and in good faith with investors;
- $1,000,000 in respect of their breaches of section 19 of the Act and section 113 of Ontario Regulation 1015, which required that books and records of NAM and Olympus United Group be maintained; and
- $250,000 for misleading Staff, contrary to subsection 122(1)(a) of the Act.

[16] With respect to Mr. Kefalas, Staff request:

(a) pursuant to clause 1 of subsection 127(1) of the Act, an order that Mr. Kefalas be prohibited from becoming registered under the Act for a period of 3 years;

(b) pursuant to clause 1 of subsection 127(1) of the Act, an order that a term and condition of supervision be imposed on Mr. Kefalas's registration for a period of 3 years should he seek to be registered after the prohibition period referred to above; and

(c) pursuant to clause 8.2 of subsection 127(1) of the Act, an order that Mr. Kefalas be prohibited from becoming or acting as a director or officer of a registrant for a period of 3 years.

[17] In support of these requests, Staff called four investor witnesses who testified about how they were personally impacted.

Factors to Consider when Determining the Appropriate Sanctions

[18] Staff submit that the allegations against Mr. Xanthoudakis and Mr. Smith, as proven, are extremely serious:

> Xanthoudakis and Smith failed to account for investors' funds despite their positions of seniority within the Norshield Investment Structure. More particularly, Xanthoudakis and Smith participated in transactions which artificially inflated the NAVs reported to investors. By this conduct, investors were mislead into believing that their funds were invested in a structure that had value and liquidity, of which it had neither, at least in 2004 and 2005. Further, Xanthoudakis and Smith participated in transactions which preferred the interests of certain investors over others. Conduct of this nature is unlawful, improper and a violation of their positions of authority within the Norshield Investment Structure. Last, Xanthoudakis and Smith misled Staff about the true structure of the Norshield

> investments during the regulatory on-site review of the Corporate Respondents' business in an effort to hide their unlawful conduct.
>
> (Sanctions Submissions of Staff, dated April 19, 2010 at paragraph 16.)

[19] Staff submit that NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith acted dishonestly, treated investors unfairly, contributed to the losses experienced by investors and misled Staff. This conduct, they submit, is particularly egregious; the nature and scale of their misconduct warrant higher administrative penalties and trading, registration, and director and officer bans.

[20] Staff submit that the roles held by Mr. Kefalas as Compliance Officer and Ultimate Responsible Person are crucial to the proper regulation of the capital markets, and Mr. Kefalas's failure to properly discharge his responsibilities resulted in harm to investors and to the capital markets.

[21] Citing the Commission's recent decision in *Re Rowan* (2009), 33 O.S.C.B. 91 ("*Rowan*") at para. 145, Staff submit that as registrants, the Respondents are expected to have a higher level of awareness of securities law requirements and the importance of those requirements to the capital markets. As such, Staff submit that the Respondents' breaches of Ontario securities law should be treated as significantly more serious than if they had not been registered.

[22] Staff submit that we should consider the scale of the Respondents' unlawful activity when assessing appropriate sanctions. They submit that the nearly entire loss of $159 million invested by close to 2,000 investors, most of whom were Ontario residents, and the period of time over which the misconduct occurred indicate that significant sanctions should be ordered.

[23] With respect to Mr. Kefalas, Staff submit that severe sanctions are warranted given the magnitude of loss suffered by investors and the gate-keeping function of a Compliance Officer or Ultimate Responsible Person.

[24] Staff also draw our attention to the fact that neither Mr. Xanthoudakis nor Mr. Smith have demonstrated any recognition of the seriousness of their improprieties.

[25] Staff submit that an order permanently removing NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith from the marketplace and significant administrative penalties would be proportionate to the Respondents' conduct and would have a deterrent effect on the Respondents and like-minded individuals.

[26] Staff contend that an administrative penalty would be appropriate since the Respondents are registrants and the scope of their misconduct is broad. They submit that the administrative penalty should have sufficient magnitude to effectively deter similar behaviour by the Respondents and others.

[27] Staff referred to *Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*") at para. 5, in which the Supreme Court of Canada agreed with the penalty imposed by the British Columbia Securities Commission on respondents who had leadership roles, stating that their "deceitful conduct and leadership roles justified the imposition of a higher penalty than that imposed on

their confederates." An order that the maximum penalty of $100,000 be paid was upheld by the court.

[28] Staff also cited the Commission's decision in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("*Limelight*"), where administrative penalties of $175,000 and $200,000 were ordered against two respondents who were directing minds. These respondents were also jointly and severally liable to disgorge $2.75 million to the Commission. This order was made after consideration of factors including the amount raised from investors, the egregious conduct of the respondents in causing harm to investors and the marketplace, the loss of the entire amount of investments and misleading statements made to Staff by the respondents. (*Limelight, supra* at para. 33). The panel noted that the quantum of administrative penalties ordered would have been higher had the disgorgement order not been made.

[29] Staff urge us to consider mitigating factors when assessing what sanctions would be appropriate for Mr. Kefalas. These mitigating factors include Mr. Kefalas's belief that NAM's legal counsel was the person responsible for compliance in practice and that he was never asked to practically fulfill any ongoing compliance function by NAM.

[30] At the Sanctions and Costs Hearing, Staff requested that any administrative penalties ordered be allocated to the receiver for NAM, for the benefit of investors in the Norshield Investment Structure.

B. Costs

[31] Staff also request an order pursuant to subsection 127.1 of the Act that Mr. Xanthoudakis and Mr. Smith shall jointly and severally pay to the Commission $295,000 in costs. Staff does not request an order of costs with respect to the other Respondents.

[32] The total costs incurred for this proceeding is calculated to be $998,320, which includes work done by investigation and litigation Staff. Staff are claiming costs of $414,077.50, which reflects the hours claimed for two litigators' preparation for the hearing, and some costs associated with a Staff investigator's investigation and preparation for the hearing. This total is adjusted down in Staff's final claim for costs to reflect the fact that only five of the seven allegations were made out against the Respondents. Hence, Staff's request that $295,000 be paid.

IV. THE POSITIONS OF THE RESPONDENTS

[33] NAM is currently in receivership. Both NAM and Olympus United Group were unrepresented at the Sanctions and Costs hearing. We received no submissions from these Respondents.

A. Mr. Xanthoudakis and Mr. Smith

Trading, Registration and other Restrictions

[34] Mr. Xanthoudakis and Mr. Smith submit that the conduct addressed in this proceeding does not correlate to the cease trading and personal exemption remedies requested by Staff. They suggest that the sanctions relating to bans on trading and exclusions from exemptions are not appropriate in the circumstances.

[35] In contrast, they submit that restrictions on their registration and their ability to be or act as directors or officers of issuers relate to the conduct at issue.

Administrative Penalties

[36] Mr. Xanthoudakis and Mr. Smith submit that in addition to the general public interest requirement for any order made under subsection 127(1), an order that a respondent pay an administrative penalty requires that the respondent breached Ontario securities law.

[37] They agree with Staff's submission that a breach of section 19 of the Act, relating to books and records requirements, is a breach of Ontario securities law. However, they submit that a breach of section 19 should not warrant a penalty in the magnitude of $1,000,000.

[38] Mr. Xanthoudakis and Mr. Smith also agree that a finding that they misled Staff during the on-site compliance review would be a breach of Ontario securities law. They submit that this finding in the Merits Decision was based on an omission to discuss the Channel Funds, rather than a positive misstatement. They suggest that the seriousness of this breach can be distinguished from cases where respondents have made statements that are misleading.

[39] Mr. Xanthoudakis and Mr. Smith submit that we should consider mitigating circumstances when deciding whether an administrative penalty is appropriate and, if so, the quantum of that penalty. They submit that the Respondents were in crisis mode at the time of the on-site compliance review and Mr. Xanthoudakis believed he was going to have a follow-up interview with Staff during the next couple weeks, where there could have been further disclosure of his knowledge of the investment structure.

[40] Mr. Xanthoudakis and Mr. Smith do not agree that a breach of OSC Rule 31-505 constitutes a breach of Ontario securities law that could lead to an administrative penalty. They submit that it is less than clear whether a breach of the general duty that "A registered dealer or advisor shall deal fairly, honestly and in good faith with its clients" amounts to a failure to comply with Ontario securities law.

[41] They submit that the definition of "regulations", which constitutes Ontario securities law under the Act, includes rules *unless the context otherwise indicates*. Looking at the context, they submit that rules such as section 2.1 of OSC Rule 31-505 which make a very general statement can be distinguished from rules that specifically articulate a particular obligation in a way that is more discernable and concrete. This issue is addressed more fully in paragraphs 51 to 71, below.

[42] Regarding the amount of any administrative penalty, counsel for Mr. Xanthoudakis and Mr. Smith submits that *Cartaway* dealt with an entirely different set of circumstances than are at issue in this proceeding; the two individuals earned $5.1 million in personal trading profits relating to trades in securities of the issuer in that proceeding, whereas, in this case, there were no findings that either Mr. Xanthoudakis or Mr. Smith personally profited. They submit that *Cartaway* does not provide any guidance with respect to the quantum of administrative penalty that should be ordered.

[43] Mr. Xanthoudakis and Mr. Smith also distinguish *Limelight* from this proceeding, and submit that it is difficult to find any points of similarity between that case and this one.

[44] In reply to Staff's statement that they have not shown any remorse or recognized the seriousness of their improprieties, Mr. Xanthoudakis and Mr. Smith submit that they were entitled to defend themselves in regard to the allegations brought against them, and that little weight should be placed on how they have responded to this proceeding, including their choice not to testify. At the Sanctions and Costs Hearing, counsel for Mr. Xanthoudakis and Mr. Smith stated:

> In my submission that is a rather unfair point to make in that I think it is well understood that in our legal system that responding to and defending a proceeding brought against you is something that one is entitled to do and that, in the course of doing that, standing up at the outset and admitting wrongdoing is generally not a recommended legal strategy in responding and, therefore, I would simply ask that little weight be placed to how Mr. Xanthoudakis and Mr. Smith have responded to this proceeding.
>
> (Public Hearing Transcript, April 20, 2010 at page 61, lines 13 to 23.)

He also noted that Mr. Xanthoudakis expressed sorrow for investors' losses in a letter he wrote to some investors in May 2006.

B. Mr. Kefalas

[45] Mr. Kefalas made oral submissions regarding mitigating factors for any sanctions ordered against him.

[46] Although he was registered as the Ultimate Responsible Person and Compliance Officer for NAM, Mr. Kefalas takes the position that he was never more than a figurehead, and stated at the Sanctions and Costs Hearing that he never believed he actually held those roles. Rather, he submits that Karine Simoes held the dual role of in-house counsel and head of compliance for NAM. He claims his submissions in this respect are supported by evidence heard at the hearing on the merits from witnesses who were employed in the Norshield Investment Structure and testified that issues related to compliance were directed to Ms. Simoes.

[47] Mr. Kefalas admits that he is culpable for signing documents that he did not read, but he claims he did this because he trusted that other responsible individuals were performing their jobs up to appropriate standards. He submits that he never deliberately acted against the public interest.

[48] Mr. Kefalas submits that a three-year ban on trading and acquiring securities and acting as a director or an officer of an issuer is too harsh given his more limited role in the investment structure.

[49] Regardless of how long he is banned from participating in the industry, he claims his professional reputation has been irreparably tarnished. He has had significant difficulty obtaining employment since this matter began, and has not been employed in the industry since early 2008. Efforts to start a business with a former colleague have also come to naught.

[50] He submits that he represents no threat to the public and that he has shown the Commission respect and has fully cooperated throughout the entire process.

V. ANALYSIS

A. Can an administrative penalty be imposed for breaches of subsections 2.1(1) and (2) of OSC Rule 31-505?

1. Staff's Submissions

[51] Staff submit that section 2.1 of OSC Rule 31-505 forms a part of Ontario securities law and therefore, administrative penalties may be imposed when it is breached.

[52] Staff refer us to *Rowan*, where the Commission imposed administrative penalties for a breach of OSC Rule 31-505, and submit that this decision is authoritative on the issue of whether OSC Rule 31-505 forms part of Ontario securities law.

[53] Staff further submit that section 2.1 of OSC Rule 31-505 clearly sets out, in a discernable and concrete manner, the obligation of registrants in dealing with their clients, a cornerstone of securities regulation and an obligation which registrants should expect to be subject to sanctions for non-compliance.

[54] Staff submit that the context of OSC Rule 31-505 supports the presumption that it forms part of the regulations and therefore part of Ontario securities law. They submit that there is nothing in its context to indicate otherwise, and the Commission may make an order requiring Mr. Xanthoudakis and Mr. Smith to pay an administrative penalty pursuant to subsection 127(1)9.

2. Mr. Xanthoudakis's and Mr. Smith's Submissions

[55] Mr. Xanthoudakis and Mr. Smith submit that subsection 127(1)9, which permits the Commission to order administrative penalties, should be applied narrowly. They submit that the imposition of sanctions under subsection 127(1)9 only invokes the Commission's public interest power to the extent that, if an articulated breach of Ontario securities law is found, the Commission must make an additional determination that it would be in the public interest to impose an administrative penalty.

[56] In response to Staff's submissions, they submit that the decision in *Rowan* does not interpret the meaning of "regulations" in the definition of "Ontario securities law" for the purposes of subsection 127(1)9 of the Act, and that it does not identify which instrument each respondent was found to have breached in order to support the orders for administrative penalties. Mr. Xanthoudakis and Mr. Smith also note that this decision is currently on appeal to the Divisional Court.

[57] Mr. Xanthoudakis and Mr. Smith submit that OSC Rule 31-505, and particularly Part 2 of that rule, which contains subsections 2.1(1) and (2), should not be considered part of Ontario securities law for the purposes of subsection 127(1)9. They claim that Part 2 does not disclose any specific obligations or provide any meaningful context to the rule. Rather, they submit that subsections 2.1(1) and (2) recite a general principle, which is akin to a statement of the public interest, and which was intended to inform the interpretation of the more specific conditions of registration for a dealer or adviser outlined in Part 1 of OSC Rule 31-505. They suggest that a finding of a breach of section 2.1 of OSC Rule 31-505 would be akin to a finding of conduct

contrary to the public interest without a specific breach of the Act or other provision of Ontario securities law, which would not be sufficient to impose an administrative penalty.

[58] They submit that at least Part 2 of OSC Rule 31-505 is likely a rule which "the context" indicates is not a substantive provision of Ontario securities law. They submit that a breach of this rule, entitled "Conditions of Registration", should result in consequences for the registration status of the respondent, rather than constitute a standard of Ontario securities law which could result in a fine.

3. Analysis and Conclusion

[59] Administrative penalties may only be ordered in circumstances where there has been a breach of Ontario securities law, as set out in clause 9 of subsection 127(1) of the Act:

> 127. (1) Orders in the public interest – The Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:
>
> …
>
> 9. If a person or company has not complied with Ontario securities law, an order requiring the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

[60] Cases where there has been a breach of Ontario securities law can be distinguished from cases where findings have been made in the public interest without a particular breach of Ontario securities law. The administrative penalty sanction is meant to apply to the former cases, where a breach of Ontario securities law has been found. This is discussed in the Final Report of the Five Year Review Committee, which recommended that administrative penalties be added to the Act:

> As is the case for securities regulators in the other Canadian jurisdictions referred to above, we recommended that the Commission's ability to impose an administrative fine should be exercisable only where there has been a contravention of Ontario securities law and it is in the public interest to impose such a fine. We are aware that there are other remedies available to the Commission which do not require there to have been a contravention of securities legislation but rather, simply a finding that the conduct is contrary to the public interest (for example, the revocation of registration). However, we recognize that the imposition of an administrative fine may be viewed as a different kind of a remedy from the others currently listed in section 127 of the Act and that principles of natural justice are better served by tying the imposition of an administrative fine to a demonstrated breach of Ontario securities law. The Government of Ontario adopted this recommendation in the 2002 Amendments.
>
> (Ontario, Ministry of Finance, *Five Year Review Committee Final Report – Reviewing the Securities Act (Ontario)*, (Toronto: Queen's Printer for Ontario, 2003) at 215.)

[61] Subsection 1(1) of the Act contains the following definitions regarding what is included in "Ontario securities law":

> "Ontario securities law" means,
>
> (a) this Act,
>
> (b) the regulations, and
>
> (c) in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject;
>
> "regulations" means the regulations made under this Act and, unless the context otherwise indicates, includes the rules;
>
> "rules" means,
>
> (a) the rules made under section 143, and
>
> (b) orders, rulings and policies listed in the Schedule;

[62] Under section 143, the Commission has the authority to make rules relating to the registration and conduct of registrants. Specifically, clause 2 of subsection 143(1) (as it read at the relevant time) provides the Commission with the following rule-making powers:

> 143. (1) Rules – The Commission may make rules in respect of the following matters:
>
> …
>
> 2. Prescribing categories or sub-categories of registrants, classifying registrants into categories or sub-categories and prescribing the conditions of registration or other requirements for registrants or any category or sub-category, including,
>
> i. standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients,
>
> ii. requirements that are advisable for the prevention or regulation of conflicts of interest, …[1]

[63] Unless the context otherwise indicates, rules made by the Commission pursuant to section 143 of the Act are included in the definition of "regulations" and form part of "Ontario securities law".

[64] The issue of the Commission's policy and rule-making power was addressed by the Court of Appeal in *Ainsley Financial Corp. v. Ontario Securities Commission* (1994), 21 O.R. (3d) 104 (C.A.) ("*Ainsley*"). The Court of Appeal distinguished non-mandatory guidelines from

[1] As part of amendments to the Act made in September 2009, the wording of clause 2 of subsection 143(1), which provides specific rule-making powers to the Commission, was changed.

mandatory pronouncements having the same effect as a statutory instrument, and noted that at that time, the Commission did not have the statutory authority to issue a mandatory provision with the effect of law (*Ainsley, supra* at paras. 15-16).

[65] Following *Ainsley*, section 143 was enacted, providing the Commission with the authority to make mandatory rules relating to enumerated heads of power. The *Final Report of the Ontario Task Force on Securities Regulation* (1994), 17 O.S.C.B. 3208 (the "Daniels Report"), recommended that the Ontario Legislature confer this express rule-making power on the Commission and stated that "[such] a power would permit the Commission to adopt rules having the force and effect of law" (Daniels Report, *supra* at 3211).

[66] OSC Rule 31-505 is a rule made under section 143. It prescribes requirements regarding standards of practice and business conduct for registrants when dealing with clients. Subsections 2.1(1) and (2) of OSC Rule 31-505 state:

> 2.1 General Duties – (1) A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.
>
> (2) A registered salesperson, officer or partner of a registered dealer or a registered officer or partner of a registered advisor shall deal fairly, honestly and in good faith with his or her clients.

[67] The question to be determined is whether subsection 2.1(1) and subsection 2.1(2) of OSC Rule 31-505 fall under the definition of "regulations", and are therefore part of Ontario securities law.

[68] Subsections 2.1(1) and (2) of OSC Rule 31-505 dictate that particular registrants *shall* deal fairly, honestly and in good faith with their clients. This is a mandatory pronouncement requiring specific behaviour.

[69] Staff submit that section 2.1 of OSC Rule 31-505 is consistent with the wording of other provisions of the Act prescribing standards of practice and business conduct of registrants and other market participants. They refer specifically to subsection 32(1) and section 116 of the Act. However, we note that subsection 32(1) was not law until 2009. The version of section 116 in force at the time of the events at issue contains an obligation for mutual fund managers to deal honestly, in good faith and in the best interests of the mutual fund. Although both sections of the Act may be consistent with subsections 2.1(1) and (2) of OSC Rule 31-505, we do not find it necessary to consider the purposes of subsection 32(1) and section 116 of the Act when determining whether OSC Rule 31-505 forms part of Ontario securities law which the Respondents were required to comply with during the period in question.

[70] We find that there is nothing in the context of OSC Rule 31-505, including subsections 2.1(1) and (2), to indicate that it was not meant to be included in the definition of "regulations" under the Act. Subsections 2.1(1) and (2) are not policy statements, which set out general statements of principle or practice. Rather, subsections 2.1(1) and (2) of OSC Rule 31-505 prescribe mandatory requirements for registrants to deal fairly, honestly and in good faith with clients.

[71] Subsections 2.1(1) and (2) of OSC Rule 31-505 are therefore "regulations", as defined in the Act, and form part of Ontario securities law. As such, it is open to the Commission to impose administrative penalties for their breach, if they are found to be in the public interest.

B. Overview of the Law on Sanctions

[72] The Commission does not impose sanctions to punish past conduct. Rather, we must act in accordance with our dual mandate of (i) investor protection, and (ii) fostering fair and efficient capital markets and confidence in capital markets. Sanctions must therefore be for the purpose of preventing and restraining future conduct that may be harmful to investors or the capital markets. The Commission's role in ordering sanctions is outlined 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)

[73] The Commission should consider relevant factors when determining whether sanctions are appropriate, including:

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

(b) the respondent's experience in the marketplace;

(c) the level of the respondent's activity in the marketplace;

(d) whether or not there has been any recognition 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 or loss avoided from the illegal conduct;

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

(h) the effect any sanction may have on the livelihood of a respondent;

(i) the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;

(j) the reputation and prestige of the respondent;

(k) the remorse of the respondent;

(l) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and

(m) any mitigating factors.

(*Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 26 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at paras. 25-26.)

[74] As noted in (e), above, we should consider both the specific and general deterrent effects of a sanctions order. Sanctions should not only deter the particular respondents from engaging in similar acts in the future, but should have a more general deterrent effect on other market participants. As stated by the Supreme Court of Canada in *Cartaway, supra* at para. 62:

> It may well be that the regulation of market behaviour only works effectively when securities commissions impose *ex post* sanctions that deter forward-looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving confidence in our capital markets.

[75] Specifically, if it is in the public interest, we may order sanctions restricting or banning respondents from participating in the Ontario capital markets. The Supreme Court of Canada has stated that:

> … 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 OSC 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 the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43.)

[76] Ultimately, any sanctions imposed must be proportionate to the circumstances and conduct of each particular Respondent (*Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 10 and *Re Rowan, supra* at para. 103).

C. What are the appropriate sanctions against the Respondents?

1. Factors Applicable to NAM, Olympus United, Mr. Xanthoudakis and Mr. Smith

[77] In determining the appropriate sanctions for each of these Respondents, we consider the following factors to be particularly relevant to this matter.

The Seriousness of the Allegations as Proved

[78] The Merits Decision panel found that NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith failed to deal fairly, honestly and in good faith with investors in a number of respects:

(a) Mr. Xanthoudakis and Mr. Smith knew that the net asset values ("NAVs") for funds in the Norshield Investment Structure were artificially inflated in 2004 and 2005;

(b) they were involved in various paper transactions which served to inflate the NAVs in 2004 and 2005;

(c) NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith also engaged in transactions that essentially preferred the redemption requests of some investors over others; and

(d) they were generally unable to account for investors' funds.

(Merits Decision at paras. 209-210 and 231-237.)

[79] The duty to deal fairly, honestly and in good faith goes to the heart of what securities regulation is about and a breach of this obligation is especially serious. Mr. Xanthoudakis and Mr. Smith were the directing minds of the Norshield Investment Structure which marketed to investors an investment in a portfolio of hedge fund managers, when in fact they knew the funds were substantially being invested indirectly in corporate securities. The Merits Decision panel found that they continued to sell funds when, among other things, the NAVs were misstated. These Respondents' conduct seriously undermines the public's confidence in the capital markets and allowed a situation which led to the significant investment losses of numerous investors.

[80] Mr. Xanthoudakis and Mr. Smith submit that OSC Rule 31-505 is not intended to regulate investment funds, since it is directed at the duties of registered securities dealers in relation to dealings with their clients. However, we note that Mr. Xanthoudakis's and Mr. Smith's registrations under the Act were as registered officers of NAM, a registered adviser in the categories of extra-provincial adviser and investment counsel and portfolio manager, and as registered officers of Olympus United Group, a registered dealer in the categories of mutual fund dealer and limited market dealer. OSC Rule 31-505 clearly has direct application to Mr. Xanthoudakis and Mr. Smith, as reflected in the findings in the Merits Decision.

[81] The Merits Decision panel found that these Respondents should have been able to provide more information about the activities and assets of Mosaic Composite and the Channel Funds. These companies were found to be so fundamental to the investment structure that explanations and documentation should have been available. The Merits Decision panel found that NAM and Olympus United Group did not provide, and therefore presumably did not have, up-to-date records of subscriptions and redemptions, sufficient supporting documents for the NAV calculations, documentation regarding in-kind investments, documents regarding unexplained payments in excess of $150 million from two entities in the Norshield Investment Structure, copies of agreements regarding the investment structure and other relevant documents.

[82] The seriousness of a breach of securities law depends on the context and the consequences of that breach. An inability to properly account for funds undermines confidence in the market. This was not merely a technical breach; the Merits Decision panel found there was a fundamental failure to account for funds on a widespread basis. Proper record-keeping is fundamental to discharging one's obligations when accepting money from others. Without adequate records, accountability for management of funds cannot be achieved. We view breaches of this nature as being very serious.

[83] The Merits Decision panel found that Mr. Xanthoudakis and Mr. Smith materially misled Staff during their investigation by failing to inform them of the involvement of the Channel Funds in the investment structure. Misleading Staff in their investigation is a serious breach of the Act.

The Respondents' Experience in the Marketplace

[84] All the Respondents were registered with the Commission. In a recent decision, the Commission found that:

> As a registrant, the President of a registered broker and investment dealer, and a director and member of an audit committee of a reporting issuer, Rowan was expected to have a higher level of awareness of the insider reporting regime and its importance to the capital markets. Rowan's breaches of Ontario securities law are therefore significantly more serious than those previously considered.
>
> (*Rowan, supra* at para. 145.)

[85] Although the allegations in *Rowan* are different than in this case, the Commission's finding is applicable. The Respondents were expected to be aware of their duties as registrants and of record keeping requirements.

[86] The Supreme Court addressed this factor in an appeal of a British Columbia Securities Commission decision where the respondents were registrants in that province. The court found that: "They took unfair advantage of their positions as registrants, and engaged in conduct that seriously undermined the public confidence in the fairness of the capital markets." (*Cartaway, supra* at para. 18).

[87] Mr. Xanthoudakis and Mr. Smith failed drastically to meet the standards of a registrant entrusted to manage investors' funds, which is clearly evident from the findings in the Merits Decision.

[88] Given their experience, the Respondents were or should have been more aware of their duties.

Deterrence

[89] Any sanctions imposed should be sufficient to effectively deter the Respondents and like-minded people from engaging in similar abuses of the Ontario capital markets.

[90] In *Limelight, supra* at para. 67, the Commission described the deterrent purpose of administrative penalties:

> The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

[91] Sanctions in this case should not be so minimal as to be a minor cost of doing business. They should be sufficient to send the message that breaching the duty to deal fairly, honestly and in good faith with clients, failing to keep and maintain proper books and records, and misleading Staff will not be tolerated in the Ontario capital markets.

Impact on Investors and the Market as a Whole

[92] We heard evidence from four investors on how they were impacted by the failure of the Norshield Investment Structure. Our role is not to punish the Respondents for their conduct, nor to right any wrongs suffered by investors by providing them with restitution. However, their testimony can be considered in determining the seriousness of the Respondents' breaches. As well, the impact of these breaches on investors is a factor to consider when assessing which sanctions are appropriate.

[93] We accept the evidence of the investor witnesses that, as a result of their investments in Olympus United Funds, they suffered financial losses that will impact their lifestyles and that their confidence in the capital markets has been undermined.

The Respondents' Level of Participation in the Marketplace

[94] Close to 2,000 retail investors lost most of the $159 million invested in the Norshield Investment Structure. Institutional investors who invested at other levels of the structure were also impacted. Losses such as these by a large number of investors are bound to have a significant impact on confidence in the marketplace.

Other Mitigating Factors

[95] We accept that NAM was in "crisis mode" at the time of Staff's on-site investigation and that Mr. Xanthoudakis believed that there would be a follow-up interview with Staff. We have taken these circumstances into account when determining the appropriate sanctions.

2. Factors Applicable to Mr. Kefalas

The Seriousness of the Allegations, as Proved

[96] The Merits Decision panel concluded that Mr. Kefalas accepted certain responsibilities when he registered with the Commission as a Compliance Officer and Ultimate Responsible person. Mr. Kefalas's failure to fulfill his responsibilities constituted conduct that was contrary to the public interest.

[97] These positions exist to help ensure that investors are treated properly. It is not acceptable to say documents were signed without reading them or being aware of their implications. A

registrant cannot assume the title of Compliance Officer or Ultimate Responsible Person and merely trust that others will do the work required pursuant to that registration.

Mr. Kefalas's Experience in the Marketplace

[98] Mr. Kefalas was registered with the Commission with regard to his work with NAM since May 2000. Regardless of how active a role Mr. Kefalas actually had in overseeing NAM's compliance, he was registered as the Compliance Officer and Ultimate Responsible Person. Mr. Kefalas should have been aware of his duties as a registrant.

Mitigating Factors

[99] We consider that the impact this proceeding has had on Mr. Kefalas's ability to obtain employment, his lesser role in the Norshield Investment Structure, his belief that he was not actually responsible for monitoring compliance, and his expressed remorse are all mitigating factors. Any sanctions imposed will be determined with consideration given to these circumstances.

3. Prohibitions on Participation in the Capital Markets

[100] Sanctions ordered should protect Ontario investors by restraining the Respondents' future market participation and conduct.

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

(a) an order that the registration of each of NAM, Olympus United Group and Mr. Xanthoudakis be terminated;

(b) an order that each of NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith be permanently prohibited from becoming registered under the Act;

(c) an order that each of NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith be permanently prohibited from trading in securities, except that Mr. Xanthoudakis and Mr. Smith may trade in securities for the account of their registered retirement savings plans and/or registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which they and/or their spouses have sole legal and beneficial ownership, provided that, as the order applies to each of them as individuals:

(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 which is a reporting issuer;

(ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only;

(d) an order that exemptions contained in Ontario securities law do not apply to each of NAM, Olympus United Group, Mr. Xanthoudakis and Mr. Smith permanently;

(e) an order reprimanding each of Mr. Xanthoudakis and Mr. Smith;

(f) an order that each of Mr. Xanthoudakis and Mr. Smith resign all positions held as a director or officer of an issuer;

(g) an order that each of Mr. Xanthoudakis and Mr. Smith be prohibited permanently from becoming or acting as a director or officer of any issuer;

(h) an order that Mr. Kefalas be prohibited from becoming registered under the Act for two years;

(i) an order that a term and condition of close supervision be imposed on Mr. Kefalas's registration for a period of two years if he should seek to become registered after the prohibition period referred to above; and

(j) an order that Mr. Kefalas be prohibited from becoming or acting as a director or officer of a registrant for a period of two years.

[102] These sanctions are appropriate and proportionate to the misconduct and entirely consistent with the Commission's duty to impose sanctions that provide general and specific deterrence to market participants.

4. Administrative Penalties

[103] We find that Mr. Xanthoudakis's and Mr. Smith's conduct warrants substantial administrative penalties. Mr. Xanthoudakis and Mr. Smith were involved in activities intended to mislead investors and to favour certain investors. Multiple breaches of the Act, as found in the Merits Decision, will have serious consequences.

[104] We accept Mr. Xanthoudakis's and Mr. Smith's submission that little weight should be placed on how they have responded to this proceeding, including their choice not to testify. They were entitled to defend themselves against the allegations before them, and we do not consider their lack of stated remorse under these circumstances to be a factor to be weighed against them.

[105] A breach of the duty to deal fairly, honestly and in good faith with clients is exceptionally serious and goes to the heart of the protection securities regulation is meant to provide to investors. As we have discussed above, proper record-keeping is a fundamental requirement for the management of funds. We therefore find that severe administrative penalties are warranted for these two breaches of Ontario securities law.

[106] Misleading Staff and failing to state facts that should have been stated in Staff's investigation is also a very serious breach of Ontario securities law, which calls for substantial administrative penalties. However, we take into account the facts that NAM was in crisis mode at the time of Staff's investigation, and that Mr. Xanthoudakis was under the impression he would be interviewed by Staff on another occasion as mitigating factors.

[107] Even considering these mitigating factors, failing to inform Staff of an important component of the investment structure warrants a significant administrative penalty.

[108] Mr. Xanthoudakis and Mr. Smith were found to have breached their duties to deal fairly, honestly and in good faith in multiple respects:

(a) they knew that the NAVs for funds in the Norshield Investment Structure were artificially inflated in 2004 and 2005;

(b) they were involved in various paper transactions, which served to inflate the NAVs in 2005 and 2005;

(c) they engaged in transactions that essentially preferred the redemption requests of some investors over others; and

(d) they were unable to account for investors' funds.

[109] As noted previously, the activities that led to the breaches occurred over a long period of time and investors were consistently and continually treated unfairly. Although some of their unlawful activity commenced prior to April 7, 2003, when the administrative penalty provision came into force, the inappropriate conduct that occurred subsequent to that date was repeated and warrants a significant administrative penalty. The Respondents were involved in numerous transactions, which treated investors unfairly in many ways. Without taking Mr. Xanthoudakis's and Mr. Smith's conduct prior to April 7, 2003 into account, we find that the administrative penalty discussed below for their breaches of their duties to deal fairly, honestly and in good faith is appropriate and necessary to provide an individual and general deterrent in order to protect the integrity of the capital markets and confidence in them.

[110] Their failure to keep and maintain proper records was widespread and, as noted above, went beyond merely a technical breach.

[111] These last two breaches of Ontario securities law by Mr. Xanthoudakis and Mr. Smith demand very high administrative penalties.

[112] There was no finding in the Merits Decision that Mr. Xanthoudakis and Mr. Smith benefitted financially from their improper conduct. However, this does not mitigate the seriousness of the breaches, nor the consequences to numerous investors of their ongoing conduct.

[113] Given the seriousness of these breaches, as discussed above, considering the loss of almost all of the $159 million invested by close to 2,000 retail investors, and to deter future wrongdoing, we conclude that it is in the public interest to order that Mr. Xanthoudakis and Mr.

Smith each pay the following administrative penalties for allocation to, or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act:

(a) $1,000,000 in respect of their breaches of section 2.1 of Rule 31-505;

(b) $1,000,000 in respect of their breaches of section 19 of the Act and section 113 of Regulation 1015; and

(c) $125,000 for misleading Staff, contrary to subsection 122(1)(a) of the Act.

[114] We find it appropriate to order that the administrative penalties be designated for allocation to and for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act. Although Staff suggested that the funds be allocated to the Receiver for distribution to investors at the Sanctions and Costs Hearing, we leave it to the Commission to determine at a future date the question of the allocation of these funds.

VI. COSTS

[115] Staff seek an order that Mr. Xanthoudakis and Mr. Smith pay costs of $295,000 on a joint and several basis. They do not seek an order of costs against Mr. Kefalas, and note that he had less of a role in the matters at issue than Mr. Xanthoudakis and Mr. Smith.

[116] Mr. Xanthoudakis and Mr. Smith did not challenge the reasonableness or appropriateness of the costs requested by Staff.

[117] Section 127.1 of the Act grants the Commission the power to order that a person or company pay the costs related to an investigation and a hearing that are incurred by or on behalf of the Commission if the following criteria are met:

(a) the Commission is satisfied that the person or company has not complied with, or is not complying with, Ontario securities law; or

(b) the Commission considers that the person or company has not acted in the public interest.

[118] Based on the Merits Decision, it is clear that Mr. Xanthoudakis and Mr. Smith both failed to comply with Ontario securities law and acted contrary to the public interest. We must consider whether a costs order is appropriate in the circumstances by addressing additional factors, including:

(a) the importance of early notice of an intention to seek costs;

(b) the seriousness of the allegations and the conduct of the parties;

(c) the presence or absence of abuse of process by any respondent;

(d) the conduct of any respondent as it affects investigative and hearing costs; and

(e) the reasonableness of the costs requested by Staff.

(*Re Ochnik* (2006), 29 O.S.C.B. 5917 at para. 29.)

[119] In *Rowan, supra* at paragraph 239, the Commission reduced the costs payable by the respondents, on the basis that only half of the allegations against them were made out. In this case, Staff have factored the fact that two of the six allegations were not made out against the Respondents into their request for costs.

[120] We accept that the amount claimed by Staff represents only a portion of the investigation and hearing costs related to this proceeding, as set out in Staff's bill of costs and written submissions. The $295,000 sought does not represent all the costs incurred by Staff, even after the total amount is scaled down to reflect the fact that two of the allegations brought against the Respondents were dismissed.

[121] We conclude that as a result of their breaches of Ontario securities law and conduct contrary to the public interest, Mr. Xanthoudakis and Mr. Smith shall pay costs of this proceeding in the amount of $295,000, on a joint and several basis.

VII. CONCLUSION

[122] For the reasons discussed above, we conclude that making the sanctions and costs orders described above are in the public interest and are proportionate to the Respondents' respective culpability and conduct in the circumstances. Accordingly, we issue the order issued along with these reasons and decision.

[123] This order reflects the seriousness of the securities law violations that occurred in this matter, and imposes sanctions that will not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

DATED at Toronto this 6th day of August, 2010.

"David L. Knight" *"Margot C. Howard"*

David L. Knight, F.C.A. Margot C. Howard, CFA