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
FRANKLIN DANNY WHITE, NAVEED AHMAD QURESHI,
WNBC THE WORLD NETWORK BUSINESS CLUB LTD.,
MMCL MIND MANAGEMENT CONSULTING,
CAPITAL RESERVE FINANCIAL GROUP, and
CAPITAL INVESTMENTS OF AMERICA

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing:	June 4, 2010	
Decision:	September 29, 2010	
Panel:	Patrick J. LeSage Carol S. Perry	- Commissioner and Chair of the Panel - Commissioner
Counsel:	Cullen Price	- For the Ontario Securities Commission
		No one appeared for any of the Respondents.

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. Overview

1. History of the Proceeding

[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 Franklin Danny White ("White"), Naveed Ahmad Qureshi ("Qureshi"), WNBC The World Network Business Club Ltd. ("WNBC"), MMCL Mind Management Consulting ("MMCL"), Capital Reserve Financial Group ("Capital Reserve"), and Capital Investments of America ("Capital Investments") (collectively, the "Respondents").

[2] The hearing on the merits in this matter commenced on March 23, 2009, and evidence was heard on March 23, 24, and 25, 2009. Following the close of evidence, submissions on the merits were heard on March 27, 2009. None of the Respondents were present or represented by legal counsel for the merits hearing. The decision on the merits was rendered on February 10, 2010 (*Re WNBC et al.* (2010), 33 O.S.C.B. 1569 (the "Merits Decision")).

[3] Following the release of the Merits Decision, we held a separate hearing on June 4, 2010, to consider sanctions and costs (the "Sanctions and Costs Hearing"). Only Staff of the Commission ("Staff") appeared at the Sanctions and Costs Hearing. In addition to their oral submissions, Staff provided written submissions dated April 9, 2010 along with a book of Authorities, a Bill of Costs and a letter providing further submissions dated June 7, 2010.

[4] Following the Sanctions and Costs hearing, we requested by letter dated July 23, 2010, that all of the parties provide us with further submissions in writing regarding the issue of retrospective application of sanctions. On August 20, 2010, we received written submissions on this issue from Staff and White.

[5] These are our Reasons and Decision as to the appropriate sanctions and costs to order against the Respondents.

2. The Non-attendance of the Respondents at the Sanctions and Costs Hearing

[6] None of the Respondents were present or represented by legal counsel at the Sanctions and Costs Hearing.

[7] The date for the Sanctions and Costs Hearing was set on consent by all of the parties. Qureshi (on his own behalf and on behalf of Capital Reserve and Capital Investments) agreed to the June 4, 2010 hearing date during a telephone conference call with Staff and the Chair of the Panel held on March 11, 2010. White did not participate in this conference call, but he sent an email (on his own behalf and on behalf of WNBC and MMCL) to Staff dated March 10, 2010, which stated: "As I don't have any plans that would not be able to be changed…I will accept any date as fine" (Exhibit 1). Following the March 11, 2010 conference call, the Chair of the Panel issued an Order scheduling the Sanctions and Costs Hearing for June 4, 2010 (*Re WNBC et al.*

(2010), 33 O.S.C.B. 2379). Staff also provided in evidence an email dated March 12, 2010, notifying all the Respondents of the June 4, 2010 hearing date and the Commission's Order dated March 11, 2010 (Exhibit 2).

[8] We find that the Respondents were all aware of the June 4, 2010 hearing date and that they chose not to attend. Subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA") provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice. We are satisfied that Staff gave adequate notice of this proceeding to the Respondents and that we are entitled to proceed in their absence in accordance with subsection 7(1) of the SPPA.

[9] While none of the Respondents appeared at the Sanctions and Costs Hearing, prior to the hearing, Qureshi did email Staff on March 3, 2010 to inform Staff that "he planned to reopen the case in the future because of the osc [*sic*] staff's one sided inaccurate and exaggerated presentation of the fact and figures" (Exhibit 3A). According to Qureshi, Staff "completely ignored" his previous communications. Attached to the March 3, 2010 email, Qureshi provided Staff a letter in PDF format dated March 22, 2009, which provided information regarding the return of funds to investors. Staff submitted to us that the letter dated March 22, 2009 was never provided to them prior to the hearing on the merits in this matter. In support of this, Staff provided evidence that the letter in PDF format dated March 22, 2009 was only created on February 12, 2010, two days after the Merits Decision was issued (Exhibit 3B). Staff also provided us with copies of a chain of emails between Staff and Qureshi, which included an email dated March 20, 2009, from Qureshi to Staff arguing that there were "serious accounting errors and miscalculations" with respect to the amounts of funds outstanding to investors, however, there were no attachments appended to Qureshi's email to support his argument (Exhibit 3C).

[10] We are satisfied that the letter in PDF format dated March 22, 2009 was not provided to Staff or to the tribunal prior to the hearing on the merits and we accept the evidence set out in Exhibit 3B that the letter was created after the Merits Decision was issued. We reviewed the content of the letter and it appears to argue the correctness of the Merits Decision. If Qureshi takes issue with the correctness of the Merits Decision, the proper manner to deal with this is by way of an appeal pursuant to section 9 of the Act.

II. Reasons and Decision Dated February 10, 2010

[11] The Merits Decision addressed the following issues:

(a) Did the Respondents trade in securities in breach of subsection 25(1)(a) of the Act?

(b) Did the Respondents advise in connection with trading in securities in breach of subsection 25(1)(c) of the Act?

(c) Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 53(1) of the Act?

(d) Were there any exemptions available to the Respondents?

(e) Did the Respondents act in a manner that was contrary to the public interest and harmful to the integrity of Ontario capital markets?

(Merits Decision, *supra* at para. 26)

[12] Upon reviewing all the evidence, the applicable law and the submissions made, the Panel concluded in the Merits Decision that:

(a) all of the Respondents breached subsection 25(1)(a) of the Act;

(b) White, Qureshi and WNBC breached subsection 25(1)(c) of the Act;

(c) all of the Respondents breached subsection 53(1) of the Act;

(d) there were no exemptions available to the Respondents; and

(e) all of the Respondents acted contrary to the public interest.

(Merits Decision, *supra* at para. 182)

[13] The Panel found that from 2002 until 2004, significantly more than CDN$ 1 million was raised from investors (Merits Decision, *supra* at para. 41). The Respondents received the following amounts as a result of their misconduct: US$ 560,366 and CDN$ 577,785 (Merits Decision, *supra* at para. 42).

[14] Investors provided significant sums to White, Qureshi and WNBC. Some investors were repaid all or part of their investment, while others received none of their investment back. The Panel found that the Respondents repaid investors the following amounts: US$ 220,202 and CDN$ 146,700 (Merits Decision, *supra* at para. 46).

[15] The amount outstanding to investors is US$ 340,164 and CDN $431,085 (approximately a total of CDN$ 800,000) (Merits Decision, *supra* at para. 46).

[16] It is this conduct that we must consider when determining the appropriate sanctions to impose in this matter.

III. Sanctions and Costs Requested by Staff

[17] In their written and oral submissions, Staff requested that the following order be made against the Respondents:

Corporate Respondents

(a) an order that each of WNBC, MMCL, Capital Reserve and Capital Investments, (collectively, the "Corporate Respondents") cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by each of the Corporate Respondents is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act;

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

(d) an order reprimanding each of the Corporate Respondents pursuant to clause 6 of subsection 127(1) of the Act;

(e) an order requiring WNBC to pay an administrative penalty of $150,000.00 (representing $50,000 for each breach of the Act) pursuant to clause 9 of subsection 127(1) to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(f) an order requiring each of MMCL, Capital Reserve and Capital Investments to pay an administrative penalty of $100,000.00 (representing $50,000 for each breach of the Act) pursuant to clause 9 of subsection 127(1) to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

(g) an order making the Corporate Respondents jointly and severally liable together with White and Qureshi to disgorge to the Commission, pursuant to clause 10 of subsection 127(1), $800,000.00 obtained as a result of their non-compliance with Ontario securities law to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

White and Qureshi

(a) an order that White and Qureshi cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by White and Qureshi is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act;

(c) an order that any exemptions contained in Ontario securities law do not apply to White and Qureshi permanently pursuant to clause 3 of subsection 127(1) of the Act;

(d) an order reprimanding White and Qureshi pursuant to clause 6 of subsection 127(1) of the Act;

(e) an order that White and Qureshi resign all positions that they may hold as a director or officer of an issuer pursuant to clause 7 of subsection 127(1) of the Act;

(f) an order that White and Qureshi be prohibited permanently from becoming or acting as a director or officer of any issuer pursuant to clause 8 of subsection 127(1) of the Act;

(g) an order that White and Qureshi be prohibited permanently from becoming or acting as a director or officer of any registrant pursuant to clause 8.1 of subsection 127(1) of the Act;

(h) an order requiring each of White and Qureshi to pay an administrative penalty of $150,000.00 (representing $50,000 for each breach of the Act) pursuant to clause 9 of subsection 127(1) of the Act, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act; and

(i) an order requiring disgorgement to the Commission pursuant to clause 10 of subsection 127(1) by White and Qureshi of $800,000, jointly and severally with the Corporate Respondents, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) pursuant to clause 10 of subsection 127(1) of the Act.

All Respondents

(a) an order requiring payment by the Respondents, on a joint and several basis, of $169,651.25 representing a portion of the costs incurred in this matter pursuant to section 127.1 of the Act.

[18] In Staff's submission, the sanctions and costs requested are appropriate in light of the Respondents' serious breaches of the Act and conduct contrary to the public interest.

IV. The Law on Sanctions

[19] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132, the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventative, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventative in nature and prospective in orientation.

(*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission, supra* at para. 45)

[20] In determining the appropriate sanctions to order in this matter, we must keep in mind the Commission's preventative and protective mandate set out in section 1.1 of the Act, and we must also consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[21] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

(a) the seriousness of the allegations;

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

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

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

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

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) the reputation and prestige of the respondent;

(l) the size of any financial sanctions or voluntary payment when considering other factors; and

(m) the shame or financial pain that any sanction would reasonably cause to the respondent and the remorse of that respondent.

(*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[22] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

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

[24] As stated above, the sanctions imposed must be protective and preventative. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> […] 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.
>
> (*Mithras*, *supra* at 1610 and 1611)

V. Appropriate Sanctions in this Case

1. Specific Sanctioning Factors Applicable in this Matter

[25] 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 type of misconduct identified in this matter will not be tolerated.

[26] In considering the sanctioning factors set out above in the case law, we find the following specific factors and circumstances to be relevant in this matter, based on our findings in the Merits Decision:

(a) The proven allegations in this matter are very serious. As stated in paragraphs 171 and 172 of the Merits Decision, the Respondents violated the registration and distribution requirements in the Act, which serve to protect investors. They failed to maintain high standards of fairness and business conduct. They also made false promises and misleading statements about the returns of the Eggvestment Program.

(b) Qureshi was formerly a registrant in New York State (Merits Decision, *supra* at para. 8). Although he was never registered in Ontario, Qureshi had experience in the capital markets and investors were "solicited with assurances of the security of

their investment and pronouncements of Qureshi's expertise in currency trading" (Merits Decision, *supra* at para. 40).

(c) The conduct of the Respondents took place over a prolonged period of time and affected many investors. From 2002 until 2004, over CDN$ 1 million was raised from at least 58 investors (Merits Decision, *supra* at para. 41).

(d) Investors lost money and were not repaid. The Commission found that the Respondents received the following amounts as a result of their misconduct: US$ 560,366 and CDN$ 577,785 (Merits Decision, *supra* at para. 42) and that while some investors were repaid, the amounts outstanding to investors are: US$ 340,164 and CDN 431,085 (Merits Decision, *supra* at para. 46).

(e) White did not recognize the seriousness of his improprieties or accept responsibility for his actions. For example, White stated in his voluntary examination with Staff that:

> They [investors] came to the seminars. They met people. They knew. They made the decision.
>
> And so long as they blame me, they'll continue to have this come into their life, because they'll just trust the next guru to tell them what to do instead of making decisions for themselves.
>
> So those people, some of them I feel this is good lesson for you. …
>
> (Transcript, Voluntary Examination of White, dated July 31, 2008 at p. 39 lines 1 to 8)

2. Retrospective Application of Sanctions

[27] As mentioned above, following the Sanctions and Costs Hearing, we requested by letter dated July 23, 2010, that the parties provide further written submissions regarding the issue of retrospective application of sanctions.

[28] The conduct in this matter took place between May 2002 to August 2005 and the following sanctions requested by Staff came into effect on the following dates:

(a) clauses 2.1 (prohibition to acquire securities) and 8.1 (prohibition from becoming or acting as a director or officer of a registrant) of subsection 127(1) of the Act came into force on December 15, 2005 after the time period when the conduct in this matter took place; and

(b) clauses 9 (administrative penalty) and 10 (disgorgement) of subsection 127(1) of the Act came into force on April 7, 2003 during the time period when the conduct in this matter took place.

[29] Only Staff and White provided us with written submissions on this issue.

[30] Staff summarizes their position at paragraph 3 of their supplementary written submissions as follows:

> … the principle against the retrospective application of a statute does not apply to the application of clauses 2.1, 8.1, 9 and 10 of s. 127(1) of the *Act* in the present circumstances because each is for the purpose of protecting against future wrongdoing and is not meant to be punitive. While the imposition of a sanction under any of clauses 2.1, 8.1, 9 and 10 may have the effect of imposing a hardship on a respondent, the clear legislative purpose is to be protective and preventive.

[31] In his written submissions at pages 3 and 4, White takes the position that:

> … it is a common sense fact that if a sanction is imposed that could have serious financial punitive consequences on the offender, that by said actions it is made penal, (Punitive) in nature. As such the sanctions become an offense under the charter in taking the matter into the realm of penal, and therefore enacts Section 11(d)

[32] Further, at page 8 of his written submissions, White submits that:

> It should be noted that a stated goal of the commission is to have confidence in the markets, and if the commission makes a practice of retroactive punishments, it would serve to discourage professional activity in the market. Retrospective punishment sends a dangerous message to the market.
>
> I take the approach that in dealing with matters such as this case, it is best to see that the regulation of market behaviour only works effectively when securities commissions impose sanctions that deter forward-looking market participants from engaging in similar wrongdoing.

[33] In our view, the recent Commission case *Re Rowan et al.* (2010), 33 O.S.C.B. 91 ("*Re Rowan*") correctly sets out the applicable law to address retrospective sanctions. In *Re Rowan*, the Commission followed the British Columbia Court of Appeal in *Thow v. British Columbia (Securities Commission)*, [2009] B.C.J. No. 211 (B.C.C.A.) ("*Thow*") and explained that the British Columbia Court of Appeal "found that the new increased administrative penalty did not apply and the administrative penalty was reduced to the maximum permitted at the time the infractions occurred" (*Re Rowan*, *supra* at para. 93). As a result, in *Re Rowan*, the Commission concluded at paragraph 94 that:

> We agree with and prefer to follow the reasoning and rationale of the British Columbia Court of Appeal in *Thow*, although we would emphasize that the imposition of a fine is a penalty and would downplay the use of the word punitive even though it is used in a limited sense in that decision. The law as developed by the Supreme Court of Canada cases, and followed in *Thow*, is that ongoing

> constraints or prohibitions may be applied retrospectively but penalty provisions, particularly monetary penalties, should not to be applied retrospectively.

[34] Based on paragraph 94 of *Re Rowan*, we find that prospective sanctions which impose constraints or prohibitions such as clauses 2.1 (prohibition to acquire securities) and 8.1 (prohibition from becoming or acting as a director or officer of a registrant) of subsection 127(1) of the Act may be applied in the present case.

[35] With respect to an administrative penalty and consistent with our decision in *Re Rowan*, an administrative penalty cannot be imposed for misconduct that occurred prior to April 7, 2003 when the Act was amended to grant an adjudicative panel authority to impose such an order. The administrative penalty imposed in this case therefore may only relate to misconduct that occurred after April 7, 2003. Based on Staff's submission that approximately 33% of the total funds were obtained prior to April 7, 2003, we have applied this percentage to reduce the administrative penalties that we have found are appropriate to impose on the Respondents.

[36] The April 7, 2003 amendment to the Act also gave the Commission authority to order disgorgement of funds obtained by misconduct. Since the Commission did not have authority to order disgorgement for misconduct prior to that amendment, it is argued that disgorgement should not apply to monies obtained prior to that date. Disgorgement, however, does not have any of the characteristics of a penalty. Disgorgement is an order directing that any unlawfully obtained funds be removed from the transgressor. Notwithstanding some of the funds were invested in this scheme prior to the coming into force of the disgorgement provision, our order should not be reduced to reflect monies invested prior to April 7, 2003. The rationale of disgorgement is to reflect the principle that a person from whom funds were unlawfully obtained has a legal right to have those funds returned.

[37] The details of the amounts of the administrative penalty and disgorgement are discussed further below in the respective sections of our Reasons.

3. Trading and Other Prohibitions

Trading

[38] Staff submitted that in the circumstances of this case, it would be appropriate to order that all of the Respondents: cease trading permanently, be subject to a permanent prohibition from acquiring any securities and that exemptions contained in Ontario securities law not apply to any of the Respondents.

[39] In this case, we find that the public interest requires that the Respondents be restrained permanently from any future market participation. Participation in the capital market is a privilege, not a right (*Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Sup. Ct.) at para. 56). As stated in *Manning v. Ontario (Securities Commission)*, [1996] O.J. No. 3414 at para. 47:

> There is no right of any individual to participate in the capital markets in Ontario. … the Act provides certain exemptions which allows individuals to make certain

> trades without being registered, however, the OSC has explicit jurisdiction to remove the exemptions if an individual engages in conduct contrary to the letter or spirit of the Act, whether such conduct causes damage to investors or is detrimental to the integrity of the capital markets. The OSC found that such conduct existed on the facts of the present case.

[40] The gravity of the conduct in this matter warrants that all of the Respondents should be prevented from participating in the capital markets in any capacity. The Eggvestment scheme took place over a period of two years and affected at least 58 investors and raised over $1 million. The Respondents in this matter cannot be trusted to safely participate in the capital markets in the future. As explained in *Re St. John* (1998), 21 O.S.C.B. 3851 at page 3867:

> In our view [the respondent] is not a person whom we can safely trust to participate in the capital markets in any way. We have no confidence whatsoever that if she is permitted to participate as an investor for her own account, [the respondent] will not once again push the envelope by engaging in conduct which is detrimental to others and abusive to our capital markets. Accordingly we order that trading in any securities by [the respondent] cease permanently.

[41] We find it appropriate to order that: all of the Respondents shall cease trading permanently, the acquisition of any securities by all of the Respondents is prohibited permanently, and any exemptions in Ontario securities law do not apply permanently to all of the Respondents. However, in our view it is appropriate to provide a carve out to White and Qureshi and permit them 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, subject to certain conditions as set out in our Order.

Director and Officer Bans

[42] Staff also requested that White and Qureshi resign all positions that they may hold as a director or officer of any issuer, and that they be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant.

[43] In *Mithras*, the Commission explained that the removal of individuals from the capital markets is an effective mechanism for protecting the public. In addition to trading prohibitions, officer and director bans are another effective way to remove persons from participating in the capital markets.

[44] In our view, the use of director and officer bans will ensure that White and Qureshi will not be put in a position of control or trust with any issuer or registrant. This is important because the misconduct in this matter was facilitated by companies that White and Qureshi controlled. Specifically, White controlled WNBC and MMCL and Qureshi controlled Capital Reserve and Capital Investments (Merits Decision, *supra* at paras. 11 to 19). White and Qureshi's companies played an important role in the investment scheme because through WNBC, investors were solicited (Merits Decision, *supra* at paras. 91 to 98), MMCL accepted money from investors (Merits Decision, *supra* at para. 99), Capital Reserve had investor funds transferred to it and used

these funds to trade foreign currency and Capital Investments also traded in foreign currency using investor funds (Merits Decision, *supra* at para. 108).

[45] Taking all of this into consideration, we find that it is appropriate for White and Qureshi to resign from all positions they may hold as a director or officer of any issuer and that they be prohibited permanently from acting as a director or officer of any issuer or registrant.

Reprimand

[46] As well we find that it is appropriate for White and Qureshi to be reprimanded. The reprimand will provide strong censure of their misconduct and will impress on the public the importance of complying with the registration and prospectus provisions of the Act.

[47] Together, the combined sanctions will provide general and specific deterrence to help ensure that similar conduct does not take place in the future.

4. Administrative Penalties

[48] Staff requested that the following administrative penalties be imposed against the Respondents:

(a) MMCL, Capital Reserve and Capital Investments each pay an administrative penalty of $100,000.00 (representing $50,000 for each breach of the Act); and

(b) White, Qureshi and WNBC each pay an administrative penalty of $150,000.00 (representing $50,000 for each breach of the Act).

[49] The misconduct in this matter involved numerous breaches of the Act over a period of two years. Under clause 9 of subsection 127(1) of the Act, we have the power to impose an administrative penalty of not more than $1 million in connection with each failure to comply with the Act.

[50] Staff has taken a mathematical approach to computing an administrative penalty and suggests that $50,000 per breach of the Act is appropriate. We disagree with this approach. In our view, the total amount imposed as an administrative penalty needs to also take into account the specific conduct of each respondent, the unique circumstances of the case, any aggravating or mitigating factors and the level of administrative penalties imposed in similar cases. As stated in *Re Sabourin* (2010), 33 O.S.C.B. 5299 at para. 75:

> 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.

[51] In our view, an administrative penalty of $75,000 is the aggregate amount that is appropriate to impose on each of White and Qureshi. However, as discussed above, since the

administrative penalty provision, clause 9 of subsection 127(1) of the Act, only came into force on April 7, 2003, we have reduced the quantum of the administrative penalty payable to $50,000 for each of White and Qureshi.

[52] We find that it is in the public interest to impose a $50,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on White because:

(a) He was directly involved in creating the Eggvestment investment scheme (Merits Decision, *supra* at paras. 30, 37, 70 to 72).

(b) White controlled WNBC, a company through which he ran an investment club and charged membership fees to investors (Merits Decision, *supra* at paras. 11, 13, 14 and 31).

(c) He solicited investors at weekly WNBC meetings, satellite club meetings and at public speaking engagements (Merits Decision, *supra* at paras. 32, 33, 77 and 120).

(d) He promoted the Eggvestment investment scheme in videos and on the company website (Merits Decision, *supra* at para. 78).

(e) He advised investors about the Eggvestment program and described it as a low risk investment (Merits Decision, *supra* at para. 129).

(f) He forwarded investor funds to accounts controlled by Qureshi (Merits Decision, *supra* at para. 75).

(g) His conduct breached subsections 25(1)(a), 25(1)(c) and 53(1) of the Act and was contrary to the public interest.

[53] With respect to Qureshi, we also find that it is in the public interest to impose a $50,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, because:

(a) He was directly involved in creating the Eggvestment scheme (Merits Decision, *supra* at paras. 30 and 37).

(b) He gave presentations with White at WNBC meetings to solicit investors (Merits Decision, *supra* at para. 82).

(c) He took an active role in advising Investor 2 on her Eggvestment investment and he was one of the contact persons to field investor questions about the Eggvestment program (Merits Decision, *supra* at paras. 135 and 136).

(d) He was directly involved in the Eggvestment program's finances. He received investor funds from MMCL, White and WNBC (Merits Decision, *supra* at para. 88).

(e) He played the predominant role in the actual investment of the Eggvestment fund (Merits Decision, *supra* at para. 84). Qureshi pooled the funds he received and traded in foreign currency markets through trading accounts in his name and his companies, Capital Reserve and Capital Investments (Merits Decision, *supra* at para. 40).

(f) He admits he lost nearly US$ 500,000 in foreign currency trading activities (Merits Decision, *supra* at para. 44).

(g) He controlled Capital Investments, which managed WNBC's assets, participated in forex, commodities, futures and the capital markets (Merits Decision, *supra* at para. 86).

(h) His conduct breached subsections 25(1)(a), 25(1)(c) and 53(1) of the Act and was contrary to the public interest.

[54] In addition, we find that as a whole, an administrative penalty in the amount of $50,000 for each of White and Qureshi is appropriate when considered with the disgorgement order, discussed below, and White's representations as to his financial circumstances. In his written submissions at page 2, White submits that he is insolvent and specifically that:

> I [White] was forced into Bankruptcy.
>
> Dr. Qureshi let the country, and while I have not been in communication with him for well over a year, I doubt that he would be motivated to come back. I believe he lost all his Canadian assets and I have no knowledge of his offshore situation. If he does have some wealth offshore, I doubt that it would be enough to satisfy the needs of the hearing.

[55] With respect to the Corporate Respondents, in our view, an administrative penalty of $60,000 is the aggregate amount that is appropriate to impose on each of WNBC, MMCL, Capital Reserve and Capital Investments. However, as discussed above, since the administrative penalty provision, clause 9 of subsection 127(1) of the Act, only came into force on April 7, 2003, we have reduced the quantum of the administrative penalty payable to $40,000 for each of the Corporate Respondents.

[56] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on WNBC because:

(a) WNBC charged membership fees and provided services such as business consulting, tax consulting, private banking, financial literacy, offshore international business consulting and financial planning...etc (Merits Decision,

supra at paras. 13 and 31). One of WNBC's roles was to coach and advise its members' investment decisions (Merits Decision, *supra* at paras. 140, 141 and 142). The Eggvestment program was one of the investment opportunities facilitated by WNBC (Merits Decision, *supra* at para. 14).

(b) WNBC held weekly meetings and produced promotional videos to solicit investors to participate in the Eggvestment program (Merits Decision, *supra* at paras. 32, 33, 34, 38, 94 and 95).

(c) At WNBC meetings, Investors were told that the Eggvestment program was a low risk high return investment and that their capital would be safe. Investors were also told there was a guaranteed rate of return of 15%, 18%, 19% or 20%. (Merits Decision, *supra* at para. 38).

(d) WNBC provided written investment contracts to investors and issued units of the Eggvestment program ("Eggs") to investors (Merits Decision, *supra* at paras. 92 and 93).

(e) The Eggvestment program which was facilitated through WNBC raised more than CDN$ 1 million from at least 58 investors (Merits Decision, *supra* at para. 41).

(f) WNBC's conduct breached subsections 25(1)(a), 25(1)(c) and 53(1) of the Act and was contrary to the public interest.

[57] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on MMCL because:

(a) MMCL accepted funds from investors for investments made through WNBC (Merits Decision, *supra* at para. 99).

(b) MMCL transferred investor funds to Qureshi for him to invest in foreign currency (Merits Decision, *supra* at para. 101).

(c) MMCL's conduct breached subsections 25(1)(a) and 53(1) of the Act and was contrary to the public interest.

[58] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on Capital Reserve because:

(a) Capital Reserve accepted funds from Eggvestment investors (Merits Decision, *supra* at paras. 40 and 106).

(b) Capital Reserve traded in foreign currencies using investor funds (Merits Decision, *supra* at para. 104).

(c) Capital Reserve's conduct breached subsections 25(1)(a) and 53(1) of the Act and was contrary to the public interest.

[59] We find that it is in the public interest to impose a $40,000 administrative penalty, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act, on Capital Investments because:

(a) Capital Investments entered into a private placement agreement with WNBC to set up a trading account to manage its assets, and also held an account for currency trading (Merits Decision, *supra* at para. 107).

(b) Capital Investments accepted funds from Eggvestment investors (Merits Decision, *supra* at paras. 40 and 111).

(c) Capital Investments traded in foreign currency using funds from Eggvestment investors (Merits Decision, *supra* at para. 108).

(d) Capital Investments' conduct breached subsections 25(1)(a) and 53(1) of the Act and was contrary to the public interest.

[60] In our view, the administrative penalties described above are proportionate to the misconduct of the Respondents, will deter the Respondents in this matter from engaging in similar conduct in the future, and the administrative penalty amounts ordered apply only to the conduct that in our view took place after April 7, 2003, the coming into force of the Act's administrative penalty provision.

5. Disgorgement

[61] Staff requested that the Respondents be ordered to disgorge to the Commission, on a joint and several basis, $800,000 to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. The $800,000 represents the amount of funds the Respondents received that is still outstanding to investors (Merits Decision, *supra* at para. 181).

[62] As stated in *Re Sabourin, supra* at para. 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.

[63] In *Re Limelight* (2008), 31 O.S.C.B. 12080 ("*Limelight*") at paragraph 52, the Commission set out the following factors (non-exhaustive) to consider 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.

[64] The burden is on Staff, to prove on a balance of probabilities, the amount obtained by a respondent as a result of that respondent's non-compliance with the Act. In *Limelight,* the Commission explained at paragraph 49 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.

[65] In our view, a disgorgement order is appropriate in this case 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.

[66] In the Merits Decision, we found at paragraph 181 that the amount of funds outstanding to investors was US$ 340,164 and CDN$ 431,085, for a combined total of approximately CDN$ 800,000.

[67] While Qureshi did not appear at the Sanctions and Costs Hearing, he did provide an email to Staff contesting the amount outstanding to investors. As described in paragraph 9 of our Reasons, he argues that Staff made accounting errors. As set out in paragraph 10 of our Reasons we find that the documentation in support of Qureshi's arguments was not provided to Staff or to the tribunal prior to the hearing on the merits and we accept Staff's evidence set out in Exhibit 3B that the letter Qureshi purports to rely on was created after the Merits Decision was issued. In our view, the combined total of funds outstanding to investors is approximately CDN$ 800,000.

[68] However, we note that one investor commenced a civil proceeding against White and WNBC, and the Statement of Claim dated April 17, 2007 states, among other things, that this investor advanced CDN$ 300,000 to White, WNBC and MMCL. This investor has obtained a judgment, dated October 4, 2007, from the Ontario Superior Court of Justice in the amount of CDN$ 356,219.18 against White and WNBC (the "Superior Court Judgment") and CDN$ 300,000 of this amount represents the return of funds to the investor.

[69] Since the Superior Court Judgment compensates one investor who advanced CDN$ 300,000 to White, WNBC and MMCL, as a result, we find that the disgorgement amount should be reduced by CDN$ 300,000 to CDN$ 500,000 to take into account the Superior Court Judgment.

[70] As discussed above at paragraph 36 of our Reasons, we considered the timing of the coming into force of the disgorgement provision (clause 10 of subsection 127(1) of the Act), which came into force on April 7, 2003. Since the purpose of disgorgement is for a respondent to return any ill gotten gains, and it is not a penalty, the disgorgement provision applies to the Respondents and all their conduct during May 2002 to August 2005.

[71] Therefore, the Commission has determined that the sum of CDN$ 500,000 should be disgorged. But for the Superior Court Judgment, we would have ordered the full amount of CDN$ 800,000 to be disgorged.

[72] We find that it is appropriate to order that the Respondents disgorge the amount of $500,000 on a joint and several basis because the Eggvestment investment scheme was created and run jointly by White and Qureshi (Merits Decision, *supra* at paras. 30, 37 and 65). White and Qureshi and their companies played different roles in the Eggvestment investment scheme (for example, White and his companies were involved in investor solicitation and receiving investor funds while Qureshi and his companies accepted the investor funds and invested them in the foreign currency markets) but they were in the scheme together and their separate roles were integral to executing the investment scheme.

[73] Therefore, we order the Respondents to disgorge the sum of $500,000 on a joint and several basis to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

6. Allocation of Amounts for the Benefit of Third Parties

[74] As mentioned above, the administrative penalty and disgorgement amounts ordered in this matter are to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act. We find that it is in the public interest that third parties include investors.

[75] As stated in paragraph 45 of the Merits Decision:

> Investors have, on aggregate, been repaid only approximately one third of the money they invested. However, some investors received all their money back, while other investors received nothing back.

[76] Accordingly, we follow the Commission's approach in *Re Sabourin*, *supra* at paragraphs 88 and 89:

> 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.
>
> 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

[77] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of the investigation (127.1(1)) and hearing (127.1(2)) if the Commission is satisfied that the person or company has not complied with the Act or not acted in the public interest.

[78] Staff requested, pursuant to section 127.1 of the Act, that the Respondents be ordered to pay, jointly and severally, a total of $169,651.25 to cover the costs incurred during the litigation phase of the hearing. The costs are as follows:

(a) Lead Litigator – 414.25 hours at $205 per hour;

(b) Forensic Accountant – 139 hours at $185 per hour; and

(c) Assistant Investigator – 319 hours at $ 185 per hour.

[79] Staff explained that its costs were calculated in accordance with Staff's schedule of hourly rates for various members of Staff of the Enforcement Branch. In support of this request, Staff provided us with a bill of costs and copies of the timesheets supporting the hourly figures claimed. These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the bill of costs.

[80] Staff is only requesting costs relating to the lead litigator, forensic accountant and an assistant investigator. In addition, Staff's bill of costs excludes any time spent by students-at-law, law clerks and assistants. The costs sought by Staff do not include the costs of the investigation stage of this matter and do not include the time spent preparing for and attending on the hearing regarding sanctions.

[81] We have reviewed the documentation provided by Staff relating to the costs of the investigation and hearing and in the circumstances we find that it is appropriate to order that the Respondents pay costs, jointly and severally, in the amount of $169,651.25. According to Staff's bill of costs, Staff's total costs for the hearing amounted to $356,280.00 and Staff only requested recovering $169,651.25 of that total. In our view, the amount of $169,651.25 is reasonable and conservative as this amount relates only to the work performed by the lead litigator, forensic accountant and an assistant investigator in the context of the litigation phase of this matter. We also find it appropriate to order that costs be paid by the Respondents on a joint and several basis because White and Qureshi and the companies that they controlled were all together responsible for the conduct in this matter.

VII. Decision on Sanctions and Costs

[82] We consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[83] We will issue a separate order giving effect to our decision on sanctions and costs and we order that:

(a) pursuant to clause 2 of subsection 127(1) of the Act, all of the Respondents shall cease trading permanently, with the exception that each of White and Qureshi 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, the acquisition of any securities by all of the Respondents is prohibited permanently, except in the case of White and Qureshi, 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 in Ontario securities law do not apply permanently to all of the Respondents;

(d) pursuant to clause 6 of subsection 127(1) of the Act, White and Qureshi are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, White and Qureshi shall immediately resign all positions they may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, White and Qureshi are prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to clause 8.1 of subsection 127(1) of the Act, White and Qureshi are prohibited permanently from becoming or acting as a director or officer of any registrant;

(h) pursuant to clause 9 of subsection 127(1) of the Act, each of WNBC, MMCL, Capital Reserve and Capital Investments shall pay an administrative penalty of $40,000, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(i) pursuant to clause 9 of subsection 127(1) of the Act, each of White and Qureshi shall pay an administrative penalty of $50,000, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(j) pursuant to clause 10 of subsection 127(1) of the Act, the Respondents shall disgorge to the Commission, on a joint and several basis, $500,000.00, to be allocated by the Commission in accordance with paragraph (k) of this Order;

(k) the amounts referred to in each of paragraphs (h) to (j) 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 scheme that was the subject matter of this proceeding, in accordance with subsection 3.4(2)(b) of the Act; and

(l) pursuant to section 127.1 of the Act, the Respondents shall pay, on a joint and several basis, $169,651.25 in costs to the Commission.

Dated at Toronto this 29th day of September, 2010.

"*Patrick J. LeSage*"	"*Carol S. Perry*"
Patrick J. LeSage	Carol S. Perry