



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

IN THE MATTER OF DAVID M. O'BRIEN

ORDER

WHEREAS on December 8, 2010, the Secretary of the Commission issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Monday, December 20, 2010 at 10:30 a.m., or as soon thereafter as the hearing can be held;

AND WHEREAS on December 9, 2010, the Respondent was served with the Notice of Hearing, Staff's Statement of Allegations dated December 7, 2010, and the affidavit of Lori Toledano ("Toledano") affirmed on December 15, 2010, as evidenced by the affidavit of Daniela De Chellis, sworn on December 16, 2010, and filed with the Commission;

AND WHEREAS the Notice of Hearing provides for the Commission to consider, among other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to s. 127 of the Act, to issue temporary orders against David M. O'Brien ("O'Brien"), as follows:

- (a) O'Brien shall cease trading in any securities for a prescribed period or until the conclusion of the hearing on the merits in this matter;
- (b) O'Brien is prohibited from acquiring securities for a prescribed period or until the conclusion of the hearing on the merits in this matter; and

(c) Any exemptions contained in Ontario securities law do not apply to O'Brien for a prescribed period or until the conclusion of the hearing on the merits in this matter;

AND WHEREAS on December 20, 2010 Staff of the Commission and O'Brien appeared before the Commission and made submissions. During the hearing on December 20, 2010, O'Brien advised the Commission that he was opposed to Staff's request that temporary orders be issued against him and that he wished to cross-examine Toledano on her affidavit;

AND WHEREAS on December 20, 2010, the hearing with respect to the issuance of the temporary orders was adjourned until December 23, 2010 at 12:30 p.m.;

AND WHEREAS on December 23, 2010, a hearing with respect to the issuance of the temporary orders was held and the panel of the Commission considered the affidavit of Toledano, the cross-examination of Toledano and the submissions made by Staff and O'Brien;

AND WHEREAS on December 23, 2010, the Commission issued a temporary cease trade order pursuant to s. 127 of the Act ordering that:

- (a) O'Brien shall cease trading securities;
- (b) O'Brien is prohibited from acquiring securities; and
- (c) Any exemptions contained in Ontario securities law do not apply to O'Brien.

(the "Temporary Cease Trade Order");

AND WHEREAS on December 23, 2010, the Commission ordered that the Temporary Cease Trade Order shall expire on April 1, 2011;

AND WHEREAS on December 23, 2010, the Commission ordered that Staff and O'Brien shall consult with the Secretary's Office and schedule a confidential pre-hearing conference for this matter;

AND WHEREAS a confidential pre-hearing conference was scheduled for February 24, 2011;

AND WHEREAS at the confidential pre-hearing conference on February 24, 2011, Staff of the Commission and O'Brien appeared and made submissions regarding the disclosure made by Staff. Staff also requested an extension of the Temporary Cease Trade Order;

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

IT IS HEREBY ORDERED THAT:

- 1) a hearing to extend the Temporary Cease Trade Order will take place on March 30, 2011 at 11:30 a.m.;
- 2) a motion regarding disclosure will take place on April 21, 2011 at 10:00 a.m., and in accordance with Rule 3.2 of the *Rules of Procedure* of the Ontario Securities Commission, O'Brien will serve and file a motion record, including any affidavits to be relied upon, by April 11, 2011 at 4:30 p.m.; and
- 3) a further confidential pre-hearing conference will take place on May 30, 2011 at 10:00 a.m.

DATED at Toronto this 24th day of February, 2011.

"Mary G. Condon"

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