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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
LEHMAN COHORT GLOBAL GROUP INC., ANTON SCHNEDL,
RICHARD UNZER, ALEXANDER GRUNDMANN and HENRY HEHLSINGER

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

Merits Hearing:	January 25 and 26, 2010	
Merits Decision:	July 28, 2010	
Sanctions and Costs Hearing:	November 4, 2010	
Panel:	James E. A. Turner	– Vice-Chair and Chair of the Panel
	Carol S. Perry	– Commissioner
	Sinan O. Akdeniz	– Commissioner
Counsel:	Hugh Craig	– For Staff of the Ontario Securities Commission
		– No one appeared for any of the Respondents.

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REASONS AND DECISION
ON SANCTIONS AND COSTS

I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") to consider pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") whether it is in the public interest to make an order with respect to sanctions and costs against Lehman Cohort Global Group Inc. ("**Lehman**"), Anton Schnedl ("**Schnedl**"), Richard Unzer ("**Unzer**") and Alexander Grundmann ("**Grundmann**") (collectively referred to as the "**Respondents**").

[2] The hearing on the merits was heard over two days on January 25 and 26, 2010 and reasons and the decision on the merits were issued on July 28, 2010 (the "**Merits Decision**").

[3] Following the release of the Merits Decision, we held a separate hearing on November 4, 2010 to consider submissions from Staff of the Commission ("**Staff**") regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). No one appeared for the Respondents at the Sanctions and Costs Hearing.

[4] These are our reasons and decision as to the appropriate sanctions and costs to be ordered against the Respondents. Our sanctions and costs order is attached as "Schedule A" to these reasons.

II. THE MERITS DECISION

[5] In a Statement of Allegations dated August 14, 2009, Staff alleged that the offer and sale to European investors of fraudulent investment schemes by the Respondents constituted trades in securities without registration in contravention of subsection 25(1)(a) of the Act. It was alleged that this conduct also constituted trading in securities that was contrary to the public interest. Staff also alleged that the Respondents engaged in acts of fraud, contrary to section 126.1 of the Act.

[6] We concluded in the Merits Decision that each of Lehman, Schnedl, Unzer and Grundmann contravened subsection 25(1)(a) of the Act and acted contrary to the public interest. We further concluded that each of Lehman and Schnedl knowingly perpetrated a fraud and contravened section 126.1(b) of the Act. However, we found that there was insufficient evidence to conclude that Unzer and Grundmann knowingly perpetrated a fraud and we dismissed that allegation against them.

[7] Our reasons for reaching these conclusions are summarized in paragraphs 67 to 80, 101 to 104, 107, 116 and 121 of the Merits Decision as follows:

> [67] In this case, the Respondents were soliciting and Lehman was purporting to enter into transactions that would have constituted trading in securities for

purposes of the Act if they had occurred in Ontario. In analysing the investment scheme from a securities law perspective we recognize that the scheme was a sham and that the Respondents never intended to complete the issue of a security as represented to investors. That does not mean, however, that no trading in a security occurred in Ontario for purposes of the Act.

[68] The acts in furtherance of the investment scheme that occurred in Ontario include the incorporation of Lehman in Ontario for the purpose of carrying out the investment scheme and the establishment of the Toronto Virtual Office and use of that office in dealing with investors. The establishment and use of the Toronto Virtual Office was an integral part of the investment scheme intended to mislead investors into believing they were dealing with a company and individuals located in Ontario. In our view, the establishment and use of the Toronto Virtual Office in this manner had sufficient proximity to the purported trades in securities with investors so as to constitute acts in furtherance of trades in securities that occurred in Ontario. The Commission came to a similar conclusion in *Sunwide*. We note that Lehman's head office was shown as the address of the Toronto Virtual Office and that its registered office was shown as the Toronto address of the law firm that incorporated Lehman.

[69] In addition, and perhaps most important, Lehman established bank accounts in Toronto to which investors wired funds in making their investments. Accordingly, investors completed their investments and the purported trades in securities by wiring funds to Toronto bank accounts and Lehman received those investor funds in Toronto.

[70] It is also clear that Lehman through its representatives solicited investors to purchase oil futures and foreign treasury bonds, both securities for purposes of the Act.

Lehman

[71] In the circumstances, we have concluded that Lehman engaged in acts in furtherance of trades in securities in Ontario within the meaning of the Act. There is evidence that Lehman:

(a) used the Lehman Web site to advertise its services in furtherance of trading in securities; that Web site referred to Lehman's Toronto Virtual Office address;

(b) established and paid for the services of the Toronto Virtual Office;

(c) communicated with investors using the Toronto Virtual Office;

(d) established Toronto bank accounts that received funds from investors;

(e) solicited trades in securities by telephone through its representatives (although those representatives probably were not in Ontario and those calls probably were not made from Ontario);

(f) entered into account agreements with investors governed by "the laws of Toronto, Canada"; and

(g) used the Lehman Web site to disseminate false account information to investors.

[72] Accordingly, we find that Lehman traded in securities in Ontario within the meaning of the Act. Lehman was not registered in any capacity with the Commission. The onus is on Lehman to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Lehman therefore contravened subsection 25(1)(a) of the Act.

Schnedl

[73] Based on the information and circumstances referred to in paragraphs 11 and 12 of these reasons, we have concluded that Schnedl was a directing mind of Lehman. There is evidence that Schnedl engaged in acts in furtherance of trades in securities in Ontario in that he:

(a) came to Toronto and caused Lehman to be incorporated under the laws of Ontario for purposes of carrying out the investment scheme;

(b) established the Toronto Virtual Office, signed on behalf of Lehman the services agreement establishing that office and paid for those services on behalf of Lehman;

(c) established the Toronto bank accounts used by Lehman to receive investor funds and was sole signing officer on those accounts;

(d) solicited the Austrian Investors by telephone, as a representative of Lehman, to participate in the investment scheme (although those calls were probably not made from Ontario);

(e) acted as the administrative and technical contact for the Lehman Web site used to advertise and solicit trades and to disseminate false account information to investors; and

(f) caused funds to be wired from Lehman's Toronto bank accounts to his personal bank accounts in Spain.

Some of those acts in furtherance of trades were engaged in by Schnedl using the Hehlsinger alias.

[74] Accordingly, we find that Schnedl traded in securities in Ontario within the meaning of the Act. Schnedl was not registered in any capacity with the Commission. The onus is on Schnedl to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Schnedl therefore contravened subsection 25(1)(a) of the Act.

Unzer

[75] Unzer participated in the investment scheme as a representative of Lehman by soliciting investors by telephone to invest in that scheme.

[76] Unzer called the Austrian Investors on numerous occasions to solicit investments in treasury bonds. The phone calls led to the Austrian Investors investing in April and May, 2008. Communications with Unzer included faxes to him at the Toronto Virtual Office.

[77] There is no evidence that Unzer was ever in Ontario or that he telephoned the Austrian Investors from Ontario. There is evidence, however, that he made use of the Toronto Virtual Office in his communications with investors and that he directed investors to make payments to Lehman's Toronto bank accounts. The acts in furtherance of trades carried out by Unzer may have occurred outside Ontario, but those acts in furtherance related to trading in securities that occurred in Ontario for purposes of the Act (see our conclusions in paragraphs 72 and 74 of these reasons). Accordingly, we find that Unzer traded in securities within the meaning of the Act. Unzer was not registered in any capacity with the Commission. The onus is on Unzer to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Unzer therefore contravened subsection 25(1)(a) of the Act.

Grundmann

[78] Grundmann participated in the investment scheme as a representative of Lehman by soliciting investors by telephone to invest in that scheme.

[79] Grundmann first starting calling the Austrian Investors in February 2008. He proposed that the Austrian Investors invest in oil futures because the price of oil was increasing rapidly at the time and because a "5% stop loss" would minimize the risk of such an investment. Grundmann told the Austrian Investors that it would be easy to make up their unrelated prior losses in the stock market by investing in oil futures. The Austrian Investors purported to invest in oil futures with Grundmann in February and May, 2008. Grundmann

gave the Austrian Investors international wire instructions and bank account information for the Lehman Toronto bank accounts, a Lehman account application, and a user ID and password for the password-protected section of the Lehman Web site where the Austrian Investors could access their account statements. Communications with Grundmann included faxes to him at the Toronto Virtual Office.

[80] There is no evidence that Grundmann was ever in Ontario or that he telephoned the Austrian Investors from Ontario. There is evidence, however, that he made use of the Toronto Virtual Office in his communications with investors and that he directed the Austrian Investors to make payments to Lehman's Toronto bank accounts. The acts in furtherance of trades carried out by Grundmann may have occurred outside Ontario, but those acts in furtherance related to trading in securities that occurred in Ontario for purposes of the Act (see our conclusions in paragraphs 72 and 74 of these reasons). Accordingly, we find that Grundmann traded in securities within the meaning of the Act. Grundmann was not registered in any capacity with the Commission. The onus is on Grundmann to prove that an exemption from registration was available. No evidence was submitted to us indicating that any such registration exemption was available. Grundmann therefore contravened subsection 25(1)(a) of the Act.

…

[101] Lehman committed dishonest acts by making numerous deceitful and false statements to investors including, in particular, that their funds would be invested in oil futures and/or foreign treasury bonds. We have no evidence that the investors' funds were ever used for that purpose. It also appears that the Austrian Investors' account statements falsely showed fictitious investments and purported investment returns. There is no doubt based on the evidence that Lehman committed acts of deceit and falsehood through its representations in soliciting investors to invest in the scheme. The Supreme Court of Canada has stated that "other fraudulent means" include the non-disclosure of important facts, the unauthorized diversion of funds and the arrogation of funds or property. Lehman and Schnedl did each of those things.

[102] As noted above, we found that Schnedl was a directing mind of Lehman and participated personally in the fraudulent activity.

[103] The second element required to establish fraud is deprivation caused by the dishonest acts. In this case, as a result of the deceitful and false statements made by Lehman, investors wired substantial amounts of money to Lehman bank accounts in Toronto. A substantial portion of those funds were misappropriated by Schnedl for his personal benefit. The Austrian Investors have demanded the repayment of the amounts they wired to Lehman and have received no response. Accordingly, the Austrian Investors have been deprived of those funds as a result of the dishonest acts of Lehman and Schnedl. The

second element of fraud, deprivation, is therefore established against Lehman and Schnedl.

[104] Finally, in order to commit fraud, a person must have the necessary mental element (*mens rea*). As discussed in *Théroux*, the person must have subjective knowledge of the prohibited conduct and that a consequence of that conduct will be the deprivation of another. Based on our conclusions in paragraphs 101 to 103, 123 and 125 of these reasons, we find that Lehman and Schnedl *knowingly* committed fraud by depriving the Austrian Investors of the funds that they were induced by deceit to forward to Lehman.

…

[107] In any event, we believe that in this case the fraud perpetrated by Lehman and Schnedl occurred in Ontario because of the real and substantial link between the fraud and Ontario.

…

[116] In our view, there is a real and substantial link between the fraud committed by Lehman and Schnedl and Ontario, even though the fraud was not planned or initiated by persons in Ontario. We were particularly influenced in coming to this conclusion by the fact that Lehman was incorporated in Ontario, Lehman was held out as carrying on business in and from Ontario, the Virtual Office was located in Ontario and was used in carrying out the investment scheme, and investor funds were wired to Lehman bank accounts established in Toronto. These elements of the investment scheme were an integral part of the fraud. We also find that the incorporation of Lehman, the establishment of the Toronto Virtual Office and the opening of the bank accounts were preparatory activities to perpetrate the fraudulent scheme (see paragraph 110 of these 22 reasons) Accordingly, we find that Lehman and Schnedl knowingly perpetrated a fraud in Ontario for purposes of section 126.1(b) of the Act.

…

[121] We have concluded above that Lehman and Schnedl knowingly perpetrated a fraud for purposes of section 126.1(b) of the Act. We heard evidence that Unzer and Grundmann participated in the fraud by contacting the Austrian Investors to sell the investment scheme to them on behalf of Lehman and that they made use of the Toronto Virtual Office in doing so. We do not have any evidence, however, that Unzer or Grundmann knew or reasonably ought to have known that the investment scheme was a fraud, that the investor account statements were a sham, or that investor funds were being diverted to and misappropriated by Schnedl. While we can speculate that Unzer and Grundmann probably did know that the investment scheme was a fraud, that is not enough.

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

[9] For purposes of the Merits Decision and these reasons, the "**Austrian Investors**" mean a husband and wife who are residents of Austria and who invested in the investment scheme. Their testimony was given by video conference.

III. SANCTIONS AND COSTS REQUESTED BY STAFF

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

Cease trade and other prohibition orders

[11] Staff seeks an order:

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

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

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

(d) pursuant to clause 7 of subsection 127(1), that each of Schnedl, Unzer and Grundmann resign all positions he may hold as a director or officer of an issuer; and

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

Reprimand

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

Administrative Penalties

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

(a) $150,000 to be paid by Schnedl; and
(b) $30,000 to be paid by each of Unzer and Grundmann.

[14] Staff submits that an administrative penalty of $150,000 is appropriate in the circumstances for Schnedl. Schnedl committed multiple and repeated violations of the Act,

including fraud, which caused serious harm to the Austrian Investors. A substantial administrative penalty is necessary to deter Schnedl from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants.

[15] Similarly, Staff submits that the nature of the conduct of Unzer and Grundmann warrants an administrative penalty of $30,000 each. Staff concede that their conduct was not as serious as that of Schnedl given that they were not found to have committed fraud.

Disgorgement

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

[17] Staff seeks a specific order that the Respondents jointly and severally disgorge $297,542 to the Commission, being the total amount obtained by them as a result of their non-compliance with Ontario securities law. The Austrian Investors sent Lehman approximately €221,000, or approximately $297,542 in Canadian funds. All of these funds appear to have been lost by the Austrian Investors and Schnedl misappropriated the majority of them.

[18] Staff submit that the entire amount obtained by the Respondents from the Austrian Investors should be ordered disgorged based on the following factors:

(a) the amount requested to be disgorged represents the entire amount obtained as a result of the Respondents' illegal trading and the fraudulent conduct of Lehman and Schnedl;

(b) the Respondents' misconduct was egregious and the Austrian Investors were seriously harmed by the misappropriation of their funds;

(c) it does not appear likely that investors will be able to obtain any redress given that none of Schnedl, Unzer or Grundmann are within Canada or can be located by Staff; and

(d) a disgorgement order for the entire amount obtained by the Respondents from the Austrian Investors would have a significant specific and general deterrent effect.

[19] Staff submits that financial sanctions should be ordered regardless of whether it can be demonstrated that any of the Respondents currently have the ability to pay. An order for disgorgement of the entire amount obtained from investors would achieve the objectives of general and specific deterrence, and maintains proportionality and consistency with other Commission decisions. Furthermore, even if the Respondents do not currently have the ability to pay, the order will remain in place in the event that any assets of Lehman, Schnedl, Unzer or Grundmann are located.

Staff's Conclusion on Sanctions

[20] Staff submits that the proposed sanctions are proportionate to the Respondents' egregious conduct and will serve as a specific and general deterrent. An order permanently removing the Respondents from the capital markets, requiring disgorgement of all funds obtained from the Austrian Investors, and requiring the Respondents to pay significant administrative penalties will signal both to the Respondents and to like-minded individuals that fraudulent conduct will result in severe sanctions.

Costs

[21] Staff also seeks an order for investigation and hearing costs pursuant to section 127.1 of the Act. Staff submit that the Respondents should be ordered to pay $51,718.83 on a joint and several basis, which amount Staff submits represents the costs incurred in the investigation and hearings related to this matter.

IV. THE RESPONDENTS DID NOT PARTICIPATE IN THE HEARINGS

[22] None of the Respondents appeared or participated in the hearing on the merits or the Sanctions and Costs Hearing.

V. SANCTIONS

(i) The Law on Sanctions

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

[24] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. This objective was described in *Re Mithras Management Ltd.* as follows:

> … 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 OSCB 1600 at pp. 1610-1611)

[25] Further, the Supreme Court of Canada has recognized general deterrence as an additional factor that the Commission may consider when imposing sanctions. In *Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60 the Supreme Court stated that: "…it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative".

[26] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of each respondent. The Commission has previously identified the following as some of the factors that a panel should consider when imposing sanctions:

(a) the seriousness of the conduct and the breaches of the Act;
(b) the respondent's experience in the marketplace;
(c) the level of a respondent's activity in the marketplace;
(d) whether or not there has been recognition by a respondent of the seriousness of the improprieties;
(e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;
(f) the size of any profit obtained or loss avoided from the illegal conduct;
(g) the size of any financial sanction or voluntary payment;
(h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;
(i) the reputation and prestige of the respondent;
(j) the remorse of the respondent; and
(k) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at p. 7746; and *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 OSCB 1133 at para. 26)

[27] Because the Respondents appear to reside outside of Canada and their exact whereabouts have never been determined, it is unlikely that any financial sanction we impose will be paid. That is a relevant factor in determining sanctions but is not a predominant or determining factor.

[28] Ultimately, the sanctions we impose must protect Ontario's capital markets and investors by restricting or barring the Respondents from participating in our markets and by deterring others from using our jurisdiction to perpetrate fraudulent schemes which are abusive to investors outside Ontario.

(ii) Findings and Conclusions as to Sanctions

Specific Factors Applicable in this Matter

[29] In considering the factors referred to in paragraph 26 of these reasons, we find the following factors and circumstances to be relevant in this matter, based on our findings in the Merits Decision (which are set out in paragraph 7 of these reasons):

(a) the conduct of the Respondents was clearly egregious; as noted above, the Respondents Lehman and Schnedl solicited and sold investments they knew were a sham, lied to and misled investors and misappropriated at least $297,542 of investors' funds;

(b) all of the Respondents breached a number of key provisions of the Act which are intended to protect investors from the very conduct that occurred here; the Respondents actions caused severe financial damage to the Austrian Investors and to the integrity of Ontario's capital markets, and were clearly contrary to the public interest;

(c) the Austrian Investors were solicited by telephone by Schnedl, Unzer and Grundmann to invest in the fraudulent scheme; after they had done so, and after they had lost all of their investment, they were harassed by Schnedl in sometimes abusive phone calls;

(d) Schnedl, Unzer and Grundmann's communications with the Austrian Investors included the use of aliases and deceitful and false statements with respect to the investment scheme;

(e) Schnedl, Unzer and Grundmann knew or ought to have known that they were selling securities in breach of the Act;

(f) Lehman prepared client account statements that purported to show for each client all account activity and account balances; it appears that the account statements were a complete sham and did not reflect actual investments or returns;

(g) no trade confirmations were ever sent to investors;

(h) notwithstanding the investments shown in the client accounts, it appears that no oil futures, treasury bonds or any other securities were ever purchased by Lehman on behalf of investors;

(i) it appears that no money was ever returned to investors; the Austrian Investors made a total investment of approximately €221,000 and have made repeated demands for the return of their funds but have received no response; the Austrian Investors testified that they have been left almost destitute as a result;

(j) the Austrian Investors were misled into believing that Lehman was carrying on business in Toronto and they thought they were dealing with a company and individuals located in Canada; the Toronto Virtual Office appears to have been established for the sole purpose of misleading investors into believing that was the case; and

(k) Lehman opened bank accounts in Ontario, established the Toronto Virtual Office and used that office as part of the fraudulent scheme, telephone numbers for the Virtual Office were given to investors, and the Lehman web site and the administrative forms used by Lehman referred to the Toronto Virtual Office.

[30] It is important in these circumstances to impose very significant sanctions in order to demonstrate that we will not tolerate our jurisdiction and capital markets to be used in this manner to defraud investors located outside Canada. That conduct is completely unacceptable.

Trading and Other Prohibitions

[31] One of the Commission's objectives in imposing sanctions is to restrain future conduct that could be harmful to investors or Ontario's capital markets. In this case, we find that the public interest requires us to permanently restrain the Respondents from any future market participation.

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

(a) a permanent cease trade order against each of the Respondents;

(b) a permanent prohibition order against each of the Respondents acquiring any securities;

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

(d) an order that each of Schnedl, Unzer and Grundmann resign all positions they hold as a director or officer of an issuer;

(e) an order that each of Schnedl, Unzer and Grundmann be prohibited permanently from becoming or acting as a director or officer of an issuer; and

(f) an order reprimanding each of the Respondents.

Disgorgement

[33] 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.

[34] Disgorgement 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.

[35] In contemplating the issue of a disgorgement order, we have considered the following factors which have been determined by the Commission to be relevant:

> (a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;
>
> (b) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;
>
> (c) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;
>
> (d) whether the individuals who suffered losses are likely to be able to obtain redress by other means; and
>
> (e) the deterrent effect of a disgorgement order on the respondents and other market participants.
>
> (*Re Limelight Entertainment Inc.* (2008) OSCB 12030 at para. 52)

[36] In our view, a disgorgement order is appropriate in these circumstances because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an order will deter them and others from similar misconduct. In our view, it is appropriate that a disgorgement order in these circumstances relate to the full amount that we determined in the Merits Decision to have been obtained by each of Lehman and Schnedl from the Austrian Investors.

[37] We will order that Lehman and Schnedl disgorge $297,542 on a joint and several basis. That amount represents the total amount in Canadian dollars that was obtained by Lehman and Schnedl from the Austrian Investors. We impose joint and several liability on Lehman and Schnedl because, as stated in the Merits Decision, Schnedl was the directing and controlling mind of Lehman. Ultimately it was Schnedl who concocted, orchestrated and carried out the investment scheme and misappropriated investors' funds.

[38] It is not clear on the evidence what amount was obtained by Unzer or Grundmann from investors. Further, we did not conclude in the Merits Decision that Unzer and Grundmann knowingly committed fraud. As a result, we will not order that either Unzer or Grundmann disgorge any amount or that they pay, on a joint and several basis, the amount we order disgorged by Lehman and Schnedl.

Administrative Penalties

[39] In our view, it is appropriate in this matter to impose substantial administrative penalties against Lehman and Schnedl, in addition to our disgorgement order. We have considered the

submissions made by Staff as to the appropriate administrative penalty in this case. However, we find that it is in the public interest to impose a higher administrative penalty against Lehman and Schnedl than that requested by Staff. We have concluded that we have the legal authority to do so without further notice to the Respondents.

[40] In imposing the following administrative penalty, we have considered our findings in the Merits Decision, the respective roles of each Respondent in the illegal conduct involved in this matter and the extent of the involvement of each Respondent in selling the investment scheme to investors.

[41] We will order that an administrative penalty of $500,000 be paid to the Commission by Lehman and Schnedl, on a joint and several basis. Lehman and Schnedl committed multiple and repeated violations of the Act, including fraud, which caused serious harm to the Austrian Investors. As noted above, Schnedl was the directing and controlling mind of Lehman and orchestrated the investment scheme and misappropriated investors' funds. A very substantial administrative penalty is justified based on the fraud that occurred and the amounts that appear to have been lost by investors. The administrative penalty imposed shall be allocated to or for the benefit of third parties in accordance with section 3.4(2)(b) of the Act in accordance with this decision (see paragraph 43 of these reasons).

[42] We will not order an administrative penalty against Unzer or Grundmann. We did not conclude in the Merits Decision that they knowingly committed fraud and all of their activities appear to have been carried on outside Ontario. Further, the evidence submitted to us by Staff in respect of the activities of Unzer and Grundmann was less compelling than that against Lehman and Schnedl. We have concluded in all of the circumstances that the appropriate sanctions against Unzer and Grundmann are only the cease trade and other market participation bans referred to in paragraph 32 of these reasons.

Allocation of Amounts for Benefit of Third Parties

[43] Any amounts paid to the Commission in compliance with our orders for disgorgement and administrative penalties shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment scheme, 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 scheme 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. We recognise that the evidence led us to conclude that the Austrian Investors lost approximately $297,542 as a result of the fraudulent investment scheme.

[44] The terms of paragraph 43 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

[45] Staff seeks an order for the payment of $51,718.83 of the costs of investigation and of the hearing in this matter against all of the Respondents, on a joint and several basis. Staff has submitted a bill of costs supporting that amount. We accept that the amount claimed by Staff is only a portion of the costs incurred by Staff in this matter.

[46] We order that costs in the amount of $51,718.83 shall be payable by Lehman and Schnedl, on a joint and several basis. We make no order for costs against Unzer or Grundmann for the reasons referred to in paragraph 42 of these reasons.

VII. CONCLUSION

[47] For the reasons discussed above, we have concluded that the sanctions imposed above are proportionate to the respective conduct and culpability of each Respondent in the circumstances and are in the public interest. We will issue a sanctions and costs order in the form appended to these reasons as Schedule "A".

Dated at Toronto, this 2nd day of March, 2011.

"James E. A. Turner"

James E. A. Turner

"Carol S. Perry"

Carol S. Perry

"Sinan O. Akdeniz"

Sinan O. Akdeniz

Schedule "A"

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

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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
LEHMAN COHORT GLOBAL GROUP INC., ANTON SCHNEDL,
RICHARD UNZER, ALEXANDER GRUNDMANN and HENRY HEHLSINGER

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

WHEREAS on August 14, 2009, a Statement of Allegations and a Notice of Hearing were issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), in respect of Lehman Cohort Global Group Inc. ("**Lehman**"), Anton Schnedl ("**Schnedl**"), Richard Unzer ("**Unzer**"), Alexander Grundmann ("**Grundmann**") and Heinrich "Henry" Hehlsinger;

AND WHEREAS the Commission conducted the hearing on the merits in this matter on January 25 and 26, 2010;

AND WHEREAS the Commission issued its reasons and decision on the merits in this matter on July 28, 2010 (the "**Merits Decision**");

AND WHEREAS the Commission concluded that Lehman and Schnedl committed fraud and that Lehman, Schnedl, Unzer and Grundmann (collectively the "**Respondents**" and

individually a "**Respondent**") contravened Ontario securities law and have acted contrary to the public interest;

AND WHEREAS the Commission conducted a hearing with respect to the sanctions and costs to be imposed in this matter on November 4, 2010 and issued its reasons imposing sanctions and costs on March 2, 2011 (the "**Sanctions and Costs Decision**");

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order for the reasons set forth in the Sanctions and Costs Decision;

IT IS HEREBY ORDERED THAT:

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

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by any of the Respondents is prohibited permanently;

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

(d) pursuant to clause 7 of subsection 127(1) of the Act, each of Schnedl, Unzer and Grundmann shall immediately resign all positions they may hold as a director or officer of any issuer;

(e) pursuant to clause 8 of subsection 127(1) of the Act, each of Schnedl, Unzer and Grundmann are prohibited permanently from becoming or acting as a director or officer of any issuer;

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

(g) pursuant to clause 9 of subsection 127(1) of the Act, Lehman and Schnedl shall jointly and severally pay an administrative penalty of $500,000;

(h) pursuant to clause 10 of subsection 127(1) of the Act, Lehman and Schnedl shall jointly and severally disgorge to the Commission $297,542;

(i) the amounts referred to in paragraphs (g) and (h) 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 the Sanctions and Costs Decision; and

(j) pursuant to section 127.1 of the Act, Lehman and Schnedl shall jointly and severally pay $51,718.83 in costs to the Commission.

Dated at Toronto, Ontario this 2nd day of March, 2011.

"James E. A. Turner"

James E. A. Turner

"Carol S. Perry"

Carol S. Perry

"Sinan O. Akdeniz"

Sinan O. Akdeniz