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 VINCENT CICCONE and CABO CATOCHE CORP.
(a.k.a. MEDRA CORP. and MEDRA CORPORATION)**

REASONS FOR DECISION ON DISCLOSURE

Hearing:	September 7 and 13, 2012	
Decision:	September 20, 2012	
Reasons:	October 31, 2012	
Panel:	Vern Krishna, Q.C.	- Commissioner and Chair of the Panel
Appearances:	Michelle Vaillancourt	- For Staff of the Commission
	No one appeared on behalf of Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)	

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REASONS FOR DECISION ON DISCLOSURE

I. OVERVIEW

[1] The primary issue raised by this motion is whether Staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") have met their disclosure obligations to the respondent Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation) (collectively, "**Medra**") to disclose all relevant documents in their possession. Medra requested that copies of all relevant documents in Staff's possession be sent to its offices in Mexico. Staff advised Medra that all relevant documents are available for inspection at the offices of the Commission, but Staff refused to send copies of the documents to Medra. For the reasons that follow, I find that by refusing to provide copies of all relevant documents in their possession to Medra, Staff failed to meet their disclosure obligations.

II. HISTORY OF PROCEEDINGS

[2] The merits proceeding in this matter arose out of a Statement of Allegations dated September 30, 2011, as amended by an Amended Statement of Allegations dated May 2, 2012, and a Notice of Hearing dated October 3, 2011, as amended by an Amended Notice of Hearing dated May 3, 2012. The Amended Statement of Allegations and the Amended Notice of Hearing were issued in respect of Vincent Ciccone ("**Ciccone**") and Medra (together, the "**Respondents**").

[3] The hearing on the merits in this matter commenced on September 5, 2012. Neither Ciccone nor Medra appeared, however, Staff informed the Commission that Staff and Ciccone were seeking an adjournment in light of their settlement discussions. I adjourned the hearing on the merits to September 7, 2012. Another panel of the Commission approved a settlement agreement between Staff and Ciccone on September 7, 2012.

[4] When the hearing on the merits resumed on September 7, 2012, I made inquiries about two e-mail messages, dated August 26, 2012 and September 5, 2012, that were filed with the Office of the Secretary by a representative of Medra, Jeffrey Janssen Anuth ("**Anuth**"), who purports to be its President. The e-mail message contains Medra's request that Staff disclose all relevant documents in their possession by sending copies of said documents to Medra at their offices in Mexico. Staff made submissions in response to Medra's request, supported by the Affidavit of Allister Field, sworn September 7, 2012, and further requested that the Panel proceed with the hearing on the merits of the allegations against Medra by means of a hearing in writing pursuant to Rule 11 of the Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "***Rules of Procedure***"). Medra did not appear and made no further submissions on this issue.

[5] Having heard oral submissions from Staff, I adjourned the hearing to September 13, 2012, and directed Staff to make written submissions on their disclosure obligations with respect to Medra, including submissions on the law, policy, jurisprudence and their position on this issue, by September 13, 2012.

[6] The hearing on the merits resumed on September 13, 2012. Staff made further oral submissions, supported by written submissions dated September 12, 2012, that were filed in accordance with the procedural direction that I issued on September 7, 2012. Medra did not appear and made no further submissions on this issue. I reserved my decision and further adjourned the hearing on the merits to September 20, 2012.

[7] On September 20, 2012, I gave an oral decision that Staff's disclosure obligations require them to provide copies of the relevant material to Medra, subject to certain conditions which were set out in an Order dated September 20, 2012. These are my reasons for the oral decision given on September 20, 2012.

III. NON-ATTENDANCE OF MEDRA

[8] Medra did not appear on any days of the hearing on the merits. Based on the Affidavit of Allister Field, sworn September 7, 2012, I was satisfied that Medra was given notice of the hearing in accordance with subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (the "**SPPA**") by e-mail communications with Anuth who is purportedly the President of Medra. Accordingly, I was entitled to proceed in the absence of the company or its representative in accordance with subsection 7(1) of the SPPA.

IV. THE FACTS

A. Disclosure Requests

[9] The facts giving rise to Medra's request are not in dispute. Staff issued an Amended Statement of Allegations in which Staff allege that Medra engaged in conduct contrary to sections 25, 53 and 126.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). In proceeding against Medra, Staff have been in communication with Anuth, who, as discussed above, is purportedly the President of Medra.

[10] By e-mails dated November 4 and 15, 2011, Staff informed Anuth that the first and second tranches of disclosure, comprising of 31 and 18 binders respectively, were available for inspection at the Commission's offices pursuant to Subrule 4.3(2) of the *Rules of Procedure*. According to Staff, the materials that they obtained during their investigation into this matter include documents received from third parties and documents or testimony obtained by way of a section 11 order and subject to the non-disclosure protections of sections 16 and 17 of the Act. Accordingly, Staff advised Anuth in the e-mail messages that (i) disclosure is subject to very strict laws of non-disclosure; (ii) a significant amount of the information contained in the disclosure is subject to section 16 of the Act (the text of which was set out in the e-mail) and should be treated as confidential; (iii) the implied undertaking rule applies to the disclosure, that is, "respondents who receive information further to [Staff's] duty to make disclosure on proceedings commenced under Section 127 of the Securities Act may not, without leave of the Commission, use the information for any purpose collateral or ulterior to the resolution of the issues in that proceeding".

[11] On August 16, 2012, Staff provided Anuth, by e-mail, with a redacted hearing index listing documents that Staff intended to produce or enter as evidence at the hearing

on the merits. On August 23, 2012, Staff further provided Anuth with witness summaries by e-mail. References to personal information were redacted from both the redacted hearing index and witness summaries. With respect to both the redacted hearing index and witness summaries, Staff again provided Anuth with the cautionary advice relating to disclosure described in paragraph [10] above. Staff reiterated that the documents were available for inspection at the Commission's offices, but also offered to send the documents referred to in the redacted hearing index to Medra's counsel in Ontario.

[12] Anuth requested by e-mail dated August 26, 2012 that Staff send "complete, unedited, un-redacted documentation" to Medra's legal counsel in Mexico. He suggested that Staff "may ship the documentation to your very own Canadian embassy in Mexico City, for pick up by [Medra's] legal counsel". Anuth took the following position in his e-mail to Staff:

> Your disingenuous requirement for us to come to Canada and view documentation within the confines of your office, or to obtain Canadian legal counsel (at considerable expense), that meets with your approval, in order to merely view evidence that you are using against the company, is highly questionable and inappropriate. Give us the documents.

[13] In response, Staff maintained that disclosure documents were available for inspection at the Commission's offices in accordance with Rule 4.3(2) of the *Rules of Procedure*. Staff further advised that they were prepared to deliver copies of documents referred to in the redacted hearing index to Medra's counsel in Ontario.

B. The Mexican Complaint Filed by Anuth

[14] At the hearing on the merits, Staff presented an e-mail dated September 5, 2012 from Anuth which stated that "[Medra's] Management has found it necessary to initiate a criminal complaint in Mexico, in defense of, in protection of, and preservation of shareholder interests". Attached to the e-mail was a copy of what appears to be an official document filed by Anuth with the Mexican authorities in order to pursue a "criminal compliant" (as well as a "private suit") "against the crime of FRAUD and/or the crimes determined to have been committed…by the individual(s) found responsible" (the "**Mexican Complaint**"). Staff have provided me with an official translation of the Mexican Complaint.

[15] The Mexican Complaint identifies Anuth as the plaintiff and complainant and names Ciccone as one of the parties responsible for the alleged fraud. In the Mexican Complaint, Anuth referred to some of the allegations against Ciccone contained in the Amended Statement of Allegations and requested that the Mexican authorities initiate an investigation into the matters referred to in the complaint.

[16] The Mexican Complaint states:

> According to the information provided by the above-mentioned Canadian authorities, said authorities have various evidentiary documents that allow it to determine the probable responsibility of any individuals performing acts that may have caused financial harm to the undersigned and other

> shareholders. The Ontario Securities Commission has volumes 1a, 1 B, 1C, 1D 1E, 1E (*sic*), 1F, 1G, 1H, 1I, 1J, 5A, 5B, 5C, 9, 10A, 12A, 12B, 12C, 12D, 13A, 13B, 14, 15, 16, 17, 18, 19A, 19B, 20, 22, 23, 24, 25 and 26, in the file of VINCNET CICCONE and CABO CATOCHE CORP., a.k.a. MEDRA CORP and MEDRA CORPORATION, which certify the damage that may have been committed by Vincent Ciccone against the undersigned and various other shareholders in the above-mentioned corporation. In view of the above, since November 2010, the current corporate officers had requested a copy of said documents from the Canadian authorities in order to file the corresponding suits.

[17] Certain documents appeared to have been attached to the Mexican Complaint, although the copies of the documents that were filed with the Mexican Complaint were not part of evidence:

> DOCUMENTS. Hard copy of the attachments to the e-mail sent by the Ontario Securities Commission of the Government of Canada, consisting of a document listing volumes 1a, 1 B, 1C, 1D, 1E, 1E (*sic*), 1F, 1G, 1H, 1I, 1J, 5A, 5B, 5C, 9, 10A, 12A, 12B, 12C, 12D, 13A, 13B, 14, 15, 16, 17, 18, 19A, 19B, 20, 22, 23, 24, 25 and 26, in the file of VINCENT CICCONE and CABO CATOCHE CORP., a.k.a. MEDRA CORP and MEDRA CORPORATION, made up of 46 pages; 10 pages of which are in English and whose translation into Spanish I will provide.

[18] The affidavit evidence of the Staff investigator is that the redacted hearing index attached to Staff's e-mail to Anuth dated August 16, 2012 is 47 pages in length and includes references to documents and testimony that were compelled by way of section 13 summonses issued pursuant to a section 11 order obtained in this matter, including 4 transcripts of compelled examinations of Ciccone, as well as documents obtained voluntarily from third parties including investors whose last names were redacted.

V. ISSUES

[19] The issue before the Panel in this motion is whether Staff are required to provide copies of the disclosure material to Medra in order to meet their disclosure obligations.

VI. THE POSITION OF THE PARTIES

A. Medra

[20] Medra did not attend the hearing and made no formal legal submissions in respect of this motion. However, in their e-mail to Staff dated September 5, 2012, Medra asks that the Commission "enter this communication, in its entirety, into the official record of any proceedings you may have in this matter…".

[21] Medra's position on the issue of disclosure may be summarized in the following excerpt from the September 5th e-mail:

> Subsequent and current management has repeatedly requested complete information from the Ontario Securities Commission. Such information to include a true, complete and accurate copy of any and all information, documents, statements, financial records, depositions, emails and other records, written or recorded, in the matter of Ciccone Group, Medra Corporation etc. ….
>
> **….**
>
> Ontario Securities Commission [*sic*] has continually refused to send us this information. Your disingenuous requirement for us to come to Canada and view documentation within the confines of your office, or to obtain Canadian legal counsel, that meets with your approval, in order to merely view evidence that you are using against the company, is highly questionable and inappropriate.

B. Staff

[22] Staff accept that they have an obligation to disclose to Medra any documents in the possession of Staff that may be relevant to the allegations giving rise to this proceeding, whether those documents are inculpatory or exculpatory. However, it is Staff's position that their disclosure obligation is satisfied when they make all relevant documents available for inspection at the offices of the Commission. Staff submit that their disclosure obligation is set out in Subrules 4.3(1) and 4.3(2) of the *Rules of Procedure* which state:

> **4.3 Disclosure of Documents or Things – (1) Requirement to Disclose** – Each party to a proceeding shall deliver to every other party copies of all documents that the party intends to produce or enter as evidence at the hearing, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case, at least 20 days before the commencement of the hearing on the merits or as determined by a Panel as the circumstances require.
>
> **(2)** In the case of a hearing under section 127 of the Act and subject to Rule 4.7, Staff shall make available for inspection by every other party all other documents and things that are in the possession or control of Staff that are relevant to the hearing. Staff shall provide copies, or permit the inspecting party to make copies, of these documents at the inspecting party's expense, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing.

[23] Staff submit that they have complied with Subrule 4.3(2) because they have made all relevant documents available for inspection at the offices of the Commission. In Staff's view, they should not be required to send copies of the relevant documents to Medra's offices in Mexico because the documents include information obtained by the

Commission through compelled examinations, and as such are protected by the confidentiality requirements of section 16 of the Act. That section reads:

> **16. (1) Non-disclosure** – Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,
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> (a) the nature or content of an order under section 11 or 12; or
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13.
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> **(2) Confidentiality** – If the Commission issues an order under section 11 or 12, all reports provide under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except as permitted under section 17.

[24] Staff further submit that the relevant documents in their possession are subject to section 17 of the Act, the relevant subsections of which state:

> **17. (1) Disclosure by Commission** – If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,
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> (a) the nature or content of an order under section 11 or 12;
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> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
>
> (c) all or part of a report provided under section 15.
>
> **….**
>
> **(3) Disclosure to police** – Without the written consent of the person from whom the testimony was obtained, no order shall be made under

subsection (1) authorizing the disclosure of testimony given under subsection 13(1) to,

(a) a municipal, provincial, federal or other police force or to a member of a police force; or

(b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

….

(6) Disclosure in investigation or proceeding – A person appointed to make an investigation or examination under this Act may disclose or produce anything mentioned in subsection (1), but may do so only in connection with,

(a) a proceeding commenced or proposed to be commenced by the Commission under this Act; or

(b) an examination of a witness, including an examination of a witness under section 13.

(7) Disclosure to police – Without the written consent of the person from whom the testimony was obtained, no disclosure shall be made under subsection (6) of testimony given under subsection 13(1) to,

(a) a municipal, provincial, federal or other police force or to a member of a police force; or

(b) a person responsible for the enforcement of the criminal law of Canada or of any other country or jurisdiction.

[25] Staff submit that the documents requested by Medra may only be provided by Staff upon receipt of an undertaking not to disclose such documents to any other person, in compliance with sections 16 and 17 of the Act. Staff submit that neither Medra nor its Mexican counsel can give an enforceable undertaking not to disclose the documents. Therefore, Staff take the position that they should not be required to provide Medra copies of the materials

[26] Furthermore, they submit that Medra has already made clear, by deeds and words, that any documents disclosed by Staff will be provided to Mexican authorities in support of the Mexican Complaint. Medra's actions with respect to the Mexican Complaint, Staff submit, create reasonable grounds for concern that Medra will not comply with sections 16 and 17 of the Act, and justify their position that disclosure must be conducted in the controlled environment of the Commission's offices.

[27] Staff submit that the manner in which they propose to effect disclosure to Medra is consistent with the Supreme Court of Canada's decision in *Deloitte & Touche LLP v. Ontario (Securities Commission*), [2003] 2 S.C.R. 713 ("***Deloitte (SCC)***"), where, at

paragraph 28, the Court recognizes that when exercising their disclosure obligations, Staff must:

> ….search for an approach that provides fair consideration for the respondents in jeopardy and enables them to meet the case against them yet also is sensitive to the third party's privacy interests and expectations.

[28] Staff submit that their position is consistent with practice in the criminal context. Staff rely on the *Crown Policy Manual*, published by the Ministry of the Attorney General, which addresses the situation where an accused is self-represented and the Crown's disclosure material contains information that is subject to privacy concerns. In that situation, the *Crown Policy Manual*, section D-1, para. 9(b) states:

> An unrepresented accused is entitled to the same disclosure as the represented accused. However, if there are reasonable grounds for concern that leaving disclosure material with the unrepresented accused would jeopardize the safety, security, privacy interests, or result in the harassment of any person, Crown counsel may provide the disclosure by means of controlled and supervised, yet adequate and private, access to the disclosure materials. . . . Crown counsel shall inform the unrepresented accused in writing of the appropriate uses, and limits upon the use, of the disclosure materials.

[29] Staff submit that the above policy flows from the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (the "**Martin Committee**"). The Martin Committee's Recommendation 12(h) was as follows:

> where reasonably capable of reproduction, and where Crown counsel intends to introduce them into evidence, copies of documents, photographs, audio or video recordings of anything other than a statement by a person, and other materials should normally be supplied to the defence. The defence may be limited to a reasonable opportunity, in private, to view and listen to a copy of any audio or video recording where Crown Counsel has reasonable cause to believe that there exists a reasonable privacy or security interest of the victim(s) or witness(es), or any other reasonable public interest, which cannot be satisfied by an appropriate undertaking from defence counsel.

[30] Staff submit that their proposed method of effecting disclosure has been endorsed by the Ontario courts in *R. v. Blencowe*, [1997] O.J. No. 3619 (Gen. Div.) ("***Blencowe***"), *R. v. Schertzer*, [2004] O.J. No. 5879 (S.C.J) ("***Schertzer***") and *R. v. Radwanski*, [2006] O.J. No. 5250 (S.C.J.) ("***Radwanski***").

[31] In *Blencowe*, Watt J. (as he then was) ruled that disclosure of a video containing alleged child pornography should be provided to the defence upon an undertaking from defence counsel that the copies of the tape will be retained in counsel's offices. The Court also imposed strict and specific limits on who would be permitted to view the tape.

[32] In *Schertzer*, the Court was dealing with the disclosure of information that contained the identity of a confidential informant whose information led to a drug prosecution. In that case, Ewaschuk J. ordered that the Crown is not required to make disclosure to the accused until his counsel enters into an express undertaking not to use the disclosure material or information contained in the material beyond the need to make full answer and defence.

[33] In *Radwanski*, the Crown sought to effect disclosure by providing electronic documentation to the defence. The defence objected to the cost of obtaining the software required to view the documents, and requested the Crown pay for the software. In response, the Crown offered to allow the defendant to view the documents at the offices of the Crown. In that case, the Court accepted that the Crown had properly discharged their disclosure obligations by making the documents available for inspection at the offices of the Crown.

[34] Finally, Staff rely on two decisions of the Commission, *Re Suman* (2009), 32 O.S.C.B. 592 ("***Suman***"), and *Re Carlton Ivanhoe Lewis et al.* (2010), 33 O.S.C.B. 2826 that both, in Staff's view, approved of disclosure in the manner similar to that proposed in the matter herein. In *Suman*, the Commission ordered that an unrepresented party need not be provided a copy of a computer hard drive containing confidential information relating to non-parties to the Commission proceeding. Instead, the Commission ordered that the unrepresented respondent be permitted to view the material at the offices of the Commission or, alternatively, at the offices of counsel for his co-respondent.

VI. ANALYSIS

Have Staff met their disclosure obligations to Medra?

[35] Staff have a broad duty of disclosure akin to the *Stinchcombe* standard established in criminal law (*R. v. Stinchcombe*, [1991] 3 S.C.R. 326 (S.C.C.) ("***Stinchcombe***")). That standard "requires the Crown to disclose all relevant information, whether inculpatory or exculpatory, subject to the discretion of the Crown, which discretion is reviewable by the Court" (*Re Boock,* (2010), 33 O.S.C.B. 1589 at para. 70 and *Re Biovail Corp.* (2008), 31 O.S.C.B. 7161 at para. 15, cited in *Suman* at para. 38; see also *Deloitte (SCC)*). That disclosure obligation is a matter of fundamental fairness to respondents in Commission proceedings because it allows respondents facing possible sanction by the Commission to make to make full answer and defence.

[36] In this motion, Staff do not dispute their obligation to disclose all relevant evidence in their possession. The dispute giving rise to this motion is with respect to Staff's proposed method of disclosure. Staff submit their disclosure obligation does not require the delivery of all relevant documents, including relevant evidence obtained by Staff by means of a compelled examination, to an unrepresented respondent who resides outside Canada. They are concerned that an extraterritorial respondent may make unauthorized use of the compelled evidence and Staff will have little or no power to enforce the confidentiality provisions in section 16 of the Act.

[37] A fundamental problem with Staff's position is that it draws an unsupportable distinction between respondents living in Canada at the time of disclosure and those living abroad. In answer to questions from the Panel during the hearing, Staff counsel agreed that documents, including compelled evidence, are routinely provided to unrepresented respondents living in Canada. Those respondents are free to leave Canada, taking the compelled evidence with them. In such cases, Staff are equally powerless to stop misuse of the documents upon their removal from Canada. If Staff's concerns about the potential misuse of compelled evidence beyond Canada's borders warrant restrictions on their disclosure obligations, such restrictions would apply equally to all unrepresented respondents, not simply those living outside Canada.

[38] The authorities relied upon by Staff confirm that the Crown's disclosure obligations will, except in rare circumstances, require the Crown to provide a respondent with copies of all relevant evidence in the Crown's possession and control, but for that which is protected by privilege (*Blencowe*, *supra*, at paras. 20 and 21). Staff rely on these authorities to support their argument that concerns about potential misuse of the disclosure material will justify limiting access to disclosure material. However, the cases cited by Staff demonstrate that only in those "rare circumstances" where specific and significant privacy interests are at risk will disclosure by means of controlled inspection of the evidence at the offices of the Crown be justified. The rare circumstances in those cases included instances where the Crown was required to disclose videotapes containing alleged child pornography or where the disclosed documents identify a confidential informant. Staff have not demonstrated similarly significant privacy interests in this case. Indeed, Staff have not identified the specific documents they seek to protect by means of restricted disclosure, other than to say they include information obtained through compelled examinations. In the absence of specific third party privacy interests that would be compromised by sending copies of the material to Mexico, Medra's right to meaningful disclosure for the purpose of making full answer and defence must prevail.

[39] The Act grants Staff broad powers to compel persons to provide evidence in aid of their investigations, and requires that such evidence be kept confidential, to be used solely for the purpose for which it was collected. Staff must act to ensure compelled evidence is not used for any improper purpose. However, when Staff bring allegations against a respondent, and the compelled evidence may be relevant to those allegations, the respondent has a right to *meaningful disclosure* of that evidence in a manner that will permit the respondent to make full answer and defence.

[40] Meaningful disclosure is a subjective concept and may vary depending on the circumstances of each case. Where, as here, a respondent resides in Mexico and has not retained Ontario counsel, *meaningful disclosure* requires Staff to provide copies of the disclosure material to the respondent. In the circumstances of this case, providing copies of the disclosure material is not only required to ensure procedural fairness and natural justice, but also to comply with the Commission *Rules of Procedure*, Subrule 4.3(2) of the which states:

> ….Staff shall provide copies, or permit the inspecting party to make copies, of these documents at the inspecting party's expense, as soon as is

reasonably practicable after the Notice of Hearing is served, and in any case at least 20 days before the commencement of the hearing.

Concerns about Medra's use of the disclosure material

[41] When Medra receives copies of the disclosure material, it will be bound by the confidentiality provisions of the Act and will not be permitted to disclose the material to any person other than legal counsel for the purpose of making full answer and defence to the allegations made by Staff in this proceeding. Nothing in this decision alters Medra's obligations under the Act to maintain the confidentiality of the disclosed material.

[42] To ensure Medra understands the limitations on its use of the disclosure material and agrees to those limitations, Staff will not be required to provide copies of the documents to Medra until Medra provides a written undertaking that it will not disclose the documents or use them for any purpose other than making full answer and defence in the Commission proceeding. If Medra fails to provide such an undertaking, Staff are not required to provide copies of the documents. Once given, should Medra fail to comply with the undertaking, they will be in breach of Ontario securities law, and subject to sanctions.

Redaction of personal financial information

[43] Staff requested to redact from the disclosure material any personal information relating to investors. Staff described such information to include addresses, telephone numbers, bank account numbers, Social Insurance Numbers, and any other similarly sensitive personal information. I am satisfied that personal investor information is likely irrelevant to the allegations against Medra, and therefore may be redacted from the disclosure material.

[44] If Medra believes that any of the redacted information is necessary for the purpose of making full answer and defence, Medra may bring a motion for a determination as to whether the redacted information is relevant and therefore should be disclosed.

VII. CONCLUSION

[45] Having found that Staff had not met their disclosure obligations to Medra, the following Order was issued dated September 20, 2012:

(i) Subject to the receipt from Medra of a written undertaking to comply with the terms of this Order as described in subparagraph (iii)(e) below, Staff shall provide copies of all relevant materials in their possession (the "**Material**") to Medra, subject to redaction of personal information relating to third parties;

(ii) If Medra believes that any of the redacted information is necessary for the purpose of making full answer and defence to the allegations made against it in these proceedings, Medra may bring a motion pursuant to Rule 3 of

the Commission *Rules of Procedure* for a determination as to whether the redacted information is relevant to said allegations;

(iii) The Material will be provided to Medra on the following conditions:

(a) Medra and its counsel shall not use the Material for any purposes other than for making full answer and defence to the allegations made against it in these proceedings;

(b) any use of the Material other than for the purpose of making full answer and defence to the allegations made against Medra in these proceedings will constitute a violation of this Order;

(c) Medra and its counsel shall maintain custody and control over the Material, so that copies of the Material are not improperly disseminated;

(d) the Material shall not be used for a collateral or ulterior purpose, including for purposes of other proceedings; and

(e) Medra shall sign an undertaking accepting the conditions set out at subparagraphs (a) to (d) above prior to any Material being provided to Medra by Staff, which undertaking shall be signed and returned to Staff within 5 business days of receipt of this Order.

DATED at Toronto this 31st day of October, 2012.

"Vern Krishna"

Vern Krishna, Q.C.