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

MAITLAND CAPITAL LTD., ALLEN GROSSMAN,
HANOCH ULFAN, LEONARD WADDINGHAM,
RON GARNER, GORD VALDE, MARIANNE HYACINTHE,
DIANNA CASSIDY, RON CATONE, STEVEN LANYS, ROGER MCKENZIE,
TOM MEZINSKI, WILLIAM ROUSE and JASON SNOW

REASONS AND DECISION ON SANCTIONS AND COSTS
with respect to Tom Mezinski
(Section 127 of the *Securities Act*)

Hearing:	August 9, 2012	
Reasons:	November 20, 2012	
Panel:	Edward P. Kerwin	– Commissioner
Counsel:	Derek J. Ferris	– For Staff of the Ontario Securities Commission
		– No one appearing for Tom Mezinski

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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**"), pursuant to section 127 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 (the "**Sanctions and Costs Hearing**") against Tom Mezinski ("**Mezinski**").

[2] This proceeding arose out of a Notice of Hearing issued on January 24, 2006, by the Ontario Securities Commission (the "**Commission**") and a Statement of Allegations filed by staff of the Commission ("**Staff**") on the same day. The Statement of Allegations contained allegations against Mezinski, Steven Lanys ("**Lanys**"), Maitland Capital Ltd. ("**Maitland**"), Allen Grossman ("**Grossman**"), Hanoch Ulfan ("**Ulfan**"), Leonard Waddingham ("**Waddingham**"), Ron Garner ("**Garner**"), Gord Valde ("**Valde**"), Marianne Hyacinthe ("**Hyacinthe**"), Dianna Cassidy ("**Cassidy**"), Ron Catone ("**Catone**"), Roger McKenzie ("**McKenzie**"), William Rouse ("**Rouse**") and Jason Snow ("**Snow**") (collectively the "**Maitland Respondents**").

[3] Staff alleged that between November 2004 and November 2005, inclusive, Maitland operated a "boiler room" from two locations in Toronto, Ontario and raised approximately $5.5 million through the sale of Maitland shares to approximately 1,200 investors across Canada and in other countries. Staff alleges that Maitland hired salespersons to telephone investors and sell Maitland shares to them, such salespersons being paid a commission ranging from 17% to 20% of the amounts paid for the purchase of Maitland shares.

[4] The specific allegations relating to Mezinski included the following:

i. Mezinski traded in securities as a salesperson for Maitland shares and received a commission on the sale of Maitland shares that he sold;

ii. Mezinski was not registered with the Commission in any capacity, and therefore traded in securities contrary to s. 25 of the Act and contrary to the public interest;

iii. No prospectus receipt had been issued to qualify the sale of Maitland shares by Mezinski, contrary to s. 53 of the Act and contrary to the public interest; and

iv. Mezinski made misleading representations to investors, including representations regarding the future listing and future value of Maitland shares with the intention of effecting sales of Maitland shares contrary to s. 38 of the Act and contrary to the public interest.

[5] A hearing to determine the merits of the allegations against Mezinski was conducted on February 15, 2012 (the "**Merits Hearing**"). Mezinski did not attend the Merits Hearing, but the Panel was satisfied that he had adequate notice of the proceeding.

[6] A decision on the merits was rendered on July 6, 2012 (*Re Maitland Capital Ltd. et al*. (2012), 35 O.S.C.B. 6489) (the "**Merits Decision**").

[7] The Sanctions and Costs Hearing was held on August 9, 2012. Mezinski did not appear before the Commission or make submissions in respect of the Sanctions and Costs Hearing. Staff made oral and written submissions to the Commission on sanctions and costs.

[8] While Mezinski did not attend the Sanctions and Costs Hearing, the Commission was satisfied that it had jurisdiction over Mezinski in this proceeding, all reasonable steps had been taken to provide gratuitous service on him and the Panel was entitled to proceed to hear the submissions of Staff as to sanctions and costs as permitted under section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"). Section 7 of the SPPA provides as follows:

> Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[9] These are my reasons and decision as to the appropriate sanctions and costs against Mezinksi.

II. OTHER DECISIONS CONCERNING THE MAITLAND RESPONDENTS

A. The Decision of Justice Sparrow of the Ontario Court of Justice

[10] Maitland, Grossman and Ulfan were the subject of a criminal proceeding under section 122 of the Act. On March 23, 2011, Justice Sparrow of the Ontario Court of Justice convicted Maitland, Grossman and Ulfan of contraventions of the Act in the course of their operation of a "boiler room", which sold large volumes of Maitland shares through high pressure sales tactics to non-accredited investors across Canada and in other countries (*R. v. Maitland Capital Limited et al.*, 2011 ONCJ 168 (CanLII), hereafter "*R. v. Maitland*"). Specifically, Justice Sparrow convicted Grossman and Ulfan on the following offences:

(i) trading in securities of Maitland without registration contrary to subsections 25(1) and 122(1)(c) of the Act;

(ii) trading in securities of Maitland without a prospectus contrary to subsections 53(1) and 122(1)(c) of the Act;

(iii) giving prohibited undertakings as to the future value or price of the securities of Maitland with the intention of effecting trades contrary to subsections 38(2) and 122(1)(c) of the Act;

(iv) making prohibited representations regarding the future listing of the securities of Maitland on a stock exchange contrary to subsections 38(3) and 122(1)(c) of the Act.

[11] In addition, Grossman and Ulfan were convicted of the following offences arising from the fact that they were officers or directors of Maitland:

(i) authorizing, permitting or acquiescing in trades in securities of Maitland without Maitland and its salespersons being registered to trade in such securities contrary to subsection 122(3) of the Act;

(ii) authorizing, permitting or acquiescing in trades in securities of Maitland where such trading was a distribution of such securities without a prospectus contrary to subsection 122(3) of the Act;

(iii) authorizing, permitting or acquiescing in the giving of undertakings as to the future value or price of the securities of Maitland with the intention of effecting trades contrary to subsection 122(3) of the Act; and

(iv) authorizing, permitting or acquiescing in the making of prohibited representation by Maitland salespersons regarding the future listing of the securities of Maitland on a stock exchange with the intention of effecting trades contrary to subsection 122(3) of the Act;

[12] Finally, Grossman and Maitland were convicted of the offence of making a misleading or untrue statement contrary to subsection 122(1)(b) of the Act, and Ulfan was convicted of the offence of authorizing, permitting or acquiescing to the making of that misleading or untrue statement, contrary to subsection 122(3) of the Act.

[13] In a subsequent sentencing decision dated May 4, 2011, Justice Sparrow sentenced each of Grossman and Ulfan to 21 months in jail, and imposed a fine against Maitland in the amount of $1,000,000.

B. Commission Decision with respect to Maitland, Grossman and Ulfan

[14] On June 28, 2011, the Commission ordered that a hearing be conducted "…in respect of Grossman, Ulfan and Maitland to consider whether an order should be made against them under subsection 127(10) of the *Act*" and that such hearing "…shall proceed in writing."

[15] Subsection 127(10) of the Act reads as follows:

> **127(10) –** Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
>
> 1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.
>
> 2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities or derivatives.

3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities or derivatives.

4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

5. The person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements.

[16] Following receipt of written submissions from Staff, and no submissions having been made by Grossman, Ulfan or Maitland, the Commission issued an Order on February 8, 2012, pursuant to subsection 127(1) and (10) of the Act, imposing the following sanctions:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan shall permanently cease trading in any securities;

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

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

(d) pursuant to clause 6 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are reprimanded;

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

(f) pursuant to clause 8 of subsection 127(1) of the Act, Grossman and Ulfan 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, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any registrant;

(h) pursuant to clause 8.2 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any registrant;

(i) pursuant to clause 8.3 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any investment fund manager;

(k) pursuant to clause 8.5 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(l) pursuant to subsection 37(1) of the Act, Maitland, Grossman and Ulfan are prohibited permanently from telephoning from a location within Ontario to residences within or outside Ontario for the purposes of trading in securities.

C. Commission Decision with respect to Valde, Waddingham, Cassidy and Garner

[17] On or about September 2, 2011, each of Valde, Waddingham, Cassidy and Garner entered into an agreed statement of facts with Staff in which each of them admitted certain breaches of the Act. The Commission conducted a sanctions hearing on September 2, 2011, on the basis of the four agreed statements of fact. On November 4, 2011, the Commission issued reasons, indicating that the Commission was satisfied that each of those four Maitland Respondents participated as salespersons in a fraudulent investment scheme, did not comply with Ontario securities law and acted contrary to the public interest, and accordingly the Commission issued an Order imposing the following sanctions against Valde, Waddingham, Cassidy and Garner:

(a) pursuant to clause 2 of subsection 127(1) of the Act, each of Valde, Waddingham, Cassidy and Garner shall cease trading in any securities for a period of three years, with the exception that each of them will be permitted to trade securities for the account of their respective registered retirement savings plans (as defined in the Income Tax Act (Canada)) in which the respondent and/or the spouse of the respondent have sole legal and beneficial ownership, provided that

(i) the securities 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) the four subject Respondents do not own legally or beneficially (in the aggregate, together with the Respondents' spouse) more than one percent of the outstanding securities of the class or series of the class in question;

(iii) the four subject Respondents carry out any permitted trading through a registered dealer (who has been given a copy of the Order) and in accounts opened in the Respondents' name only, and the Respondents must close any accounts that are not in the Respondents' name only; and

(iv) no such trading shall be permitted unless and until the subject Respondent has paid in full the disgorgement order against the Respondent set out in subparagraph (e) of the Order;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by any of Valde, Waddingham, Cassidy and Garner is prohibited for a period of three years, subject to the same exception set out in subparagraph (a) of the Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to any of Valde, Waddingham, Cassidy and Garner for a period of three years, subject to the same exception set out in subparagraph (a) of the Order;

(d) pursuant to clause 6 of subsection 127(1) of the Act, each of Cassidy, Garner, Waddingham and Valde is reprimanded;

(e) pursuant to clause 10 of subsection 127(1) of the Act, the following amounts shall be disgorged by each of the four subject Respondents, respectively:

- Cassidy $10,000
- Garner $27,791.25
- Waddingham $32,857.59; and
- Valde $12,307.50

(f) pursuant to section 37 of the Act, each of Valde, Waddingham, Cassidy and Garner shall be prohibited permanently from calling or telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities.

D. Commission Decision with respect to Lanys

[18] On February 15, 2012, Staff filed an agreed statement of facts they had entered into with Lanys, in which Lanys admitted certain breaches of the Act. The Commission conducted a

sanctions hearing on February 15, 2012, on the basis of the agreed statement of facts. On July 6, 2012, the Commission issued reasons, indicating that the Commission was satisfied that Lanys participated as a salesperson in a fraudulent investment scheme, did not comply with Ontario securities law and acted contrary to the public interest, and after hearing and considering the submissions of Staff and counsel for Lanys, the Commission issued an Order imposing the following sanctions against Lanys:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Lanys shall cease trading in any securities for a period of three years from the date of this Order, with the exception that Lanys shall be permitted to trade securities for the account of his registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) in which he has 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 which is a reporting issuer;

    (ii) he does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question;

    (iii) he carries out any permitted trading through a registered dealer (who has been given a copy of this Order) and in accounts opened in his name only, and he must close any accounts that are not in his name only; and

    (iv) no such trading shall be permitted unless and until he has paid in full the disgorgement order set out in subparagraph (e) of the Order;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lanys is prohibited for a period of three years from the date of this Order, subject to the same exception set out in subparagraph (a) of the Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to Lanys for a period of three years from the date of the Order, subject to the same exception set out in subparagraph (a) of the Order;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Lanys is reprimanded;

(e) pursuant to clause 10 of subsection 127(1) of the Act, Lanys shall disgorge to the Commission $91,407.10;

(f) pursuant to section 37 of the Act, Lanys shall be prohibited permanently from calling at a residence or telephoning from a location in Ontario to any

residence located in or out of Ontario for the purpose of trading in any security or in any class of securities; and

(g) the amount set out in subparagraph (e) of the 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 Maitland shares, as permitted under subsection 3.4(2)(b) of the Act.

III. THE DECISION ON THE MERITS

[19] The Commission found in the Merits Decision that:

(a) Mezinski engaged in the trading of securities without registration where no exemption was available contrary to subsection 25(1) of the Act (Merits Decision, at para. 47 to 53);

(b) Mezinski engaged in the distribution of security where a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act (Merits Decision, at para. 61);

(c) Mezinski, with the intention of effecting a trade in securities of Maitland, made a prohibited representation to a Maitland Investor concerning the future listing of Maitland shares, contrary to subsection 38(3) of the Act (Merits Decision, at para. 65);

(d) Mezinski received $595.00 in commission from the sale of Maitland securities (Merits Decision, at para. 40).

IV. SANCTIONS REQUESTED BY STAFF

[20] In their written and oral submissions, Staff requested the following sanctions be imposed against Mezinski:

(a) trading in any securities by Mezinski shall cease for a further three years from the date of the Order;

(b) the acquisition of any securities by Mezinski be prohibited for three years from the date of the Order;

(c) any exemptions contained in Ontario securities law do not apply to Mezinski for three years;

(d) Mezinski be reprimanded;

(e) Mezinski shall disgorge to the Commission the amount of $595.00 obtained as a result of his non-compliance with Ontario securities law to be allocated to or for the benefit of third parties including investors who lost money as a result of purchasing Maitland shares, in accordance with subsection 3.4(2) of the Act; and

(f) Mezinski shall cease permanently, from the date of the Order, to call at or telephone from a location within Ontario to any residence within or outside Ontario for the purpose of trading in any security or class of securities pursuant to section 37 of the Act.

V. THE SUBMISSIONS OF STAFF

[21] Staff submits that the sanctions requested are proportionate to Mezinski's conduct in this matter and will serve as a specific and general deterrent. In Staff's view, an order removing Mezinski from the capital markets for an additional period of three years and requiring disgorgement of all funds obtained by him as sales commissions will signal both to Mezinski and to like-minded individuals that disregard for the rules governing the sale of securities to investors will result in significant consequences and sanctions.

[22] Staff submitted that the sanctions sought against Mezinski are consistent with the sanctions imposed by the Commission against Lanys in its Order of July 6, 2012, as well as the sanctions imposed against Valde, Waddingham, Cassidy and Garner in its Order of November 4, 2011. Staff argued that the conduct of Valde, Waddingham, Cassidy and Garner, who were Maitland salespersons during the relevant time, was substantially similar to the conduct of Mezinski and justifies similar sanctions, including an order that Mezinski disgorge the funds he obtained in contravention of the Act.

[23] Staff submitted that an order requiring Mezinski to disgorge the funds he obtained in contravention of the Act would ensure that Mezinski does not benefit from his breaches of the Act. In Staff's view, it is not in the public interest to allow Mezinski to retain any of those funds.

[24] Staff sought to distinguish the Commission's Order of February 8, 2012, in which the Commission declined to order Grossman and Ulfan to disgorge the amounts they obtained in contravention of the Act. Staff argued that the case against Mezinski more closely resembles, both substantively and procedurally, the proceedings against Lanys, Valde, Waddingham, Cassidy and Garner, and a similar disgorgement order should follow. In particular, Staff submitted that the Commission's refusal to issue a disgorgement order against Grossman and Ulfan was procedurally due to the fact that the Grossman and Ulfan hearing was conducted pursuant to subsection 127(10) of the Act to determine whether a reciprocal order should be issued. In that sense, Staff submitted that the proceeding against Mezinski is procedurally similar to the case against Lanys, Valde, Waddingham, Cassidy and Garner, and a similar disgorgement order should follow.

[25] Finally, Staff is not seeking an order for investigation and hearing costs pursuant to section 127.1 of the Act.

VI. THE LAW ON SANCTIONS

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

[27] In exercising its public interest jurisdiction, the Commission must act in a protective and preventative manner, as stated by the Commission in *Re Mithras Management Ltd*:

> [T]he role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at pp. 1610-1611).

[28] The Supreme Court of Canada has described the Commission's public interest jurisdiction as follows:

> The purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets (*Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission*), [2001] 2 S.C.R. 132 at para. 43).

[29] In addition, the Commission should consider general deterrence as an important factor when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court of Canada 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".

[30] The Commission has previously identified the following as factors that the Commission should consider when imposing sanctions:

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

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

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

(iv) whether or not there has been recognition by a respondent of the seriousness of the improprieties;

(v) 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;

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

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

(viii) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(ix) the reputation and prestige of the respondent;

(x) the remorse of the respondent; and

(xi) any mitigating factors.

(See *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at page 7746; *Re M.C.J.C. Holdings Inc. and Michael Cowpland*, (2002), 25 O.S.C.B. 1133 at para. 26; *Limelight Entertainment Inc. (Re)* (2008) 31 OSCB 12030 at para. 21 ("*Re Limelight*"); and *Re Sabourin* (2010), 33 OSCB 5299 at para. 57 ("*Re Sabourin*"))

VII. ANALYSIS

A. Findings with respect to Sanctions

[31] When the Commission imposes sanctions, it must do so (a) based only on the findings in the Merits Decision and on the other evidence presented at the merits hearing and the sanctions hearing (see for example *Re First Global et al.* (2008), 31 O.S.C.B. 10869, at para. 65); (b) in respect of trades and acts in furtherance of trades that occurred in or from Ontario; and (c) with the objective of protecting Ontario investors and Ontario capital markets.

[32] Overall, the sanctions imposed 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 these types of illegal activities and abusive sales practices will simply not be tolerated.

[33] In considering the factors referred to in paragraph 30 of these Reasons and Decision, I find the following factors and circumstances to be particularly relevant:

(i) The seriousness of the allegations. I accept Staff's submission that the acts committed by Mezinski constitute serious breaches of the Act;

(ii) Mezinski made prohibited representations to vulnerable and unsophisticated investors;

(iii) None of the funds obtained from investors has been recovered;

(iv) Mezinski breached key provisions of the Act which are intended to protect investors from the very conduct that occurred in this matter. His actions caused serious financial harm to investors and to the integrity of Ontario's capital markets and were contrary to the public interest;

(v) Although Mezinski was a participant in the scheme, it was Grossman and Ulfan who orchestrated the fraudulent scheme and appear to be the directing minds of Maitland;

(vi) There is no evidence of any recognition by Mezinski of the seriousness of the conduct and the breaches of the Act;

(vii) There is no evidence of remorse of Mezinski; and

(viii) There is no evidence that Mezinski cooperated with Staff .

B. Trading and Other Prohibitions

[34] One of the Commission's principal objectives in imposing sanctions is to restrain future conduct that could be harmful to investors or Ontario capital markets. In this case, I find that the public interest requires that the Commission restrict the Respondent's future participation in Ontario's capital markets.

[35] I have concluded that it is in the public interest to make the following orders, substantially on the terms requested by Staff:

(i) trading in all securities by Mezinski shall cease for a further three years from the date of the Order;

(ii) the acquisition of any securities by Mezinski is prohibited for three years from the date of the Order;

(iii) any exemptions contained in Ontario securities law do not apply to Mezinski for three years from the date of the Order; and

(iv) Mezinski is reprimanded.

C. Disgorgement

i. *The Law on Disgorgement*

[36] 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.

[37] In considering a disgorgement order, the Commission views the following issues and factors to be relevant:

> (i) whether an amount was obtained by a respondent as a result of non-compliance with the Act;
>
> (ii) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;
>
> (iii) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;
>
> (iv) whether the individuals who suffered losses are likely to be able to obtain redress [by other means]; and
>
> (v) the deterrent effect of a disgorgement order on the respondents and other market participants.
>
> (*Re Limelight, supra*, at para. 52)

[38] The disgorgement order being sought by Staff in this proceeding are consistent with the disgorgement orders issued in *Re York Rio Resources Inc. and Adam Sherman* (2011), 34 OSCB 5261, *Re York Rio Resources Inc. and Peter Robinson* (2010), 33 OSCB 10434 and *Re Sabourin* at para. 69. The disgorgement order requested against Mezinski is also consistent with the disgorgement orders issued by the Commission against Lanys, Valde, Waddingham, Cassidy and Garner, all of whom were Maitland salespersons. In each of those decisions, the salespersons were ordered to disgorge the entire amount earned in contravention of the Act. In *Re Sabourin*, the Commission stated:

> 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 conduct.

ii. *Findings on Disgorgement*

[39] I find that an order requiring Mezinski to disgorge to the Commission the specific amount that he earned in contravention of the Act is appropriate and in the public interest. I agree with Staff that a disgorgement order is necessary in these circumstances because it will

ensure that Mezinski does not benefit from his breaches of the Act and because such an order will deter Mezinski and others from similar misconduct.

[40] In making my findings on this issue, I am not bound by the Commission's earlier Order against Grossman and Ulfan in which the Commission declined to order disgorgement. As in all cases, I must reach my decision on the basis of the facts and the hearing before me. The specific facts and the hearing which led the Commission to decline to order disgorgement against Grossman and Ulfan are not present in this case. In particular, the sanctions order sought by staff against Mezinski is sought in a hearing under subsection 127(1) of the Act and not in a hearing under subsection 127(10) of the Act.

[41] Finally, I believe that a disgorgement order against Mezinski is consistent with the principle of proportionality. With respect to the issue of proportionality, I find the appropriate comparator in this case is the other Maitland salespersons, each of whom were required to disgorge the amounts they obtained in contravention of the Act.

iii. *Conclusion as to Disgorgement*

[42] The Commission will order that Mezinski disgorge to the Commission pursuant to paragraph 10 of subsection 127(1) of the Act the amount of $595.00, which is designated pursuant to section 3.4(2)(b) (i) or (ii) of the Act.

D. Telephone Solicitation Ban

[43] Staff has requested a permanent ban be imposed prohibiting Mezinski from calling at a residence or telephoning from a location in Ontario to a residence located within or outside of Ontario for the purpose of trading in any securities, pursuant to section 37 of the Act. In my view, the public interest is served by a prohibition on calling and telephone solicitation, and I will so order.

VIII. ORDER

[44] For the reasons discussed above, I have concluded that the sanctions to be imposed are in the public interest and are proportionate to the circumstances of this matter. Accordingly, I order that:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Mezinski shall cease trading in any securities for a period of three years from the date of this Order;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Mezinski is prohibited for a period of three years from the date of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to Mezinski for a period of three years from the date of this Order;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mezinski is reprimanded;

(e) pursuant to clause 10 of subsection 127(1) of the Act, Mezinski shall disgorge to the Commission $595.00, which is designated pursuant to section 3.4(2)(b) (i) or (ii) of the Act; and

(f) pursuant to section 37 of the Act, Mezinski shall be prohibited permanently from calling at a residence or telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities.

IX. CONCLUSION

[45] For the reasons set out above, I have concluded that it would be in the public interest to impose sanctions against Mezinski. I will issue a sanctions order in the form attached as Schedule "A" to these reasons.

Dated at Toronto, this 20th day of November, 2012.

"Edward P. Kerwin"

Edward P. Kerwin

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

IN THE MATTER OF THE *SECURITIES ACT*,

R.S.O. 1990, c. S.5, AS AMENDED

-AND-

IN THE MATTER OF

MAITLAND CAPITAL LTD., ALLEN GROSSMAN, HANOCH ULFAN, LEONARD WADDINGHAM, RON GARNER, GORD VALDE, MARIANNE HYACINTHE, DIANNA CASSIDY, RON CATONE, STEVEN LANYS, ROGER MCKENZIE, TOM MEZINSKI, WILLIAM ROUSE and JASON SNOW

ORDER
with respect to Tom Mezinski
(Section 127 of the *Securities Act*)

WHEREAS on January 24, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") with respect to Maitland Capital Ltd., Allen Grossman, Hanouch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Dianna Cassidy, Ron Catone, Steven Lanys, Roger Mckenzie, Tom Mezinski ("**Mezinski**"), William Rouse and Jason Snow, accompanied by a Statement of Allegations filed by Staff of the Commission ("**Staff**");

AND WHEREAS on September 2, 2011, the Commission ordered that the hearing on the merits with respect to the allegations against Mezinski would commence on February 15, 2012;

AND WHEREAS on February 15, 2012, the Commission held the hearing on the merits of the allegations against Mezinski;

AND WHEREAS on July 6, 2012, the Commission issued its Reasons and Decision on the merits of the allegations against Mezinski (the "**Merits Decision**");

AND WHEREAS the Commission found in the Merits Decision that Mezinski did not comply with Ontario securities law and acted contrary to the public interest;

AND WHEREAS on August 9, 2012, the Commission held a hearing with respect to the sanctions and costs to be imposed in this matter;

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

IT IS HEREBY ORDERED THAT:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Mezinski shall cease trading in any securities for a period of three years from the date of this Order;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Mezinski is prohibited for a period of three years from the date of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to Mezinski for a period of three years from the date of this Order;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mezinski is reprimanded;

(e) pursuant to clause 10 of subsection 127(1) of the Act, Mezinski shall disgorge to the Commission $595.00, which is designated pursuant to section 3.4(2)(b) (i) or (ii) of the Act; and

(f) pursuant to section 37 of the Act, Mezinski shall be prohibited permanently from calling at a residence or telephoning from a location in Ontario to any residence located in or out of Ontario for the purpose of trading in any security or in any class of securities.

DATED at Toronto, Ontario this th day of November, 2012.

_____

Edward P. Kerwin