Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor 20 Queen Street West 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 SHALLOW OIL & GAS INC., ERIC O'BRIEN, ABEL DA SILVA, ABRAHAM HERBERT GROSSMAN also know as ALLEN GROSSMAN, and KEVIN WASH

REASONS AND DECISION ON SANCTIONS
(Subsections 127(1) and 127(10) of the Act)

Hearing:	October 29 and 31, 2012	
Decision:	December 21, 2012	
Panel:	James E. A. Turner	- Vice-Chair
Counsel:	Sylvia Schumacher Hugh Craig	- For Staff of the Commission

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REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the "**Hearing**") before the Ontario Securities Commission (the **"Commission"**) held on October 29 and 31, 2012 pursuant to subsections 127(1) and 127(10) 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 imposing sanctions against Shallow Oil & Gas Inc. ("**Shallow Oil**"), Eric O'Brien ("**O'Brien**"), Abel Da Silva ("**Da Silva**") and Abraham Herbert Grossman also known as Allen Grossman ("**Grossman**") (collectively, the "**Respondents**").

[2] A Notice of Hearing in this matter was issued by the Commission on June 11, 2008 and a Statement of Allegations was filed by Staff of the Commission ("**Staff**") on June 10, 2008.

[3] The Commission previously approved settlement agreements and imposed sanctions on the following individuals, each of whom had originally been named as a respondent in this proceeding: Gurdip Singh Gahunia also known as Michael Gahunia ("**Gahunia**") (approved on December 16, 2010), Marco Diadamo ("**Diadamo**") (approved on December 9, 2011), Gordon McQuarrie ("**McQuarrie**") (approved on May 12, 2009), and William Mankofsky ("**Mankofsky**") (approved on July 24, 2009).

[4] On May 18, 2011, the Ontario Court of Justice (the "**Ontario Court**" or the "**Court**") released a decision finding Shallow Oil, O'Brien, Da Silva and Grossman guilty of perpetrating a fraud and engaging in unregistered trading and illegal distributions of securities. The Court also found each of O'Brien, Da Silva and Grossman guilty of trading in securities when prohibited from doing so by an order of the Commission. Da Silva and Grossman were also found guilty of making materially misleading statements to the Commission. Lastly, the Court found that O'Brien, Da Silva and Grossman authorized, permitted or acquiesced in acts, practices or courses of conduct which perpetrated fraud (the "**Criminal Judgment**").

[5] O'Brien is appealing his conviction and sentence but he has not yet perfected his appeal. Depending on the outcome of that appeal, the Commission may have to reconsider the terms of any sanctions order made against O'Brien in this proceeding.

[6] In a subsequent decision on June 15, 2011, the Court sentenced Grossman to three years in prison, to be served consecutively to any other prison sentences against him. On November 15, 2011, the Court sentenced O'Brien and Da Silva each to 27 months in prison, to be served consecutively to any other prison sentences against them (the Court decisions sentencing O'Brien, Da Silva and Grossman to prison are referred to collectively as the "**Sentencing Decisions**").

[7] On May 14, 2012, the Commission issued an Amended Notice of Hearing and Staff filed an Amended Statement of Allegations in order to rely upon the Criminal Judgment and the Sentencing Decisions in imposing sanctions on the Respondents in this proceeding.

[8] Based on the Criminal Judgment, Staff alleges that the Respondents breached subsections 25(1)(a), 53(1), 38(2), 38(3), 122(1)(a), 122(1)(c) and 126.1(b) of the Act and acted contrary to the public interest and seeks sanctions against the Respondents permanently barring them from participating in Ontario's capital markets and requiring disgorgement of moneys obtained in contravention of the Act.

[9] Staff relies on subsection 127(10) of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) in respect of a person or company who has been convicted of an offence arising from a transaction, business or course of conduct relating to securities (subsection 127(10)1) or under a law respecting the buying or selling of securities (subsection 127(10)3).

[10] Staff appeared at the Hearing, made submissions and called one witness, Mr. Wayne Vanderlaan ("**Vanderlaan**"), a member of the Commission's Enforcement Branch and of the Boiler Room Unit.

[11] Kevin Wash ("**Wash**") appeared at the hearing but was not represented and made no submissions on the matters before us. On October 29, 2012, Wash entered into an agreed statement of facts with Staff in which he admitted to unregistered trading in securities contrary to subsection 25(1)(a) of the Act, illegal distributions contrary to subsection 53(1) of the Act, and perpetrating a fraud on investors in Ontario and elsewhere in Canada contrary to subsection 126.1(b) of the Act. On November 15, 2012, the Commission held a hearing with respect to the sanctions to be imposed on Wash. Sanctions were imposed on him by order of the Commission dated November 15, 2012.

[12] No one appeared for any of the Respondents.

[13] These are my reasons for sanctions imposed pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. ANALYSIS

A. THE CRIMINAL JUDGMENT AND THE SENTENCING DECISIONS

[14] The Ontario Court summarized its findings and conclusions in the Criminal Judgment as follows:

> Salesmen working at Shallow Oil represented that business as an oil exploration company. The evidence at trial shows that in fact the company had no assets and was not engaged in any business other than the sale of shares. Contrary to representations made to the public, there was no underlying business and the shares were worthless.

The Shallow website indicated their business was based on new paraffin wax technology and bore hole casing technology used to retrieve oil from older wells. Both of those technologies are the exclusive property of Avalon Oil and Gas. Avalon has never licensed that technology to any other company. Contrary to the representation of the sales staff, Shallow Oil did not and could not operate any business based on that technology.

A high volume of shares were sold to the public in the 39 days that Shallow Oil was in operation. Members of the public were first contacted by "qualifiers" working in the Shallow office who falsely stated that they were from a research or marketing group. The qualifiers were in fact paid from the Shallow Oil account. The qualifiers asked general questions to gauge the interest of potential investors and their risk tolerance. Thousands of persons across Canada were contacted.

Once a qualifier identified a potential investor that person would be called by sales staff who read from prepared scripts in order to induce sales. There were general sales scripts and scripts designed to deal with various concerns or objections that an investor might have. The information conveyed about the company and its supposed operations and the promises as to returns were all false. The high volume, high pressure telemarketing of securities in this manner is known as a "boiler room" operation.

A person or company who wishes to offer securities to the public must register under the Securities Act with the Ontario Securities Commission. Prior to selling shares a company must prepare and register a prospectus which contains important information about the company and the shares being offered for sale. None of the three accused individuals were registered with the OSC. On the contrary, at the time in question all three were prohibited from trading in securities by orders of the OSC in relation to other matters. None of the other persons working at the Shallow office were licensed to sell securities. The corporate accused, Shallow Oil, never registered a prospectus with the OSC.

Sales staff used false names when dealing with prospective customers. Mr. Grossman used the false names "Daniel Rothstein" and "Wayne Matthews" when communicating with persons externally on behalf of Shallow and even when dealing with internal staff. Mr. Da Silva also used the false name "Wayne Matthews" for certain purposes.

(Criminal Judgment, *supra*, at paras. 9-11, & 14-17)

[15] As a result, the Court concluded that:

The banking records, business records and all of the evidence heard at trial are consistent with only one conclusion - that Shallow Oil and the persons working there were not engaged in any business other than the sale of

> shares which had no value beyond the paper they were printed on. Shallow Oil was a classic stock fraud "boiler room" operation which generated significant moneys in the short time it operated.
>
> (Criminal Judgment, *supra*, at para. 19)

[16] Considering all of the evidence as a whole, the Court found beyond a reasonable doubt that:

> The only reasonable inference is that Mr. O'Brien, Mr. Da Silva and Mr. Grossman acted in concert to setup and run the Shallow Oil stock fraud operation. They were the directing minds of the operation, received the bulk of the profits and were parties to the offences committed by those they hired and instructed.
>
> (Criminal Judgment, *supra*, at para. 39)

Accordingly, the Court found that O'Brien, Da Silva and Grossman were the directing minds with respect to the Shallow Oil stock fraud.

[17] The Court found that the prosecution had proven beyond a reasonable doubt that Shallow Oil, O'Brien, Da Silva and Grossman participated in acts relating to securities that they knew perpetrated a fraud. Further, the Court found beyond a reasonable doubt that O'Brien, Da Silva and Grossman authorized, permitted or acquiesced in acts, practices or courses of conduct which perpetrated fraud; were parties to trading in securities of Shallow Oil without registration; authorized, permitted or acquiesced in trades of securities of Shallow Oil without registration; were parties to trading in securities without a prospectus; and authorized, permitted or acquiesced in trades of securities of Shallow Oil where such trading was a distribution of securities without a prospectus.

[18] Further, the Court found that:

> All three accuseds were engaged in acts in furtherance of trading securities as described in s. l(l)(e) of the Securities Act for valuable consideration. The prosecution has tendered documentary evidence proving that all three were subject at that time to prior "Cease Trade Orders" issued by the Ontario Securities Commission.
>
> (Criminal Judgment, *supra*, at para. 55)

[19] The Court also found that Grossman and Da Silva made misleading statements to Staff of the Commission. Grossman made misleading statements on four separate occasions and Da Silva on two separate occasions.

[20] Grossman was sentenced by the Court to three years in prison, to be served consecutively to any other prison sentences against him. O'Brien and Da Silva were each sentenced to 27 months in prison, to be served consecutively to any other prison sentences against them (Sentencing Decisions, *supra*).

B. TESTIMONY OF VANDERLAAN

[21] Vanderlaan testified at the Hearing with respect to the Respondents' convictions and sentences by the Ontario Court. He also testified as to the outstanding freeze order in relation to the Shallow Oil bank account. He stated that approximately $28,000 remained in the account and that all of the funds constituted funds from investors.

C. SUBSECTION 127(10) OF THE ACT

[22] Subsection 127(10) of the Act provides as follows:

> **127 (10) Inter-jurisdictional enforcement** – 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.
>
> 2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities.
>
> 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.
>
> …

[23] Staff submits that the findings of the Court in the Criminal Judgment give me jurisdiction to impose sanctions under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act.

[24] Subsection 127(10) was added to the Act and became effective on November 27, 2008, after the events that gave rise to the Criminal Judgment (those events occurred between September 24, 2007 and February 27, 2008).

[25] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 ("***Euston Capital***"), the Commission concluded that subsection 127(10) can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

> … we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.
>
> (*Euston Capital*, *supra*, at para. 26)

[26] In a recent decision, the Commission found that the respondent's criminal conviction for fraud over $5,000 in the Ontario Superior Court of Justice, pursuant to subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, could be relied upon by the Commission, in the circumstances contemplated by subsection 127(10) of the Act, to make an order in the public interest under subsection 127(1) (*Re Lech* (2010), 33 OSCB 4795 ("***Lech***")).

[27] In *Euston Capital*, *supra*, the Commission also concluded that a presumption against retrospectivity does not apply to public interest orders made by the Commission in the circumstances contemplated by subsection 127(10):

> Based on a plain reading of subsection 127(10) in the context of section 127 as a whole, and after taking into account the Supreme Court of Canada's decisions in *Brosseau* and *Asbestos*, we conclude that the purpose of purpose of [*sic*] subsection 127(10) is to protect the public. Hence, the presumption against retrospectivity is not applicable, and subsection 127(10) may operate retrospectively.
>
> While the courts in *Brost* and *Thow* had to consider the retrospective application of a provision which expanded the sanctioning powers of a securities regulator, subsection 127(10) of the Act does no such thing. Rather, subsection 127(10) of the Act simply allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.
>
> Moreover, this Commission has considered the conduct of individuals in other jurisdictions in the past when making an order under subsections 127(1) and (5) in the public interest, even before subsection 127(10) came into effect …
>
> (*Euston Capital*, *supra*, at paras. 56-58)

[28] A similar finding was made by the Commission in *Lech*, *supra*, at paragraphs 24 to 32 and in *Re Elliott* (2009), 32 OSCB 6931 at paragraphs 16 to 26.

[29] I therefore find that I have the authority to make a public interest order under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the Criminal Judgment and the Sentencing Decisions, notwithstanding the fact that the relevant events upon which that judgment and decision are based occurred between September 24, 2007 and February 27, 2008.

D. SUBMISSIONS OF THE PARTIES

Staff's Submissions

[30] Staff requests the following sanctions against the Respondents:

(a) a permanent prohibition on the Respondents trading in securities;

(b) a permanent prohibition on the Respondents acquiring securities;

(c) a permanent exclusion from reliance by the Respondents on securities law exemptions;

(d) a reprimand of the Respondents;

(e) an order that O'Brien, Da Silva and Grossman resign any positions held as a director or officer of any issuer;

(f) a permanent prohibition on O'Brien, Da Silva and Grossman becoming or acting as a director or officer of any issuer;

(g) a permanent prohibition on O'Brien, Da Silva and Grossman becoming or acting as a director or officer of any registrant; and

(h) each of the Respondents or any of them, disgorge to the Commission, on a joint and several basis, $155,700.

[31] The disgorgement amount requested by Staff represents the total amount found by the Court to have been obtained by the Respondents from investors ($205,000), minus the amount of the disgorgement orders totaling $49,600 which have previously been made by the Commission against Gahunia, Diadamo, McQuarrie, Mankofsky and Wash.

[32] Staff is not seeking any administrative penalties. Staff submits that an order for an administrative penalty is not warranted in the circumstances because O'Brien, Da Silva and Grossman were sentenced by the Court to a term of imprisonment. Accordingly, I will not consider whether an administrative penalty might have been appropriate in the circumstances.

[33] Staff submits that I am entitled to impose the sanctions requested by Staff based solely on the evidence before me, which consists of the testimony of Vanderlaan, the Criminal Judgment and the Sentencing Decisions.

Respondents' Submissions

[34] None of the Respondents appeared at the Hearing or made submissions.

E. FINDINGS

[35] In imposing sanctions, I rely on the testimony of Vanderlaan and the findings set out in the Criminal Judgment and the Sentencing Decisions.

[36] The Respondents were found in the Criminal Judgment to have breached subsections 25(1)(a), 53(1), 122(1)(a), 122(1)(c) and 126.1(b) of the Act. That constitutes a conviction for an offence arising from a transaction, business or course of conduct related

to securities, within the meaning of subsection 127(10)1 of the Act and a contravention of law respecting the buying or selling of securities within the meaning of subsection 127(10)3 of the Act.

[37] I may make an order under subsection 127(1) in this matter if I consider it to be in the public interest to do so. In my view, it is not appropriate in exercising that jurisdiction to revisit or second-guess the Court's findings of fact or legal conclusions. I note in this respect that the Court concluded in the Sentencing Decisions that in 39 days of operation, Shallow Oil received $205,000 in investor funds (see the Criminal Judgment, *supra*, at para. 35).

[38] Based on the Criminal Judgment, I find that the Respondents breached subsections 25(1)(a), 53(1), 122(1)(a), 122(1)(c) and 126.1(b) of the Act and acted contrary to the public interest. I was not satisfied that the Ontario Court made a finding of breach by the Respondents of subsections 38(2) and (3) of the Act. Accordingly, I am not making any finding in that respect.

F. SHOULD AN ORDER FOR SANCTIONS BE IMPOSED?

[39] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

> (a) to protect investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[40] In pursuing these purposes, I must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[41] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that when assessing sanctions, it should be remembered that "participation in the capital markets is a privilege and not a right" (*Erikson* v. *Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[42] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

> … 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 doing so 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.

[43] The Supreme Court of Canada has also held that the Commission may impose sanctions which have as their objective general deterrence. The Supreme Court of Canada has 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" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[44] Although O'Brien, Da Silva and Grossman have been sentenced by the Ontario Court for their offences, the Commission nonetheless retains jurisdiction to make orders in the public interest under section 127 of the Act relating to the same acts. That is because such orders are protective and preventative in nature and not penal.

[45] I find that it is necessary to protect investors in Ontario and the integrity of Ontario's capital markets to make sanctions orders against the Respondents in the public interest.

G. THE APPROPRIATE SANCTIONS

[46] In determining the nature and duration of the appropriate sanctions, I must consider all of the relevant facts and circumstances before me, including:

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

(b) the harm to investors;

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

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

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

(f) 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;

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

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

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

(j) the reputation and prestige of the respondent;

(k) the remorse of the respondent; and

(l) any mitigating factors.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 ("***Belteco***") at paras. 25 and 26.)

[47] The following facts and circumstances are particularly relevant in determining the sanctions that should be ordered against the Respondents:

(a) Shallow Oil, O'Brien, Da Silva and Grossman have been found guilty by the Ontario Court on a total of 18 counts of breaching Ontario securities law;

(b) those counts include findings of fraud against the Respondents;

(c) significant moneys ($205,000) were obtained from investors through the boiler room during the short time it operated;

(d) investors have lost all of the money invested by them;

(e) there were never any payments made or expenses incurred in relation to a legitimate business and the shares sold to the public were and are worthless; and

(f) O'Brien, Da Silva and Grossman have a history of prior contraventions of Ontario securities law in connection with similar schemes and all three were subject to a Commission order prohibiting them from trading in securities at the time of the Shallow Oil stock fraud.

[48] In my view, there are no mitigating factors or circumstances.

[49] I have also considered the fact that Grossman was sentenced by the Court to three years in prison, and O'Brien and Da Silva were each sentenced to 27 months in prison.

[50] I have reviewed the Commission and other decisions on sanctions referred to me by Staff in assessing the sanctions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26). It is a matter of judgment in each case as to what the appropriate sanctions should be. Ultimately, the question is whether the overall sanctions imposed are in the public interest in light of all of the circumstances.

[51] I have reviewed the following Commission decisions in coming to a conclusion as to the sanctions to be imposed in this matter: *Re Landen*, (2010) 33 OSCB 9489 ("***Landen***"), *Re Lech, supra, Re Portus Alternative Asset Management Inc.*, (2012) 35 OSCB 8128, and *Re Maitland Capital Ltd.* (2012), 35 OSCB 1729. Staff also referred me to, and I have reviewed, the decisions of the British Columbia Court of Appeal in *McLean v. British Columbia (Securities Commission)* (2011), BCCA 455 and *Lines v. British Columbia (Securities Commission),*(2012) BCCA 316.

[52] In *Landen*, the respondent was convicted of insider trading, was sentenced to 45 days imprisonment and was fined $200,000 in circumstances in which a loss of $115,000 was avoided. In that case, the Commission ordered that the respondent be prohibited from trading in securities for 12 years, with carve-outs for trading for his own account, that exemptions would not apply for a period of 12 years, and that the respondent be prohibited from becoming or acting as a director or officer of a reporting issuer, registrant or investment fund manager for 12 years. The actions of the Respondents are far more egregious than those of the respondent in *Landen*.

[53] Because each of the Respondents was found by the Court to be a directing mind of the Shallow Oil stock fraud, it is appropriate to make a disgorgement order against the Respondents on a joint and several basis in respect of all the funds illegally obtained by the Respondents from investors.

[54] Staff suggested that I should deduct from any disgorgement order the amount of $49,600 representing the aggregate amount of the other disgorgement orders made by the Commission against other participants involved in the Shallow Oil stock fraud. I am not prepared to do that. The Respondents obtained $205,000 from investors in contravention of the Act and should, in the circumstances, be ordered to disgorge the full amount so obtained. In my view, in imposing a disgorgement order, I am not required to take account of what the Respondents may have done with the moneys they obtained from investors, including whether the use of such moneys forms the basis for disgorgement orders against other persons involved in the same investment scheme. In my view, that conclusion is consistent with the Commission's decisions in *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 and *Re Sabourin* (2010), 33 OSCB 5299. I am not suggesting that in other circumstances it may not be appropriate to reduce the amount of a disgorgement order in light of other relevant orders made by the Commission or other regulatory authorities. That is an issue for determination by the Commission panel imposing the particular sanctions. I am simply deciding in this case that doing so is not legally required and is not appropriate in these circumstances.

[55] It is clear that the Respondents operated a boiler room, preyed on innocent investors and caused them substantial financial losses. By doing so, the Respondents committed fraud and breached key provisions of Ontario securities law. They also breached outstanding Commission orders prohibiting them from trading in securities. The Respondents knowingly and intentionally breached those orders. The Respondents are bad actors of the most despicable kind. There is no doubt that they should be permanently barred from participation in our capital markets.

[56] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following sanctions on the Respondents:

(a) each of the Respondents shall be prohibited permanently from trading in securities;

(b) each of the Respondents shall be prohibited permanently from acquiring securities;

(c) the exemptions in Ontario securities law (as defined in the Act) shall not apply to the Respondents permanently;

(d) each of the Respondents shall be reprimanded;

(e) each of O'Brien, Da Silva and Grossman shall be ordered to resign any positions he holds as a director or officer of any issuer;

(f) each of O'Brien, Da Silva and Grossman shall be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and

(g) the Respondents shall disgorge to the Commission, on a joint and several basis, $205,000, which amount is designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) (i) or (ii) of the Act.

[57] The approximately $28,000 of investor funds which remain frozen in the Shallow Oil bank account shall be applied to the payment of the disgorgement order.

III. CONCLUSION

[58] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule "A" hereto.

DATED at Toronto this 21st day of December, 2012.

"James E. A. Turner"

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James E. A. Turner

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 SHALLOW OIL & GAS INC., ERIC O'BRIEN, ABEL DA SILVA, ABRAHAM HERBERT GROSSMAN also known as ALLEN GROSSMAN and KEVIN WASH

ORDER
(Subsections 127(1) and 127(10))

WHEREAS on June 11, 2008, 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") in respect of Shallow Oil & Gas Inc. ("Shallow Oil"), Eric O'Brien ("O'Brien"), Abel Da Silva ("Da Silva"), Gurdip Singh Gahunia also known as Michael Gahunia ("Gahunia"), Abraham Herbert Grossman also known as Allen Grossman ("Grossman"), Marco Diadamo ("Diadamo"), Gordon McQuarrie ("McQuarrie"), Kevin Wash ("Wash") and William Mankofsky ("Mankofsky");

AND WHEREAS on June 10, 2008, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of that matter;

AND WHEREAS on May 12, 2009, the Commission approved a settlement agreement between Staff and McQuarrie and issued a sanctions order against him;

AND WHEREAS on July 24, 2009, the Commission approved a settlement agreement between Staff and Mankofsky and issued a sanctions order against him;

AND WHEREAS on December 16, 2010, the Commission approved a settlement agreement between Staff and Gahunia and issued a sanctions order against him;

AND WHEREAS on December 9, 2011, the Commission approved a settlement agreement between Staff and Diadamo and issued a sanctions order against him;

AND WHEREAS on May 18, 2011, the Ontario Court of Justice (the "Ontario Court") found Shallow Oil, O'Brien, Da Silva and Grossman (the "Respondents" and individually a "Respondent") guilty on a total of 18 counts of breaching Ontario securities law;

AND WHEREAS on June 15, 2011, the Ontario Court sentenced Grossman to three years in prison, to be served consecutively to any other prison sentences against him;

AND WHEREAS on November 15, 2011, the Ontario Court sentenced each of O'Brien and Da Silva to 27 months in prison, to be served consecutively to any other prison sentences against either of them, respectively;

AND WHEREAS on May 14, 2012, the Commission issued an Amended Notice of Hearing and Staff filed an Amended Statement of Allegations to rely upon the decisions of the Ontario Court relating to the Respondents in imposing sanctions under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act;

AND WHEREAS on October 29, 2012, Wash entered into an agreed statement of facts in which he admitted to unregistered trading in securities contrary to subsection 25(1)(a) of the Act, illegal distributions contrary to subsection 53(1) of the Act and perpetrating a fraud on investors in Ontario and elsewhere in Canada contrary to subsection 126.1(b) of the Act;

AND WHEREAS on November 15, 2012, the Commission conducted a hearing and imposed sanctions on Wash;

AND WHEREAS each of the Respondents has been found by the Ontario Court to have (i) been convicted of an offence arising from a transaction, business or course of conduct related to securities within the meaning of subsection 127(10)1 of the Act, and (ii) contravened the laws of Ontario respecting the buying and selling of securities within the meaning of subsection 127(10)3 of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act:

IT IS HEREBY ORDERED THAT:

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

(b) pursuant to paragraph 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 paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to any of the Respondents permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, each of the Respondents is reprimanded;

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, each of O'Brien, Da Silva and Grossman shall resign any positions that he holds as a director or officer of any issuer;

(f) pursuant to paragraph 8 of subsection 127(1) of the Act, each of O'Brien, Da Silva and Grossman is prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to paragraph 8.1 of subsection 127(1) of the Act, each of O'Brien, Da Silva and Grossman shall resign any positions that he holds as a director or officer of any registrant; and

(h) pursuant to paragraph 10 of subsection 127(1) of the Act, the Respondents shall disgorge to the Commission, on a joint and several basis, $205,000, which amount is designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) or (ii) of the Act.

DATED at Toronto this 21st day of December, 2012.

"James E. A. Turner"

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James E. A. Turner