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 THE *COMMODITY FUTURES ACT*,
R.S.O. 1990, c. C.20, AS AMENDED

- AND -

IN THE MATTER OF AXCESS AUTOMATION LLC, AXCESS FUND MANAGEMENT, LLC, AXCESS FUND, L.P., GORDON ALAN DRIVER, DAVID RUTLEDGE, 6845941 CANADA INC. carrying on business as ANESIS INVESTMENTS, STEVEN M. TAYLOR, BERKSHIRE MANAGEMENT SERVICES INC. carrying on business as INTERNATIONAL COMMUNICATION STRATEGIES, 1303066 ONTARIO LTD. carrying on business as ACG GRAPHIC COMMUNICATIONS, MONTECASSINO MANAGEMENT CORPORATION, REYNOLD MAINSE, WORLD CLASS COMMUNICATIONS INC. and RONALD MAINSE

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

Hearing:	November 7, 2012	
Decision:	March 12, 2013	
Panel:	Christopher Portner	- Commissioner and Chair of the Panel
	Paulette L. Kennedy	- Commissioner
Appearances:	Yvonne Chisholm	- For Staff of the Ontario Securities Commission
	Gordon Alan Driver	- For himself, Axcess Automation LLC, Axcess Fund Management, LLC and Axcess Fund, L.P.
	Steven M. Taylor	- For himself, Berkshire Management

		Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. carrying on business as ACG Graphic Communications and Montecassino Management Corporation
Reynold Mainse	-	For himself and World Class Communications Inc.

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

I. INTRODUCTION

[1] This was a hearing (the "**Sanctions and Costs Hearing**") before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 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 against Axcess Automation LLC ("**Axcess Automation**"), Axcess Fund Management, LLC ("**Axcess Fund Management**"), Axcess Fund, L.P. ("**Axcess Fund**")(collectively, the "**Axcess Companies**"), Gordon Alan Driver ("**Driver**"), Steven M. Taylor ("**Taylor**"), Berkshire Management Services Inc. ("**Berkshire**") carrying on business as International Communication Strategies ("**ICS**"), 1303066 Ontario Ltd. ("**1303066**") carrying on business as ACG Graphic Communications ("**ACG**"), Montecassino Management Corporation ("**Montecassino**", and together with Berkshire and 1303066, the "**Taylor Companies**"), Reynold Mainse ("**Reynold**") and World Class Communications Inc. ("**WCC**") (collectively, the "**Respondents**").

[2] We note that some of the respondents in this matter, namely, David Rutledge ("**Rutledge**"), 6845941 Canada Inc. ("**6845941**") also known as Anesis Investments ("**Anesis**") and Ronald Mainse ("**Ronald**"), entered into settlement agreements with Staff of the Commission ("**Staff**") which were approved by the Commission on August 13, 2010 (*Re Axcess Automation LLC* (2010), 33 O.S.C.B. 7376 (settlement with respect to Rutledge and 6845941) and *Re Axcess Automation LLC* (2010), 33 O.S.C.B. 7384 (settlement with respect to Ronald)).

[3] The Sanctions and Costs Hearing was held on November 7, 2012 following the hearing on the merits in this matter in April and May 2011 (the "**Merits Hearing**") and the issuance of the decision on the merits on September 27, 2012 ((2012), 35 O.S.C.B. 9019)(the "**Merits Decision**"). Staff appeared and made oral submissions, supported by written submissions, briefs of authorities, the Affidavit of Tia Faerber sworn October 25, 2012 regarding proceedings against Driver and certain of the Axcess Companies in the United States (the "**U.S.**") and the Affidavit of Rita Pascuzzi sworn October 25, 2012 regarding the costs sought by Staff.

[4] Prior to the Sanctions and Costs Hearing, Driver made a request that he be permitted to participate in the Sanctions and Costs Hearing by telephone, which Staff did not oppose. Rule 10.2 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10009 (the "**Rules of Procedure**") permits electronic hearings including participation by telephone. Driver did not file any written submissions, but he did make oral submissions by telephone and asked the Panel to consider part of the testimony given by a witness, R.M., at the Merits Hearing on April 20, 2011.

[5] Taylor appeared and indicated that he did not intend to make any submissions to the Panel. He did not file any written materials.

[6] Reynold appeared, gave evidence on sanctions and costs and made oral submissions. He filed documents regarding his financial circumstances which we made confidential pursuant to Rule 5.2 of the Rules of Procedure.

[7] In the Notice of Hearing, Staff also requested sanctions and costs under sections 60 and 60.1 of the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended (the "**CFA**"). As the Commission did not make findings under the CFA in the Merits Decision, it is not necessary to consider sanctions and costs under the CFA.

[8] In the Notice of Hearing and in its written submissions on sanctions and costs, Staff also sought to rely on subsection 127(10) of the Act which is the interjurisdictional enforcement provision. At the Sanctions and Costs Hearing, Staff indicated that, in light of the findings of the Panel in the Merits Decision, it is unnecessary for the Panel to consider the foregoing provision in imposing sanctions.

II. ANALYSIS

A. Sanctions

1. The Law

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

[10] 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*. (1990), 13 O.S.C.B. 1600 ("***Mithras***"):

> …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… 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.
>
> (*Mithras*, *supra*, at pp. 1610 and 1611)

[11] 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.
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> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43)

[12] The Supreme Court of Canada has recognized that general deterrence is an important factor in imposing sanctions: "… 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).

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

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

(b) The respondent's experience in the marketplace;

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

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

(e) Whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;

(f) The size of any profit obtained from or loss avoided by the illegal conduct;

(g) The size of any financial sanction or voluntary payment;

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

(i) The reputation and prestige of the respondent;

(j) The remorse of the respondent; and

(k) Any mitigating factors;

(see, for example, *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 ("***Belteco***") at p. 7746; and *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at p. 1136)

[14] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra*, at p. 1134).

[15] Further, in imposing financial sanctions, overall financial sanctions imposed on each respondent is a relevant consideration (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin Sanctions and Costs***") at para. 59). The Commission has also held in prior decisions that ability to pay, while not a predominant or determining factor, is relevant in determining the appropriate financial sanctions to be imposed (*Sabourin Sanctions and Costs*, *supra*, at para. 60).

2. Specific Sanctioning Factors Applicable in this Matter

[16] In determining the appropriate sanctions, we have taken into account the factors summarized in the following paragraphs. The allegations made by Staff and proven in this matter with respect to Driver, the Axcess Companies, Taylor and the Taylor Companies demonstrate egregious behavior on their part. The foregoing Respondents engaged in unregistered trading and an illegal distribution, contrary to subsections 25(1)(a) and 53(1) of the Act. Driver and the Axcess Companies did so by creating and operating two investment schemes, known as the "**Axcess Automation Investment**" and its successor, the "**Axcess Fund Investment**" (together, the "**Axcess Investments**"), and by administering the Axcess Investments primarily through individuals known as "point persons". Taylor was one such point person and established an infrastructure through the Taylor Companies to solicit investors and to administer the Axcess Investments on their behalf.

[17] The two investment schemes were found to be fraudulent and Driver, the Axcess Companies, Taylor and the Taylor Companies were found to have knowingly engaged in fraud contrary to subsection 126.1(b) of the Act. It was represented to investors that the Axcess Investments would generate superior returns by trading E-mini S&P 500 futures on the Chicago Mercantile Exchange or other future contracts or options using proprietary software. Most of the US$15,169,160.72 raised from investors, however, was not used to trade E-mini S&P 500 futures or other future contracts or options as represented. Rather, a majority of those funds, US$10,356,704.72, were diverted to pay investors to create the appearance of a legitimate investment. Investor funds were also diverted to pay Driver's personal expenses and commissions to point persons (see Merits Decision, *supra*, at paras. 256 and 257). While Driver did use a small portion of investor funds, in the approximate amount of US$3,621,665, to trade E-mini S&P 500 futures, he suffered significant trading losses in the approximate amount of US$3,532,237.52, and he and the Axcess Companies failed to disclose the losses to investors. Taylor and the Taylor Companies were aware of the fraudulent nature of the scheme since May 2007 but continued to provide incomplete information and misinformation and failed to provide accurate information, all of which constituted deceit and material misrepresentation.

[18] As we concluded in the Merits Decision:

> The evidence demonstrates that Driver was the directing mind of an investment scheme that, whatever its original objectives, was clearly fraudulent notwithstanding periodic allusions to the desirability of investors using the proceeds derived from their investments for charitable and religious purposes. Taylor was inextricably involved in furthering the fraudulent elements of the scheme and was clearly aware that he and Driver and their respective companies were acting illegally.
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> (Merits Decision, *supra*, at para. 306)

[19] Reynold, who was also a point person and received funds personally and through WCC as a result of his involvement in the Axcess Investments, and WCC were found to have engaged in unregistered trading and illegal distribution, contrary to subsections 25(1)(a) and 53(1) of the Act. However, Staff did not allege any fraudulent behavior by Reynold or WCC and there was no evidence of such behaviour.

[20] We also found that Driver, Taylor and Reynold authorized, permitted or acquiesced in the non-compliance by the Axcess Companies, the Taylor Companies and WCC, respectively, with Ontario securities law and they were, therefore, deemed liable for the non-compliance by their respective companies pursuant to section 129.2 of the Act.

[21] The level of the Respondents' activities in the marketplace and the amounts raised by the Respondents were significant. Driver and the Axcess Companies operated the Axcess Investments over a period of more than three years, from February 2006 to March 2009, and Taylor and the Taylor Companies were involved from almost the inception of the scheme. Reynold and WCC were only involved in the scheme for the approximately 18-month period from July 2007 to the end of 2008.

[22] As noted in paragraph 256 of the Merits Decision, we were unable to fully reconcile the amounts received and dispersed by Driver. However, the discrepancies in Staff's analysis of the flow of funds did not affect our findings in the Merits Decision that the majority of the funds received from investors was dispersed for purposes unrelated to the trading of E-mini S&P 500 futures or other future contracts or options as represented to investors. We accepted in the Merits Decision that approximately US$15,169,160.72 was raised from approximately 252 investors, as follows:

(a) Approximately US$2,126,085.48 was raised from the investor group administered by Taylor and comprised of approximately 130 investors (the "**Taylor Group**");

(b) Approximately US$4,131,400.96 was raised from the investor group administered by Reynold and comprised of 23 investors, all of whom were members of Reynold's family and friends (the "**Reynold Group**);

(c) Approximately US$2,051,199.39 was raised from the investor group administered by Ronald and Rutledge and comprised of 45 investors (the "**Rutledge/Ronald Group**"); and

(d) Approximately US$6,860,474.89 was raised from 54 other investors who invested with Driver directly (the "**54 Investors**").

[23] Of the US$15,169,160.72 raised, approximately US$10,356,704.72 was returned to investors, as follows:

(a) Approximately US$4,098,564.91 was received by the Taylor Group;

(b) Approximately US$2,875,054.87 was received by the Reynold Group;

(c) Approximately US$746,507 was received by the Rutledge/Ronald Group; and

(d) Approximately US$2,636,577.94 was received by the 54 Investors.

Accordingly, approximately US$4,812,456 has not been returned to investors.

[24] In the Merits Decision, we also found that Taylor and Reynold received payments as a result of their involvement in the Axcess Investments. Taylor was found to have received US$1,430,216 through accounts in his name and accounts in the name of one of the Taylor

Companies. Reynold was found to have received $210,219.50 through an account in his name and another account in the name of WCC.

[25] In determining the appropriate sanctions against Reynold and WCC, we have also taken into account the terms of the Settlement Agreement between Rutledge and Staff which we consider to be a relevant factor (*Re Sextant Capital Management Inc*. (2012), 35 O.S.C.B. 5213 ("***Sextant Sanctions and Costs***") at para. 12). As Staff submits, Reynold acted in a similar capacity as Rutledge in connection with the Axcess Investments.

[26] Driver submitted that a mitigating factor that applies to him is that R.M., who was a witness at the Merits Hearing, admitted to extortion, blackmail and money laundering. We made no such findings in the Merits Decision and reject this submission.

[27] Reynold submitted that he does not have the financial means to pay monetary sanctions and provided copies of his income tax returns and other financial information in support of his submission. Although the documents submitted by Reynold did reflect limited financial means, they did not appear to fully reflect all amounts received by him and WCC in connection with the Axcess Investments and, accordingly, it was not possible to develop an entirely clear picture of his financial circumstances. In addition, although the financial and other personal commitments made by Reynold and his wife to a number of charitable undertakings, including foreign missionary work, appears to have been undertaken at great personal sacrifice and is laudable, the fact remains that a significant portion of the funds that were used by them for these purposes were investor funds, and many investors lost a substantial portion of their investments.

[28] We recognize that a number of mitigating factors may apply in determining the appropriate sanctions with respect to Reynold. Although Reynold may have been insensitive to obvious flaws in the Axcess Investments and to the highly improbable rates of return that were promised by Driver, he eventually ceased to solicit funds from new investors although he did continue to accept new funds from existing investors. Reynold cooperated with Staff during Staff's investigation, was interviewed on a voluntary basis and voluntarily provided Staff with documents relating to the Axcess Investments. At the commencement of the Merits Hearing, Reynold, on his own behalf and on behalf of WCC, admitted to all of the allegations against them and testified to provide a full factual record to the Commission.

[29] In addition, during the Sanctions and Costs Hearing, Reynold expressed remorse and accepted or did not oppose the imposition of all of the trading and other market prohibitions requested by Staff. We accept his testimony that the collapse of the Axcess Investments was a source of considerable personal embarrassment and humiliation and had serious adverse effects on his career, reputation, family and financial circumstances.

3. Trading and Other Market Prohibitions

[30] Staff requests that Driver, the Axcess Companies, Taylor and the Taylor Companies be subject to permanent trading and acquisition bans and that any exemptions in Ontario securities law do not apply to them permanently. Staff submits that no "carve-out" should be granted to Driver or Taylor for personal trading in a registered retirement savings plan ("**RRSP**") or similar account because their conduct demonstrates that they cannot be trusted to participate in the capital markets in even a limited capacity. Staff further requests that Driver and Taylor resign as

a director or officer of an issuer and that permanent director and officer bans as well as registrant bans be ordered against Driver and Taylor.

[31] Staff also requests trading and acquisition bans for a period of 12 to 15 years against Reynold and WCC and that any exemptions in Ontario securities law do not apply to Reynold and WCC for a period of 12 to 15 years. At the Sanctions and Costs Hearing, Staff clarified that it would be appropriate to grant a carve-out to Reynold that is similar to that ordered in Staff's settlement with Rutledge, which permits Rutledge to trade and acquire securities for the account of his RRSP and the benefits from any exemptions in connection with such trades. Staff also requests that Reynold resign as a director or officer of an issuer and that director and officer bans as well as registrant bans for a period of 12 to 15 years be imposed on Reynold.

[32] Driver and Taylor made no submissions regarding trading or other market prohibitions against them. During the Sanctions and Costs Hearing, Reynold indicated that he consented or did not object to the trading and other market prohibitions for a period of 12 to 15 years as requested by Staff and that he had no intention to participate in the capital markets in the future.

[33] Driver, through the Axcess Companies of which he was a director or officer, created and perpetrated a fraudulent investment scheme and raised approximately US$15,169,160.72 from approximately 252 investors. Taylor, through the Taylor Companies of which he was a director or officer, furthered this fraudulent scheme. Taylor acted as a point person for approximately 130 investors and raised US$2,126,085.48 out of the total of US$15,169,160.72 raised. There was also evidence that these Respondents improperly relied on a number of exemptions, including the accredited investor exemption, the private issuer exemption and the minimum amount exemption.

[34] In our view, the following principles articulated in *Re St. John* (1998), 21 O.S.C.B. 3851 ("***St. John***") regarding the imposition of permanent trading bans are applicable to Driver, the Axcess Companies, Taylor and the Taylor Companies:

> In our view St. John is not a person whom we can safely trust to participate in the capital markets in any way. We have no confidence whatsoever that if she is permitted to participate as a [*sic*] investor for her own account, St. John will not once again push the envelope by engaging in conduct which is detrimental to others and abusive of our capital markets.
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> (*St John*, *supra*, at p. 3867)

[35] Having considered all of the sanctioning factors, we conclude that Driver, the Axcess Companies, Taylor and the Taylor Companies should be permanently prohibited from participating in the capital markets in any way and from being placed in a position of control or trust with respect to any issuer, registrant or investment fund manager. Accordingly, we will order permanent trading bans and the other market prohibitions against them requested by Staff, as set out in subparagraphs [68](a), (c), (e), (g), (h), (j), (l) and (n) below.

[36] With respect to Reynold and WCC, we acknowledge that there was no evidence that Reynold and WCC were involved in fraudulent misconduct. However, he acted as a point person for the 23 investors who are members of his family and friends, engaged in unregistered trading and the illegal distribution of securities issued by the Axcess Companies and raised

US$4,131,400.96, which is a significant amount. Reynold received funds through WCC, of which he was a director or officer, and there was also evidence that he purported to rely on certain exemptions such as the private issuer exemption which were not available to him. At the Sanctions and Costs Hearing, Reynold consented or did not object to the trading and other market prohibitions against him. In these circumstances, we are of the view that it is appropriate to order trading and other market prohibitions against Reynold for a period of 15 years and a carve-out which permits Reynold to trade in or acquire securities for the account of his RRSP. We observe that this is consistent with the orders agreed to in the Settlement Agreement between Staff and Rutledge, who played a similar role in the Axcess Investments. We further order that Reynold will only be permitted to trade and acquire securities for the account of his RRSP and to benefit from any exemptions in connection with such trades once the administrative penalty and disgorgement ordered against him, set out below, are paid in full. Our permanent trading bans and other market prohibition orders against Reynold and WCC are set out in subparagraph [68](b), (d), (f), (g), (i), (k), (m) and (o) below.

4. Disgorgement

[37] In its written submissions, Staff requests the following disgorgement orders against the Respondents, namely, that:

(a) Driver and the Axcess Companies jointly and severally disgorge to the Commission the amount of US$9,036,352.95, comprised of US$4,812,456.00 raised from the Taylor Group, the Reynold Group and the Rutledge Group and US$4,223,896.95 raised from the 54 Investors;

(b) Taylor and the Taylor Companies jointly and severally disgorge to the Commission the amount of US$1,430,216.00 to which reference is made in paragraph [24] above; and

(c) Reynold and WCC jointly and severally disgorge to the Commission the amount of $210,219.50 to which reference is made in paragraph [24] above.

[38] Driver and Taylor made no submissions regarding the disgorgement orders. However, Driver submitted that there are outstanding monetary orders against him in the U.S. as a result of a proceeding against him by the United States Commodity Futures Trading Commission (the "**CFTC**"). The orders include an order of restitution and a monetary penalty against Driver, Axcess Automation and Axcess Fund Management in the respective amounts of US$9,562,488 and US$31,800,000 on a joint and several basis. Driver claims that the findings made by the court in the U.S. giving rise to these orders take into account all of the funds obtained from Canadian investors.

[39] As discussed in paragraph [27] above, Reynold made submissions and provided evidence that he does not have ability to disgorge the amounts that he received. He submitted that he would have settled with the Commission if he had the ability to pay and that he personally invested in the Axcess Investments and it was unclear to him whether the funds he received were commissions or returns on the investment, the latter of which should not be subject to a disgorgement order. He submitted that the commissions or returns on his personal investment were used for his Christian ministry and not personally and that he did not gain or benefit

personally from the Axcess Investments. He took the position that he had no knowledge of wrongdoing and did not receive the funds illegally or unethically but, rather that the funds were given to him illegally and unethically.

[40] 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 purpose of a disgorgement order is to ensure that a respondent does not benefit from his or her breaches of the Act and to deter the respondent and others from similar misconduct (*Sabourin Sanctions and Costs*, *supra*, at para. 69).

[41] When determining the appropriate disgorgement orders, we are guided by the non-exhaustive list of factors set out in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight Sanctions and Costs***") at para. 52. The Commission in that decision noted that Staff has the onus to prove on a balance of probabilities the amount obtained by a respondent as a result of his or her non-compliance with the Act. Subject to that onus, any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty (*Limelight Sanctions and Costs*, *supra*, at para. 53).

[42] We take it from Staff's submissions that its request is for the Respondents to disgorge any amounts obtained that have not been returned to investors. We do not accept Staff's submission that the entire amount obtained that has not been returned to investors is US$9,036,352.95. As discussed in paragraph [22] above, the entire amount raised from the Taylor Group, the Reynold Group, the Rutledge/Ronald Group and the 54 Investors, as found in the Merits Decision, was US$15,169,160.72 (Merits Decision, *supra*, at para. 256). We further found in the Merits Decision that US$10,356,704.72 was returned to these four groups of investors (Merits Decision, *supra*, at para. 258). Accordingly, the amount that has not been returned to these four groups of investors is US$4,812,456.00.

[43] Driver raised US$15,169,160.72 through the Axcess Companies by engaging in a fraudulent investment scheme in contravention of the Act and was found to have maintained and controlled accounts in his name or in the name of Axcess Automation for the receipt and transfer of investor funds. While approximately US$10,356,704.72 has been returned to investors, many investors suffered significant losses.

[44] In determining the appropriate disgorgement order, we have also considered Driver's argument that there are monetary orders against him and certain of the Axcess Companies as a result of the proceedings in the U.S. which purportedly take into account all of the funds raised from investors in Canada. Having reviewed the evidence before us relating to the U.S. proceedings against Driver, including the Affidavit of Tia Faerber sworn October 25, 2012, we are not satisfied that there is sufficient evidence to establish the connection asserted by Driver. We further note that there is no evidence that Driver made any payment in satisfaction of the monetary orders in the U.S. As noted by Driver, he was, at the time of the Sanctions and Costs Hearing, in the process of appealing the monetary orders against him in the U.S.

[45] In these circumstances, we feel that it is appropriate to order that Driver and the Axcess Companies jointly and severally disgorge the amount that we found in the Merits Decision has not been returned to investors to ensure that Driver and the Axcess Companies do not retain any financial benefit from their breaches of the Act and to achieve general and specific deterrence.

For the purpose of disgorgement, the Canadian dollar equivalent of US$4,812,456.00, the amount obtained by Driver and the Axcess Companies that has not been returned to investors, was $5,303,326.51, which was calculated using the Bank of Canada average daily noon exchange rate for the period from February 2006 to March 2009.[1]

[46] Taylor, through the Taylor Companies, received US$1,430,216 as compensation for his involvement in the Axcess Investments. Although these Respondents only administered the investments of investors in the Taylor Group, who collectively do not appear to have suffered a loss of the amounts that they invested, the breaches of the Act by Taylor and the Taylor Companies are nonetheless serious as they furthered the deceit and misrepresentations and placed the funds of the investors in the Taylor Group at a significant risk of loss. In addition, the fact that the investors in the Taylor Group received US$1,972,479.43 more than they invested meant that other investors received less than they were entitled to receive as a return of their investments and some investors lost a substantial portion of their investments. In the circumstances, it is appropriate to order that Taylor and the Taylor Companies disgorge US$1,430,216 which they received as a result of their involvement in the Axcess Investments on a joint and several basis with Driver and the Axcess Companies. For the purpose of disgorgement, the Canadian dollar equivalent of US$1,430,216, the amount obtained by Taylor and the Taylor Companies, was $1,576,098.03, which was calculated using the Bank of Canada average daily noon exchange rate for the period from February 2006 to March 2009.[2]

[47] Reynold and WCC received $210,219.50 as a result of their involvement in the Axcess Investments. Although Reynold only administered the investments of investors in the Reynold Group, he did solicit their investments and the members of the Reynold Group collectively lost US$1,256,346.09. Reynold's characterization of the payments that he received from Driver, set out in paragraph [39] above, does not alter the fact that his financial contributions to religious undertakings were made, in whole or in part, with investor funds. Further, despite Reynold's characterization that some of the funds may have been a return on his investment, Reynold acknowledged that some of the funds may have been compensation for services rendered by Reynold as a point person for the Axcess Investments, and we found in paragraph 163 of the Merits Decision that all of the $210,219.50 was obtained as a result of his involvement in the Axcess Investments. In the circumstances, it is appropriate to order that Reynold and WCC disgorge $210,219.50 which they received as a result of their involvement in the Axcess Investments on a joint and several basis with Driver and the Axcess Companies.

[48] As a result of the settlements referred to in paragraph [2] above, orders were issued by the Commission requiring Ronald to disgorge to the Commission the amount of $138,176.88 and Rutledge and 6845941 to disgorge to the Commission the amount of $262,818.92. In determining the appropriate amount to be disgorged by the Respondents, we have taken into account any amounts that have been ordered to be disgorged by the Commission in the foregoing settlements.

[49] For the reasons set out above, we will order that:

[1] The Bank of Canada average daily noon exchange rate for the period from February 2006 to March 2009 is 1.1020.
[2] See Footnote 1.

(a) Driver and the Axcess Companies jointly and severally disgorge the amount of $3,116,013.18, which we have calculated by deducting from the amount of $5,303,326.51 described in paragraph [45] above (i) the aggregate amount which the remaining Respondents have been ordered to pay on a joint and several basis with Driver and the Axcess Companies; and (ii) to avoid the duplication of payments, the aggregate amount which Rutledge, 6845941 and Ronald have been ordered to pay under the terms of their respective settlement agreements;

(b) Driver, the Axcess Companies, Taylor and the Taylor Companies jointly and severally disgorge the amount of $1,576,098.03; and

(c) Driver, the Axcess Companies, Reynold and WCC jointly and severally disgorge the amount of $210,219.50.

[35] The amounts paid to the Commission in satisfaction of the disgorgement orders are designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act.

5. Administrative Penalty

[50] Staff requests that:

(a) Driver and the Axcess Companies jointly and severally pay an administrative penalty in the amount of $750,000;

(b) Taylor and the Taylor Companies jointly and severally pay an administrative penalty in the amount of $500,000; and

(c) Reynold and WCC jointly and severally pay an administrative penalty in the amount of $35,000.

[51] Driver and Taylor did not make specific submissions regarding administrative penalties.

[52] Reynold requested that no administrative penalty be ordered against him because he had (i) no ability to pay; (ii) cooperated voluntarily and fully with Staff from the beginning of its investigation; and (iii) testified at the Merits Hearing to provide a full record.

[53] As noted above, Driver, through the Axcess Companies, created and operated an investment scheme that, whatever its original objectives, became fraudulent when Driver misrepresented to investors and prospective investors that their funds would be invested in E-mini S&P 500 futures or other future contracts or options when in reality they were used to pay Driver's personal expenses or to pay investors as a return on their respective investments to create the appearance that the Axcess Investments were legitimate. We are of the view that a significant administrative penalty against Driver and the Axcess Companies is necessary to achieve specific and general deterrence. Accordingly, we order that Driver and the Axcess Companies pay an administrative penalty in the amount of $750,000 on a joint and several basis.

[54] We also find it appropriate to impose an administrative penalty in the amount of $500,000 against Taylor and the Taylor Companies on a joint and several basis. We recognize that Taylor and the Taylor Companies did not create the fraudulent investment scheme and were only responsible for the investments of one of the investor groups. Nonetheless, they were aware

of the fraudulent nature of the Axcess Investments since May 2007 and were inextricably involved in furthering the fraudulent elements of the scheme by continuing to provide incomplete information and misinformation and by failing to provide accurate information. In our view, a lesser but nonetheless significant administrative penalty must be imposed on these Respondents to achieve general and specific deterrence.

[55] Finally, it is appropriate in the circumstances to impose an administrative penalty in the amount of $35,000 against Reynold and WCC on a joint and several basis. As acknowledged by Staff, there was no evidence that Reynold and WCC acted fraudulently. In considering the administrative penalty to be ordered, we also take into account the mitigating factors set out in paragraphs [28] and [29] above. Nonetheless, Reynold raised a significant amount of funds in breach of the registration and prospectus requirements and an administrative penalty must be imposed to achieve specific and general deterrence.

[56] In determining the appropriate administrative penalties, we have considered the cases referred to us by Staff, including *Limelight Sanctions and Costs*, *Re Rowan* (2009), 33 O.S.C.B. 91, appeals denied in *Rowan v. Ontario Securities Commission* (2010), 103 O.R. (3d) 484 (Div. Ct.) and (2012), 110 O.R. (3d) 492 (C.A.), *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447, *Re Hibbert* (2012), 35 O.S.C.B. 9013 ("***Hibbert Sanctions and Costs***"), *Sextant Sanctions and Costs* and *Re MP Global Financial Ltd.* (2012), 35. O.S.C.B. 9061. We find the amounts proposed by Staff to be within the range of penalties ordered by the Commission against respondents involved in similar misconduct and proportional to the circumstances and conduct of each Respondent.

[57] For the reasons set out above, we order that:

(a) Driver and the Axcess Companies jointly and severally pay an administrative penalty in the amount of $750,000;

(b) Taylor and the Taylor Companies jointly and severally pay an administrative penalty in the amount of $500,000; and

(c) Reynold and WCC jointly and severally pay an administrative penalty in the amount of $35,000.

[58] The amounts paid to the Commission in satisfaction of the administrative penalties are designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act.

B. Costs

[59] Staff requests that Driver, the Axcess Companies, Taylor and the Taylor Companies jointly and severally pay costs in the amount of $202,186.87. Staff further requests that Reynold and WCC jointly and severally pay costs in the amount of $2,500.

[60] Staff prepared a Bill of Costs in support of the amounts requested and submits that a conservative approach was employed in preparing it. The Bill of Costs reflects the time spent by a senior litigation counsel, an investigation counsel and a law clerk, and does not include any time spent by students-at-law or assistants. Staff submits that only half of the hours incurred by

these individuals during the litigation phase have been claimed, and no time has been claimed in connection with the investigation, the preparation for and attendance at the Sanctions and Costs Hearing or settlement discussions and settlement hearings relating to Rutledge, 6845941 and Ronald. Staff further submits that no claim has been made for disbursements incurred throughout the matter.

[61] The Respondents did not make any specific submissions with respect to costs.

[62] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest (see also *Hibbert Sanctions and Costs*, *supra*, at para. 28). Factors to be considered by the Commission when awarding costs are set out in Rule 18.2 of the Rules of Procedure. The factors in Rule 18.2 that we consider relevant are discussed in further detail below.

[63] The total amount claimed by Staff in this matter is $202,186.87, which we accept as representing only a portion of Staff's costs related to this proceeding, as described in paragraph [60] above. We find that this portion of Staff's total costs is appropriate in the circumstances. In determining the amount of costs to be ordered in this case, we also note that Staff made allegations under both the Act and the CFA. The Commission, having considered the principles articulated in *R. v. Kienapple*, [1975] 1 S.C.R. 729, found it unnecessary to apply the CFA in its Merits Decision as the conduct establishing breaches of the CFA was essentially the same conduct that established breaches under the identical provisions of the Act.

[64] We find that Driver, the Axcess Companies, Taylor and the Taylor Companies should be jointly and severally liable for the entire amount that Staff is claiming, namely, $202,186.87. The misconduct of Driver and the Axcess Companies formed the basis of all of the allegations proven by Staff. Following a seven-day hearing, we found that Driver breached subsections 25(1)(a), 53(1) and 126.1(b) of the Act and that he was liable for the non-compliance by the Axcess Companies with Ontario securities law. Taylor and the Taylor Companies were actively involved in the administration of the Axcess Investments and, as in the case of Driver and the Axcess Companies, Staff proved breaches of subsections 25(1)(a), 53(1) and 126.1(b) of the Act by Taylor and the Taylor Companies and Taylor's liability as a director or officer of the Taylor Companies.

[65] We further note that we were disturbed by Driver's conduct during the Merits Hearing. Driver made a number of adjournment requests, all of which were considered by the Panel to be without merit and were denied, and there was a finding that Driver had a history of changing counsel and did not retain counsel or request an adjournment until the last possible moment. In addition, when Driver advised the Panel that he was obliged to attend a hearing before the U.S. Securities and Exchange Commission, the Panel agreed not to sit on that day to enable Driver's attendance at such hearing. The Panel subsequently received evidence that Driver failed to attend. Driver also failed to comply with the timeline set out in the Rules of Procedure with respect to calling witnesses and did not arrange to call his witnesses until the second day of the Merits Hearing, which Staff and the Commission again accommodated to ensure fairness.

[66] In our view, it is appropriate to order costs in the nominal amount of $2,500 against Reynold and WCC on a joint and several basis. Reynold, on his own behalf and on behalf of

WCC, made admissions on the first day of the Merits Hearing and gave evidence about the Axcess Investments which contributed to a more efficient and effective hearing. His evidence, which served to provide a full factual record, also helped the Commission to better understand the issues before it. We find that an order for nominal costs adequately reflects Reynold and WCC's cooperation in this case.

[67] For the reasons set out above, we order that:

(a) Driver, the Axcess Companies, Taylor and the Taylor Companies jointly and severally pay costs in the amount of $199,686.87;

(b) Reynold, WCC, Driver, the Axcess Companies, Taylor and the Taylor Companies jointly and severally pay costs in the amount of $2,500.

III. CONCLUSION

[68] For the reasons set out above, we conclude that it is in the public interest to make the following orders. We are of the view that the sanctions imposed will deter the Respondents and other like-minded individuals from engaging in similar misconduct in the capital markets in the future and that the sanctions are proportionate to the circumstances and conduct of each Respondent:

(a) Pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Driver, Axcess Automation, Axcess Fund Management, Axcess Fund, Taylor, Berkshire, 1303066 and Montecassino shall cease permanently;

(b) Pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Reynold and WCC shall cease for a period of 15 years, provided that Reynold is permitted to trade securities for the account of his RRSP, as defined in the *Income Tax Act*, R.S.C. 1985, c. 1, as amended, once the administrative penalty and disgorgement order set out in paragraphs (r) and (u) below are paid in full;

(c) Pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Driver, Axcess Automation, Axcess Fund Management, Axcess Fund, Taylor, Berkshire, 1303066 and Montecassino is prohibited permanently;

(d) Pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Reynold and WCC is prohibited for a period of 15 years, provided that Reynold is permitted to acquire securities for the account for his RRSP once the administrative penalty and disgorgement order set out in paragraphs (r) and (u) below are paid in full;

(e) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Driver, Axcess Automation, Axcess Fund Management, Axcess Fund, Taylor, Berkshire, 1303066 and Montecassino permanently;

(f) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Reynold and WCC for a period of 15 years,

except to the extent such exemption is necessary for trades undertaken in connection with the account of Reynold's RRSP once the administrative penalty and disgorgement order set out in paragraphs (r) and (u) below are paid in full;

(g) Pursuant to clause 7 of subsection 127(1) of the Act, Driver, Taylor and Reynold resign any positions that they hold as a director or officer of an issuer;

(h) Pursuant to clause 8 of subsection 127(1) of the Act, Driver and Taylor are prohibited permanently from becoming or acting as a director or officer of any issuer;

(i) Pursuant to clause 8 of subsection 127(1) of the Act, Reynold is prohibited from becoming or acting as a director or officer of any issuer for a period of 15 years;

(j) Pursuant to clause 8.2 of subsection 127(1) of the Act, Driver and Taylor are prohibited permanently from becoming or acting as a director or officer of a registrant;

(k) Pursuant to clause 8.2 of subsection 127(1) of the Act, Reynold is prohibited from becoming or acting as a director or officer of a registrant for a period of 15 years;

(l) Pursuant to clause 8.4 of subsection 127(1) of the Act, Driver and Taylor are prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

(m) Pursuant to clause 8.4 of subsection 127(1) of the Act, Reynold is prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 15 years;

(n) Pursuant to clause 8.5 of subsection 127(1) of the Act, Driver and Taylor are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(o) Pursuant to clause 8.5 of subsection 127(1) of the Act, Reynold is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 15 years;

(p) Pursuant to clause 9 of subsection 127(1) of the Act, Driver, Axcess Automation, Axcess Fund Management and Axcess Fund shall jointly and severally pay an administrative penalty in the amount of $750,000, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(q) Pursuant to clause 9 of subsection 127(1) of the Act, Taylor, Berkshire, 1303066 and Montecassino shall jointly and severally pay an administrative penalty in the amount of $500,000, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(r) Pursuant to clause 9 of subsection 127(1) of the Act, Reynold and WCC shall jointly and severally pay an administrative penalty in the amount of $35,000, which

is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(s) Pursuant to clause 10 of subsection 127(1) of the Act, Driver, Axcess Automation, Axcess Fund Management, Axcess Fund shall jointly and severally disgorge to the Commission the amount of $3,116,013.18, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(t) Pursuant to clause 10 of subsection 127(1) of the Act, Taylor, Berkshire, 1303066, Montecassino, Driver, Axcess Automation, Axcess Fund Management and Axcess Fund shall jointly and severally disgorge to the Commission the amount of $1,576,098.03, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(u) Pursuant to clause 10 of subsection 127(1) of the Act, Reynold, WCC, Driver, Axcess Automation, Axcess Fund Management and Axcess Fund shall jointly and severally disgorge to the Commission the amount of $210,219.50, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(v) Pursuant to section 127.1 of the Act, Driver, Axcess Automation, Axcess Fund Management, Axcess Fund, Taylor, Berkshire, 1303066 and Montecassino shall jointly and severally pay costs in the amount of $199,686.87;

(w) Pursuant to section 127.1 of the Act, Reynold, WCC, Driver, Axcess Automation, Axcess Fund Management, Axcess Fund, Taylor, Berkshire, 1303066 and Montecassino shall jointly and severally pay costs in the amount of $2,500.

Dated at Toronto this 12th day of March, 2013.

"*Christopher Portner*"	"*Paulette L. Kennedy*"
Christopher Portner	Paulette L. Kennedy