Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8
22e 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
GLOBAL CONSULTING AND FINANCIAL SERVICES, GLOBAL CAPITAL GROUP, CROWN CAPITAL MANAGEMENT CORP., MICHAEL CHOMICA, JAN CHOMICA and LORNE BANKS

REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*)

Hearing:	In writing	
Decision:	November 26, 2013	
Panel:	Alan J. Lenczner, Q.C.	- Commissioner and Chair of the Panel
Counsel:	Carlo Rossi	- For Staff of the Commission
		- No one appeared on behalf of Global Capital Group and Crown Capital Management Corp.

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REASONS AND DECISION

PART 1 – PROCEDURAL HISTORY

A. Introduction

[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 Global Capital Group ("**Global Capital**") and Crown Capital Management Corp. ("**Crown Capital**") breached the Act and acted contrary to the public interest.

[2] This proceeding was commenced by Notice of Hearing dated March 27, 2013 (the "**Notice of Hearing**") in connection with Staff's Statement of Allegations dated March 27, 2013 (the "**Statement of Allegations**") with respect to Global Consulting and Financial Services ("**Global Consulting**"), Global Capital, Crown Capital, Michael Chomica ("**Chomica**"), Jan Chomica and Lorne Banks ("**Banks**"). An Amended Statement of Allegations was filed by Staff on September 13, 2013.

[3] Staff alleges that the Respondents breached the section 25 (unregistered trading) and section 126.1(b) (fraud) of the Act, and that the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[4] This matter also involves a temporary cease trade order (the "**Temporary Order**"). The Temporary Order was first issued on November 4, 2010 against several respondents, including Crown Capital. The Temporary Order was amended and extended from time to time. On June 24, 2013, the Commission ordered that the Temporary Order, as amended, be extended against several respondents, including Crown Capital, to two days following the conclusion of this proceeding, which was initiated by the Notice of Hearing, including the issuance of the Commission's decision on sanctions and costs.

[5] On July 17, 2013, the Commission approved a settlement agreement between Staff and Banks and made orders in the public interest against Banks.

[6] On August 6, 2013, the Commission approved a settlement agreement between Staff and Global Consulting and Jan Chomica and made orders in the public interest against Global Consulting and Jan Chomica.

[7] By Notice of Motion, Motion Record and written submissions dated August 14, 2013, Staff brought a motion for an order to convert the oral hearing on the merits as it related to Chomica, Crown Capital and Global Capital to a written hearing (the "**Motion**"). On September 4, 2013, the Commission granted the Motion and set a schedule for the filing of documents in connection with the written hearing.

[8] Staff also commenced a quasi-criminal proceeding before the Ontario Court of Justice (the "**Section 122 Proceeding**"). In connection with the Section 122 Proceeding, on February 14, 2013, the Ontario Court of Justice accepted a guilty plea by Chomica for three counts of fraud,

contrary to sections 122 and 126.1(b) of the Act (the "**Guilty Plea**"). On March 14, 2013, the Ontario Court of Justice sentenced Chomica to 18 months of incarceration for the first count of fraud and two years each for the second and third counts of fraud, to be served concurrently (the "**Conviction**").

[9] Staff and Chomica subsequently requested an oral hearing pursuant to subsections 127(1) and 127(10) of the Act to consider an agreed statement of facts (the "**Section 127 Statement of Facts**") and a joint submission on sanctions (the "**Joint Submission on Sanctions**"). On October 2, 2013, pursuant to paragraph 1 of subsection 127(10) of the Act, I found that Chomica's Conviction formed the basis of an order in the public interest under subsection 127(1) of the Act. I found that Chomica fully accepted, agreed to and understood the facts and sanctions contained in the Section 127 Statement of Facts and the Joint Submission on Sanctions and made orders against Chomica in the public interest.

[10] I will not be making further analysis or findings with respect to the Global Consulting, Chomica, Jan Chomica or Lorne Banks. The following reasons and decision include my findings with respect to Global Capital and Crown Capital (collectively, the "**Respondents**").

PART 2 – OVERVIEW OF FACTS

[11] The following overview of the facts in this case is based on Chomica's "Statement of Facts for Guilty Plea".

[12] This proceeding arose from the discovery of three fraudulent advance-fee schemes being perpetrated from locations in Ontario by Chomica and others that targeted members of the public in Ontario and various jurisdictions outside Canada including the United Kingdom, Europe, Asia and Africa. Two of these schemes are defined below as the Global Capital Scheme and the Crown Capital Scheme.

[13] In an advance-fee fraud, investors are persuaded, on the basis of deceit, to make up-front payments in order to take advantage of an offer promising significantly more in return.

[14] Approximately USD $160,470 was raised from seven investors in connection with the Global Capital Scheme. These investors suffered a complete loss of their investment.

[15] A net total of USD $145,346.50 and CAD $109,426.60 was raised from 59 investors in connection with the Crown Capital Scheme. These investors also suffered a complete loss of their investment.

A. The Global Capital Scheme

[16] From approximately March 2010 to September 2010, Chomica and Banks, using aliases and purporting to act on behalf of Global Capital, solicited shareholders residing in Europe, the United Kingdom, Asia and Africa (the "**Global Capital Investors**") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "**Global Capital Scheme**").

[17] The Global Capital Scheme was operated from Chomica's residential apartment located on Bloor Street East in Toronto. Chomica and other persons operating under his direction (the "**Chomica Associates**") made solicitations to the Global Capital Investors in connection with the Global Capital Scheme from the Bloor Street Address.

[18] The Global Capital Scheme involved an artificial offer to exchange shares in Dixon, Perot & Champion Inc. (the "**DP&C Shares**") owned by the Global Capital Investors for shares in Microsoft Inc. (the "**Microsoft Shares**"). The DP&C Shares were virtually worthless and illiquid at the time of the solicitations; however, the Global Capital Investors were told that Global Capital valued them at prices ranging from USD $6 to $14, whereas the Microsoft Shares were valued at prices ranging from USD $24 to $27.

[19] As part of the Global Capital Scheme, the Global Capital Investors were informed by Chomica and the Chomica Associates that they had to make certain payments in order to complete the transactions. The payments were purportedly necessary in order to cover the difference in value between the DP&C Shares and the Microsoft Shares. However, once this initial payment was made, the Global Capital Investors were solicited by Chomica and the Chomica Associates for additional payments to cover taxes and various other costs.

[20] The Global Capital Investors were instructed by Chomica and the Chomica Associates to send the funds representing the advance fees to the account of Commonwealth Capital Corp., an Isle of Man corporation, at the Bank of Nevis in St. Kitts and Nevis.

[21] Seven Global Capital Investors paid advance-fees totaling USD $160,470 to the Commonwealth Bank Account as a result of the solicitations noted above. The majority of the funds that were transferred to the Commonwealth Bank Account by the Global Capital Investors were then transferred to bank accounts that were in the name of Global Consulting, which were under the control of Chomica.

[22] The majority of the funds deposited into the Global Consulting Bank Accounts were withdrawn as cash. Jan Chomica carried out transactions in the Global Consulting Bank Accounts at Chomica's direction.

B. The Crown Capital Scheme

[23] From approximately March 2010 to November 2010, Chomica and the Chomica Associates solicited shareholders residing primarily in Ontario (the "**Crown Investors**") for the purpose of inducing them to make various payments as part of a fraudulent advance-fee scheme (the "**Crown Capital Scheme**"). When making solicitations to investors, Chomica and the Chomica Associates used aliases and purported to act on behalf of Crown Capital and a sole proprietorship named Kuti Consulting.

[24] The Crown Capital Scheme was operated from the Bloor Street Address. Chomica and the Chomica Associates made the solicitations to the Crown Investors in connection with the Crown Capital Scheme from the Bloor Street Address.

[25] The Crown Capital Scheme involved an artificial offer to purchase shares owned by the Crown Investors at inflated prices. As part of the Crown Capital Scheme, the Crown Investors

were informed by Chomica and the Chomica Associates that they had to make certain payments in order to complete the transactions. The initial payments were purportedly to cover commissions. However, once the Crown Investors made these payments, Chomica and the Chomica Associates advised the Crown Investors that the intended purchaser of their shares had encountered financial difficulties and instead wished to exchange Microsoft Shares for the shares held by the Crown Investors.

[26] The Crown Investors were then directed to make additional payments that were purportedly necessary to cover the difference in value between the Crown Investors' shares and the Microsoft Shares.

[27] The shares held by the Crown Investors were virtually worthless and illiquid at the time of the solicitations; however, Chomica and the Chomica Associates told the Crown Investors that Crown Capital had valued them at prices ranging from USD $5 to $7.50, whereas the Microsoft Shares were valued at or around USD $23.

[28] The Crown Investors were instructed by Chomica and the Chomica Associates to send the funds representing the advance fees to bank accounts in Toronto in the name of Crown Capital and Kuti Consulting (the "**Crown Bank Accounts**").

[29] The Crown Bank Accounts were opened by Peter Siklos ("**Siklos**") using an Ontario driver's license bearing the name "Peter Kuti" (the "**Kuti License**"). The Kuti License was obtained using false identification. "Peter Kuti" was the sole signatory on the Crown Bank Accounts.

[30] Fifty-nine Crown Investors paid advance fees totaling USD $145,346.50 and CAD $109,426.60 (net of deposits that were rejected and returned to the complainants) as a result of the solicitations outlined above.

[31] The majority of the funds deposited into the Crown Bank Accounts by the Crown Investors were withdrawn as cash and/or used to purchase gold.

[32] As discussed in paragraph 8, above, Chomica pled guilty to three counts of fraud, which involved the Global Capital Scheme and the Crown Capital Scheme.

C. The Respondents

[33] Global Capital is a sole proprietorship registered in Ontario on March 15, 2010 to "Jalil Khan".

[34] Crown Capital is an Ontario corporation that was incorporated on June 11, 1992. Chomica was a director and officer of Crown Capital from the date of its incorporation until April 30, 2010 when an individual named "Peter Kuti" became the sole officer and director of Crown Capital.

[35] Neither Global Capital nor Crown Capital have ever been registered in any capacity with the Commission.

[36] The Respondents both used the address of a virtual office as their official address and neither currently has a valid address for service.

PART 3 – PRELIMINARY ISSUES

A. Failure of the Respondents to Participate

[37] Subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") requires that the parties to a Commission proceeding be given reasonable notice of the hearing. Subsection 7(1) of the SPPA, permits a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. Similarly, subsection 7(2) of the SPPA permits a tribunal to proceed where notice of a written hearing has been given and the party fails to participate. Further, Rule 7.1 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "***Rules of Procedure***") provides:

> **7.1 Failure to Participate** – If a Notice of Hearing has been served on any party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[38] Staff filed several Affidavits of Service with the Commission to demonstrate service of materials on the Respondents, including the Affidavit of Nancy Poyhonen sworn April 15, 2013, demonstrating service of the Notice of Hearing and the Statement of Allegations. After the Commission decided that it was evident that service on Crown Capital and Global Capital was not possible, on June 24, 2013, the Commission ordered that future service on the Respondents was waived, pursuant to Rule 1.4 and Rule 1.5.3(3) of the *Rules of Procedure*.

[39] Neither of the Respondents filed evidence or made submissions for the written hearing. I note that the Notice of Hearing dated March 27, 2013, the Statement of Allegations dated March 27, 2013, the Amended Statement of Allegations dated September 13, 2013 and the Commission's Order dated September 4, 2013, setting the schedule for the written hearing, are posted on the Commission's website. I am satisfied that I may proceed in the absence of the Respondents in accordance with section 7 of the SPPA and Rule 7.1 of the *Rules of Procedure*.

PART 4 – EVIDENCE AND ISSUES

[40] Staff filed its written submissions dated October 9, 2013 ("**Staff's Written Submissions**"), along with the Affidavit of Anthony Long sworn October 8, 2013 (the "**Long Affidavit**") and the Affidavit of Tia Faerber sworn October 9, 2013. Anthony Long is a senior forensic accountant in the Enforcement Branch of the Commission, and, since the summer of 2011, he was the primary investigator in this matter. Staff relies on the Long Affidavit as its complete factual and evidentiary record for its submissions in this hearing.

[41] As previously discussed above, the Respondents did not make any submissions or file any evidence for this written hearing.

[42] Staff's allegations raise the following issues:

(a) Did the Respondents engage in or hold themselves as engaging in the business of trading in securities, without registration, in circumstances where no registration exemption under Ontario securities law was available, contrary to subsection 25(1) of the Act and contrary to the public interest? and

(b) Did the Respondents, directly or indirectly, engage in or participate in any act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest?

PART 5 – ANALYSIS

[43] Staff must prove its allegations on the balance of probabilities (*Re Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 at paragraphs 26 to 28, applying *F. H. v. McDougall*, 2008 SCC 53 ("***McDougall***")). This is the civil standard of proof. I must scrutinize the evidence with care and be satisfied whether it is more likely than not that the allegations occurred (*McDougall*, *supra* at paragraph 49).

A. Section 25 of the Act

[44] The current subsection 25(1) of the Act came into force on September 28, 2009. The section provides that a person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company is registered with the Commission:

> Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[45] The definition of "security" in section 1(1) of the Act is broad; however, for the purposes of this matter it is sufficient to note that part (e) of the definition expressly notes that "a share" is a security for the purposes of the Act.

[46] The definition of "trade" or "trading" in section 1(1) of the Act is also broad and includes:

> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security,
>
> . . .

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing;

[47] From my review of Staff's submissions, there was no record that Global Capital or Crown Capital were ever registered in any capacity with the Commission, nor was there any evidence that any registration exemptions under Ontario securities law were available to them. Chomica and the Chomica associates solicited investors, on behalf of the Respondents, to send funds as part of transactions involving the sales and exchanges of shares.

[48] I am satisfied that Global Capital and Crown Capital, respectively, engaged in or hold themselves as engaging in the business of trading in securities, without registration, in circumstances where no registration exemption under Ontario securities law was available, contrary to subsection 25(1) of the Act and contrary to the public interest.

B. Section 126.1(b) of the Act

1. The Law

[49] Section 126.1 of the Act prohibits conduct relating to Securities that a person or company knows or reasonably ought to know would perpetrate a fraud:

> A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[50] As the term "fraud" is not defined in the Act, the Commission has looked to the common law consideration of the fraud provision of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46, subsection 380, for its meaning. A similar approach has been applied to the fraud provisions of other Securities legislation; see, for example, *Alberta (Securities Commission) v. Brost*, 2008 ABCA 326 ("***Brost***") at para. 42; *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 at para. 27, leave to appeal dismissed, 2004 SCCA No 81; *Lehman Brothers & Associates Corp.* (2011), 34 O.S.C.B. 13840 at paras. 96-98; *Re Nest Acquisitions and Mergers* (2013), 36 O.S.C.B. 4628 at paras. 52-63.

[51] The *actus reus* elements of the offence of fraud were set out by the Supreme Court of Canada in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***"). Citing *R. v. Olan*, [1978] 2 S.C.R. 1175, Justice McLachlin (as she then was) noted that the prohibited act will be established upon proof of two essential elements: a dishonest act and deprivation (*Théroux*, *supra* at para. 16).

[52] The first element, the dishonest act, is established by proof of deceit, falsehood, or "other fraudulent means". The Supreme Court of Canada in *Théroux* held that the existence of "other

fraudulent means" will be determined by "what reasonable people consider to be dishonest dealing" (*supra* at para. 16).

[53] The second element, deprivation, is established by proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim, caused by the dishonest act (*Théroux*, *supra* at paras. 16 and 27).

[54] The requisite mental elements of proof for the offence of fraud (the *mens rea*) were also set out by the Supreme Court of Canada in *Théroux*. The Court held that the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and

2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

(*Théroux*, *supra* at para. 27)

[55] The Court reiterated the observation that subjective intention may be inferred from the acts themselves and, further, that it is not necessary for the Crown to show precisely what is in the mind of the accused at the time of the fraudulent acts:

> … The accused must have subjective awareness, at the very least, that his or her conduct will put the property or economic expectations of others at risk. As noted above, this does not mean that the Crown must provide the trier of fact with a mental snapshot proving exactly what was in the accused's mind at the moment the dishonest act was committed. In certain cases, the inference of subjective knowledge of the risk may be drawn from the facts as the accused believed them to be… [W]here the accused tells a lie knowing others will act on it and thereby puts their property at risk, the inference of subjective knowledge that the property of another would be put at risk is clear.
>
> (*Théroux*, *supra* at paras. 23 and 29)

[56] The Alberta Court of Appeal in *Brost*, at paragraphs 42 and 43, confirmed that it is appropriate to draw an inference as to the requisite subjective mental element from the totality of the evidence.

[57] The Commission has held that for a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.1(b) of the Act (*Re Al-Tar* (2010), 33 O.S.C.B. 5535 at para. 221; *Re Ciccone* (2013), 36 O.S.C.B. 6487 at para. 74).

2. Findings

[58] Based on my review of Staff's submissions and the evidence contained in the Long Affidavit, I am satisfied that the facts of this case establish both a dishonest act and deprivation.

The purported exchange of the Global Capital Investors' shares never occurred. In terms of the Crown Capital Scheme, the purported purchase and/or exchange of the Crown Investors' shares also never occurred. Both the Global Capital Investors and the Crown Investors never received any Microsoft Shares and they suffered a complete loss of the amounts paid towards the advance fees.

[59] There was also no evidence that the Respondents engaged in any legitimate business activities. In my view, Global Capital and the Crown Capital were solely used to perpetrate a fraud and were part of an artifice designed solely to extract money from investors.

[60] As discussed above at paragraph 8, Chomica entered into a guilty plea with the Ontario Superior Court of Justice. In his Statement of Facts for his guilty plea, he admitted to being the directing mind of the Global Capital Scheme and of the Crown Capital Scheme. In the Guilty Plea, Chomica plead guilty to three counts of fraud, contrary to sections 122 and 126.1(b) of the Act. In the Section 127 Statement of Facts, Chomica agreed that his convictions for fraud arose from "transactions, business and a course of conduct relating to securities and constituted non-compliance with Ontario securities law".

[61] I find that Chomica was the directing mind of the Respondents from March 2010 to November 2010. I also find that the necessary mental element of fraud was present in that the directing mind, Chomica, knew or ought reasonably to have known that the two corporations perpetrated a fraud.

[62] I am satisfied that, on a balance of probabilities, Staff has proven the *actus reus* and *mens rea* of fraud. Consequently, I find that the Respondents engaged in or participated in an act, practice or course of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on the Global Capital Investors and the Crown Investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest.

PART 6 – SANCTIONS

[63] The Commission's mandate, set out in section 1.1 of the Act, is: (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets. In pursuing the purposes of the Act, the Commission must have regard to the principles described in subsection 2.1 of the Act, namely:

(a) requirements for timely, accurate and efficient disclosure of information;

(b) restrictions on fraudulent and unfair market practices and procedures; and

(c) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[64] Subsection 127(1) of the Act provides that the Commission may make certain orders in the public interest. In making an order in the public interest under section 127 of the Act, the Commission's jurisdiction should be exercised in a protective and preventative manner. As expressed in *Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 at 1610-1611:

> 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.

[65] This view was endorsed by the Supreme Court of Canada in the following terms:

> … 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 the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at para. 43)

[66] In determining appropriate sanctions, the Commission has identified a number of factors to be considered when determining the appropriate sanctions to be imposed. They include:

(a) the seriousness of the allegations proved;

(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 a recognition of the seriousness of the improprieties;

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

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

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

(h) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746; *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 58; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at 1134-1136)

[67] The Supreme Court of Canada has held that it is appropriate for the Commission to consider general deterrence in crafting sanctions which are designed to preserve the public interest. The Court stated that the "weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission" (*Re Cartaway Corp.*, [2004] 1 S.C.R. 672 at paras. 60 and 64).

A. Staff's Submissions on Sanctions

[68] Staff submit that at the time Staff obtained the records linked to the Crown Bank Accounts, the funds had almost all been disbursed. However, Staff identified that one of the accounts held at Duca Financial Services Credit Union ("**Duca**") had a balance of $23,346 on November 9, 2010. In his affidavit, Long submits that this account received a total of $41,491 from nine individuals, all of whom were confirmed as victims of the Crown Capital Scheme. Long also submits that the only other deposit to this account was from an external source of $102, deposited by an individual named "Peter Kuti" (Long Affidavit, *supra* at para. 76).

[69] On November 9, 2010, the Commission issued a direction pursuant to subsection 126(1) of the Act, requiring that Duca retain all funds in the bank account of Crown Capital that was held by Duca (the "**Crown Duca Account**"). The Freeze Direction was extended by the Ontario Superior Court of Justice on November 16, 2010, April 28 and August 31, 2011, February 28, 2012 and, most recently, on August 27, 2012. On August 27, 2012, the Ontario Court of Justice ordered that the Freeze Direction be continued until October 31, 2013 or until such further order of the court.

[70] Staff submits the following with respect to sanctions:

(a) it is appropriate to permanently ban the Respondents from any participation in the Ontario capital markets;

(b) an order that Crown Capital disgorge to the Commission USD $144,346.50 and CAD $109,426.60 obtained as a result of its non-compliance with Ontario securities law; and

(c) Staff requests that the Commission make an express finding that the funds in the Crown Duca Account were obtained in breach of the Act and to permit Staff to take measures to have the funds in the account forfeited.

(Staff's Written Submissions, *supra* at paras. 134, 136, 137)

[71] Staff submits that it is unaware of any additional assets in Ontario in the names of either Respondent and, therefore, Staff does not seek any other financial sanctions, apart from those listed above at paragraph 70, against the Respondents.

B. Analysis

[72] Having regard to the factors that are summarized in paragraph 66 above, I consider the following factors to be of particular relevance:

- *Seriousness of the allegations & size of profit (or loss avoided)*: I agree with Staff's submission that the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets. The Respondents' misconduct breached sections 25 and 126.1(b) of the Act, and the latter of which constituted a serious finding of fraud. The Global Capital Scheme raised a net total of USD $160,470 from seven investors, while the Crown Capital

Scheme raised a total of USD $145,346.50 and CAD $109,426.60 from 59 investors. Investors subject to both of these schemes suffered a complete loss of their investment, and most of the funds were withdrawn as cash and/or used to purchase gold.

- *Experience & level of activity in the marketplace*: The level of the Respondents' activities in the marketplace and the amounts raised by the Respondents were significant. In a span of nine months, the Respondents were able to obtain a substantial sum of money from investors through two fraudulent schemes.

- *Specific and general deterrence*: The evidence has shown that the Respondents not only flagrantly disregarded the requirements of Ontario securities law, but also acted contrary to the public interest. Given the seriousness of their conduct, significant sanctions must be imposed to not only reflect the harm done to investors, but also to send a message to the Respondents and to like-minded individuals that involvement in these types of illegal and fraudulent schemes will result in severe sanctions.

[73] Taking into account the sanctioning factors listed in paragraph 66, above, and the circumstances of the Respondents, I find that it is in the public interest to permanently restrain the Respondents from any future market participation. I conclude that it is in the public interest to impose permanent trading, acquisition and exemption bans against the Respondents.

[74] Pursuant to paragraph 10 of subsection 127(1) of the Act, the Commission may order a person or company who has not complied with Ontario securities law to disgorge to the Commission "any amounts obtained as a result of the non-compliance" with Ontario securities law. The Commission has previously held that "all money illegally obtained from investors can be ordered to be disgorged, not just the 'profit' made as a result of the activity." (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight***") at para. 49).

[75] In *Limelight*, the Commission held that it should consider the following factors when contemplating a disgorgement order, in addition to the general factors listed at paragraph 66 above:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight*, *supra* at para. 52)

[76] Based on Staff's written submissions and filed evidence, I find that Staff has proven the onus, on a balance of probabilities, that the amounts of USD $145,346.50 and CAD $109,426.60 were obtained by Crown Capital as a result of its non-compliance with the Act (*Limelight*, *supra* at para. 53). I also find that the funds in the Crown Duca Account were obtained by Crown Capital as a result of its non-compliance with the Act. I find that it is in the public interest that Crown Capital be ordered to disgorge the entire amounts it obtained as a result of its non-compliance with the Act.

[77] I order that any amounts paid to the Commission in satisfaction of the disgorgement order made against Crown Capital be designated for allocation or for use by the Commission, pursuant to subsection 3.4(2)(b) of the Act.

PART 7 – CONCLUSION

[78] For the reasons stated above I find that:

(a) Global Capital engaged in or held itself as engaging in the business of trading in securities, without registration, in circumstances where no registration exemption under Ontario securities law was available, contrary to subsection 25(1) of the Act and contrary to the public interest;

(b) Crown Capital engaged in or held itself as engaging in the business of trading in securities, without registration, in circumstances where no registration exemption under Ontario securities law was available, contrary to subsection 25(1) of the Act and contrary to the public interest;

(c) Global Capital, directly or indirectly, engaged in or participated in an act, practice or course of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest; and

(d) Crown Capital, directly or indirectly, engaged in or participated in an act, practice or course of conduct relating to securities that it knew or reasonably ought to have known perpetrated a fraud on investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest.

[79] For the reasons set out above, I find that it is necessary to protect investors in Ontario and the integrity of Ontario's capital markets, and that it is in the public interest, to make the orders set out below.

[80] I will issue a separate order giving effect to my decision on sanctions as follows:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, that Crown Capital and Global Capital shall permanently cease trading in any securities;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that Crown Capital and Global Capital shall permanently cease the acquisition of any securities;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law shall not apply to Crown Capital and Global Capital permanently; and

(d) pursuant to clause 10 of subsection 127(1) of the Act, that Crown Capital shall disgorge to the Commission the amounts of USD $145,346.50 and CAD $109,426.60, which were obtained as a result of its non-compliance with Ontario securities law, to be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

Dated at Toronto this 26th day of November, 2013.

"Alan Lenczner"

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Alan J. Lenczner, Q.C.