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
IRWIN BOOCK, STANTON DEFREITAS, JASON WONG,
SAUDIA ALLIE, ALENA DUBINSKY, ALEX KHODJAIANTS
SELECT AMERICAN TRANSFER CO.,
LEASESMART, INC., ADVANCED GROWING SYSTEMS, INC.,
INTERNATIONAL ENERGY LTD., NUTRIONE CORPORATION,
POCKETOP CORPORATION, ASIA TELECOM LTD.,
PHARM CONTROL LTD., CAMBRIDGE RESOURCES CORPORATION,
COMPUSHARE TRANSFER CORPORATION,
FEDERATED PURCHASER, INC., TCC INDUSTRIES, INC., FIRST NATIONAL
ENTERTAINMENT CORPORATION, WGI HOLDINGS, INC.
and ENERBRITE TECHNOLOGIES GROUP**

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

Hearing: November 12, 2013

Decision: January 14, 2014

Panel: Vern Krishna, Q.C. - Commissioner and Chair of the Panel

Appearances: Donna Campbell - For Staff of the Commission

- No one appeared for the respondents, Alexander Khodjaiants and Alena Dubinsky

TABLE OF CONTENTS

I. BACKGROUND **1**
II. THE MERITS HEARING AND DECISION **1**
III. PRELIMINARY ISSUES **3**
Failure of the Individual Respondents to Attend 3
1. Respondents' Participation 3
2. Staff's Submissions 3
3. The Law 3
4. Authority to Proceed in Absence of the Individual Respondents 4
IV. EVIDENCE **5**
Evidence Presented 5
V. THE U.S. SECURITIES AND EXCHANGE COMMISSION PROCEEDING **5**
Staff's Submissions 5
VI. SUBMISSIONS OF THE PARTIES ON SANCTIONS AND COSTS **6**
A. Staff's Position 6
1. Specific Sanctions and Costs Requested 6
2. Staff's Submissions on Sanctions and Costs 7
(a) Administrative Penalty 7
(i) Permanent Cease Trade Orders against Corporate Respondents 7
(b) Disgorgement 8
(c) Costs 8
B. The Respondents' Position 9
1. Alexander Khodjaiants 9
2. Alena Dubinsky 9
VII. SANCTIONS **10**
A. Factors Applicable to the Individual Respondents 11
1. Seriousness of the Misconduct and Breaches of the Act 11
2. The Individual Respondents did not Express Remorse 12
3. Size of Profit Gained or Loss Avoided from Illegal Conduct 13
4. Prohibitions on Participation in the Capital markets and the Deterrence of Like Minded People 13
5. Mitigating Factors 14
B. Disgorgement 14
C. Administrative Penalties 15
VIII. COSTS **16**
IX. CONCLUSION **16**

REASONS AND DECISION ON SANCTIONS AND COSTS

I. BACKGROUND

[1] This was a 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 Alexander Khodjaiants ("**Khodjaiants**") and Alena Dubinsky ("**Dubinsky**") (collectively, the "**Individual Respondents**").

[2] The hearing on the merits commenced by a Statement of Allegations and Notice of Hearing, dated October 16, 2008. Subsequently, on January 4, 2012, an Amended Statement of Allegations was filed by Enforcement Staff of the Commission ("**Staff**") and on January 5, 2012, an Amended Notice of Hearing was issued by the Commission. The hearing on the merits began on August 7, 2012, continued on August 8, 9, 10, 13, 2012 and on December 5, 2012 for closing submissions (the "**Merits Hearing"**).

[3] The reasons and decisions for the proceeding relating to Khodjaiants and Dubinsky were delivered on September 13, 2013 (the "**Merits Decision**") (*Re Irwin Boock et. al.* (2013), 36 O.S.C.B. 9361). By order dated on the same day, (the "**September 13, 2013 Order**") the date for the hearing with respect to sanctions and costs was set for November 12, 2013.

[4] On November 12, 2013, a hearing was held to consider submissions from Staff and the Individual Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). Staff appeared before the Commission and made submissions. The Individual Respondents did not appear in person or by counsel at the Sanctions and Costs Hearing.

[5] These are my reasons and decision as to the appropriate sanctions and costs to be ordered against the Individual Respondents.

II. THE MERITS HEARING AND DECISION

[6] At the Merits Hearing, I considered whether each of Khodjaiants and Dubinsky breached the sections 53, 126(a) and 126(b) of the Act and/or acted contrary to the public interest. In particular, whether the Individual Respondents:

- distributed securities without having filed a prospectus, contrary to subsection 53(1) of the Act and contrary to the public interest;

- engaged in conduct that resulted in or contributed to a misleading appearance of trading activity in, or artificial price for, a security, contrary to subsection 126.1(a) of the Act and contrary to the public interest; and

- engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act and contrary to the public interest.

[7] The evidence presented at the Merits Hearing showed that the Individual Respondents participated in a corporate hijacking scheme involving reincorporated entities with a new corporate names, new Committee on Uniform Security Identification Procedures (CUSIP) numbers, and a new trading symbols, which issued shares through Select American Transfer Co. ("**Select American**"), a transfer agent and an entity controlled by Irwin Boock ("**Boock**") and his associates, including Stanton DeFreitas ("**DeFreitas**"), Jason Wong ("**Wong"**) and Roufat Iskenderov ("**Iskenderov"**). The new shares were issued to new shareholders, following a consolidation of shares and an increase in authorized share capital. The reincorporated entities were closely held by Boock and his associates, which resulted in the discretionary issuance of shares to parties related to him for the purpose of trading in those shares. Those parties included Iskenderov, Elena Lazareva, Natalya Lazareva, Vicky Zaltsman, Tale Aliev, Rashad Ahmadov and Maksud Guluzade (the "**Traders**") as well as the Individual Respondents. (Merits Decision, *supra,* at paras. 27-44)

[8] Each of the Traders, including Dubinsky opened a Royal Bank of Canada ("**RBC**") Direct Investing Account. Dubinsky admitted in her compelled testimony of October 25, 2007 that she opened a RBC Direct Investing Account on June 17, 2006 (the "**RBC Account**") and a HSBC Bank Canada trading account on February 5, 2007 (the "**HSBC Account**") (together, the "**Trading Accounts**"). Dubinsky stated that the Trading Accounts were opened at the request of Khodjaiants so that he could trade in securities and that she knew nothing about the shares deposited into the Trading Accounts. (Merits Decision, *supra*, at para. 45)

[9] From July, 2006 through to December 2006, the Individual Respondents deposited shares of certain issuers, including Leasemart, Inc., Advanced Growing Systems, Inc., The Bighub.Com, Inc., International Energy Ltd., NutriOne Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd. and Universal Seismic Associates Inc. (collectively, the "**Issuer Respondents**") in the RBC Account. The Traders deposited shares of the same companies into their respective RBC accounts contemporaneously with the Individual Respondents. Subsequently, RBC terminated its relationship with Dubinsky and the Traders in March, 2007, and closed the RBC accounts. (Merits Decision, *supra*, at paras. 45, 60-63, 73)

[10] I found that the evidence proved on a balance of probabilities that the Individual Respondents traded in or acted in furtherance of trades in Asia Telecom or Pharm Control securities, which constitute distributions of those securities, in contravention of subsection 53(1) of the Act. I also found that there was cogent evidence that established on a balance of probabilities that the Individual Respondents engaged in conduct which they knew or ought to have known perpetrated a fraud within the meaning of subsection 126.1(b) of the Act. The conduct of the Individual Respondents, in these respects, was contrary to the public interest. (Merits Decision, *supra*, at paras. 99, 102, 115, and 122)

[11] I did not find, however, that the Individual Respondents engaged in market manipulation or participated in a course of conduct that they knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in securities of the Issuer Respondents, contrary to subsection 126.1(a) of the Act. I was not satisfied that Staff discharged its burden to prove, on a balance of probabilities, that the Individual Respondents engaged in the conduct alleged in breach of subsection 126.1(a) of the Act. (Merits Decision, *supra*, at para. 106)

III. PRELIMINARY ISSUES

Failure of the Individual Respondents to Attend

1. Respondents' Participation

[12] Staff served and filed written submissions on sanctions and costs by 4:00 p.m. on October 7, 2013 as required by the September 13, 2013 Order. The Individual Respondents filed responding written submissions on sanctions and costs by 4:00 p.m. on October 28, 2013, through their counsel James Camp of Wardle Daley Bernstein Bieber LLP, who was obtained through the OSC Litigation Assistance Program ("**LAP Counsel**").

[13] By email dated November 4, 2013 (the "**November 4, 2013 Email**"), Khodjaiants advised the Commission that he had requested that LAP Counsel rescind submissions made on behalf of the Individual Respondents and that LAP Counsel was no longer required to represent them. Khodjaiants advised that Panel is to ignore the submissions presented by LAP Counsel and that he would personally present oral submissions on November 12, 2013 on behalf of himself and Dubinsky. The November 4, 2013 Email also included new written submissions from Dubinsky. On November 5, 2013, Khodjaiants submitted a notice of intention to act in person (the "**Notice to Act in Person**").

[14] Despite the Notice to Act in Person, Khodjaiants and Dubinsky did not appear at the Sanctions and Costs Hearing.

2. Staff's Submissions

[15] Staff submits that there was, in the November 4, 2013 Email, a stated intention by Khodjaiants, to appear at the Sanctions and Costs Hearing. Staff also submits that the registrar distributed an email to all parties to this matter on November 11, 2013 advising that the start time for Sanctions and Costs Hearing was at ten-thirty in the morning on November 12, 2013. The email was copied to Khodjaiants, Dubinsky and Staff. Accordingly, Khodjaiants and Dubinsky were aware of this matter, the date, and the start time of ten-thirty, and elected not appear.

[16] Staff advised that there has been no contact with the Individual Respondents since the November 4, 2013 Email. Staff submits that there has been no telephone call, no e-mail, or faxes sent to the attention of Ms. Campbell at the respective fax machines of Staff and there was nothing delivered to the mail room of the offices of the Commission.

[17] It is Staff's position that the Sanctions and Costs Hearing should proceed, after having waited an hour and ten minutes for the Individual Respondents to appear.

3. The Law

[18] Subsection 6(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") requires that the tribunal provide "reasonable notice of the hearing" to the parties to a proceeding.

[19] Subsection 7(1) of the SPPA, authorizes a tribunal to proceed in the absence of a party when that party has been given notice of the hearing. The provision states:

> **Effect of non-attendance at hearing after due notice**
>
> **7**(1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[20] Further, Rule 7.1 of the Commission's Rules of Procedure (2012), 35 O.S.C.B. 10071 ("*Rules of Procedure*") replicates the language of subsection 7(1) of the SPPA.

4. Authority to Proceed in Absence of the Individual Respondents

[21] It is the responsibility of Staff to demonstrate that all reasonable efforts were made to serve the Individual Respondents themselves. Staff has the responsibility to prove that they served the Individual Respondents with documentation to inform them of the hearing dates and that all reasonable steps were taken to do so.

[22] I am satisfied that proper notice of the Sanctions and Costs Hearing has been given to both Khodjaiants and Dubinsky as evidenced by the email communications to the Individual Respondents. I am also satisfied that the Individual Respondents were informed of the hearing date in light of the fact that written submissions were made by the Individual Respondents through, LAP Counsel, and subsequently written submissions were made, by Dubinsky, through the November 4, 2013 Email.

[23] I accepted that, in accordance with subsection 7(1) of the SPPA and the Commission's *Rules of Procedure,* the Individual Respondents are not entitled to any further notice and that the hearing may proceed in their absence. I have, as a matter of considerable courtesy to the Individual Respondents, delayed the commencement of the Sanctions and Costs Hearing for one hour and ten minutes in the expectation that Khodjaiants might have given me some reason for not appearing at, 10:30a.m., the time the Sanctions and Costs Hearing was scheduled to commence. The Individual Respondents have chosen not to get in touch with the Commission and it is entirely appropriate, in the circumstances, to proceed with the Sanctions and Costs Hearing since all parties have been notified and documents and filings have been exchanged.

[24] I also note that the Merits Decision and the September 13, 2013 Order, which set out the date on which the Sanctions and Costs Hearing was scheduled to take place were posted on the Commission's website. The September 13, 2013 Order also indicated that upon failure of any party to attend at the time and place of the Sanctions and Costs Hearing, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding. Accordingly, pursuant to section 7 of the SPPA and Rule 7.1 of the Commission's *Rules of Procedure*, I was authorized to proceed with the Sanctions and Costs Hearing without further notice to Khodjaiants or Dubinsky.

IV. EVIDENCE

[25] It is well established that in imposing sanctions, the Commission considers only the findings in the merits decision, any agreed statement of facts, and evidence and submissions presented at the merits hearing and sanctions hearing. (*Re First Global Ventures, S.A. et al* (2008), 31 O.S.C.B. 10869 at para. 65)

[26] The sanctions for the Individual Respondents are based on the findings in the Merits Decision and the evidence presented at the Merits Hearing and the Sanctions and Costs Hearing.

Evidence Presented

[27] Staff submitted one document, the Bill of Costs of Staff of the Ontario Securities Commission, marked as exhibit one (the "**Bill of Costs**"). Staff did not call any witnesses.

V. THE U.S. SECURITIES AND EXCHANGE COMMISSION PROCEEDING

Staff's Submissions

[28] At the Sanctions and Costs Hearing, Staff advised that the matter against Boock, Defreitas and Wong in front of the U.S. Securities and Exchange Commission (the "**SEC**") has been completed. Staff submitted that the defendants to the SEC matter are Boock, DeFreitas, Nicolette Loisel ("**Loisel**"), Roger Shoss ("**Shoss**") and Wong (collectively, the "**Defendants**"). Staff submitted that the United States District Court Southern District of New York (the "**NY Court**") examined evidence that was led by the SEC and ordered significant monetary sanctions against Boock, DeFreitas and Wong (the "**SEC Sanctions Order**"). Staff advised that Loisel and Shoss are in Texas. They assisted on certain transactions and faced criminal proceedings. Staff submits that the criminal trial of Loisel and Shoss was completed and that they are facing severe penalties that include incarceration.

[29] The SEC Sanctions Order was reflective and proportionate to the respective roles of each of Boock, DeFreitas and Wong, in the fraudulent scheme in which Khodjaiants participated. Boock, DeFreitas and Wong were jointly and severally liable to disgorge the amount of $6,140,172 and prejudgment interest in the amount of $2,144,462.

[30] Staff also advised that the SEC requested, and the NY Court ordered that Boock pay tier 3 penalties, the highest on its scale, at the statutory maximum of $130,000 for each of the 23 issuers that were hijacked during the Toronto phase of the fraud. [NY Court Decision at pg. 16] There are three tiers of civil penalties. Tier 3 penalties are levied when fraud is involved. The total civil penalty ordered against Boock was $2,990,000. The SEC requested, and the NY Court ordered, tier 3 penalties for each of Wong and Defreitas of $1,560,000 and $130,000 respectively.

VI. SUBMISSIONS OF THE PARTIES ON SANCTIONS AND COSTS

A. Staff's Position

1. Specific Sanctions and Costs Requested

[31] Staff requests the following sanctions for the Individual Respondents and submit that these sanctions are appropriate in view of the gravity of their misconduct:

(a) an order pursuant to clause 2 of section 127(1) of the Act that trading in any securities by or of each of Khodjaiants and Dubinsky cease for a period of 15 years;

(b) an order pursuant to clause 2.1 of section 127(1) of the Act that the acquisition of any securities by each of Khodjaiants and Dubinsky is prohibited for a period of 15 years;

(c) an order pursuant to clause 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to each of Khodjaiants and Dubinsky for a period of 15 years;

(d) an order pursuant to clause 6 of subsection 127(1) of the Act reprimanding each of Khodjaiants and Dubinsky;

(e) an order pursuant to clause 9 of section 127(1) of the Act requiring Khodjaiants to pay an administrative penalty of $100,000, and Dubinsky to pay an administrative penalty of $75,000, which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(f) an order pursuant to clause 10 of subsection 127(1) of the Act that Khodjaiants and Dubinsky disgorge to the Commission the sum of $46,218.91 CAD in HSBC Cash Account 6Y-D17J-A and the sum of $1,016,518.79 USD in HSBC Cash Account 6Y-D 17J-B, for which they will be jointly and severally liable; which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) an order pursuant to clause 10 of section 127.1 of the Act that Khodjaiants and Dubinsky disgorge to the Commission the sum of $12,267.66 USD, for which they will be jointly and severally liable, which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act; and

(h) an order pursuant to section 127.1 of the Act requiring each of Khodjaiants and Dubinsky to pay $263,708.53 on account of the costs incurred in this matter, for which they shall be jointly and severally liable.

[32] In the event that any of the payments set out in paragraphs (e), (f) and (g) are not made in full, the provisions of paragraphs (a), (b) and (c) shall continue in force until such payments are made in full without any limitation as to time period.

2. Staff's Submissions on Sanctions and Costs

(a) Administrative Penalty

[33] Staff requests an order pursuant to clause 9 of section 127(1) of the Act requiring Khodjaiants to pay an administrative penalty of $100,000, and Dubinsky to pay an administrative penalty of $75,000, which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

[34] Staff submits that an administrative penalty of $100,000 is appropriate for Khodjaiants considering the magnitude of the harm committed by the Individual Respondents and the role they each played in the fraudulent scheme, and is consistent with the findings of the Commission in previous decisions relied on by Staff. Staff relies on *Limelight Entertainment Inc*., (Re) (2008), 31 O.S.C.B. 1727; *Re Rowan* (2010) 33 O.S.C.B. 91; *Re Maple Leaf Investment Fund Corp.* (2012) 35 O.S.C.B. 3080; *Re Global Partners* (2010), 33 O.S.C.B. 7783 and *Re Sulja Bros. Building Supplies, Ltd. et al.* (2011) 34 O.S.C.B. 7515.

[35] Staff submits that Khodjaiants has made no admissions. Despite the evidence against him, Khodjaiants continues to take the position he was just an innocent investor and that it could be a coincidence that the brokerage records in evidence shows that share certificates of the Issuer Respondents were deposited by Dubinsky and traded by him in concert with the Traders. (Merits Decision, *supra,* at paras. 53 and 115)

[36] Staff also submits that Dubinsky was a willing if passive participant. While she played a lesser role than that of Khodjaiants, Dubinsky was instrumental in setting up the Trading Accounts through which Khodjaiants sold the shares of the hijacked companies. (Merits Decision, *supra,* at paras. 45-47,52, and 119-120.)

(i) Permanent Cease Trade Orders against Corporate Respondents

[37] On May 18, 2007, the Commission issued an order that trading the securities the Issuer Respondents and Cambridge Resources Corporation ("**Cambridge Resources**") shall cease and that any exemptions contained in Ontario securities law do not apply to them (the "**May 18, 2007 TCTO**").

[38] On May 22, 2007, the Commission issued an order that trading the securities of Select American shall cease and that any exemptions contained in Ontario securities law do not apply to Select American (the "**May 22, 2007 TCTO**" and together with the May 18,2007 TCTO, the "**Temporary Cease Trade Orders**").

[39] The Temporary Cease Trade Orders were modified and extended from time to time by further orders of the Commission. On November 24, 2008, the Commission issued an order extending all Temporary Cease Trade Orders until the conclusion of the proceeding or until further order of the Commission. Staff now requests that I order a permanent cease trade against

Cambridge Resources, Select American and the Issuer Respondents, except NutriOne (Cambridge Resources, Select American and the Issuer Respondents, except NutriOne Corporation, collectively, the "**Corporate Respondents**").

[40] NutriOne Corporation entered into a settlement agreement with the Staff of the Commission on October 14, 2009 (the "**NutriOne Settlement Agreement**") whereby NutriOne and Staff agreed that all trading in, and all acquisitions of, the securities of NutriOne, whether direct or indirect, would cease permanently, and any exemptions contained in the Act would not apply to NutriOne permanently. By order dated October 21, 2009, the Commission approved the NutriOne Settlement Agreement. (*Re Irwin Boock et al.* (2009), 32 O.S.C.B. 9028)

[41] There are no allegations with respect to the Corporate Respondents. At the Merits Hearing, Staff does not seek findings against the Corporate Respondents and I did not make further analysis or findings with respect to the Corporate Respondents in the Merits Decision. However, there is the matter of the outstanding Temporary Cease Trade Orders, issued against the Corporate Respondents which I must address. (Merits Decision, *supra*, at para. 4)

(b) Disgorgement

[42] Staff is requesting an order pursuant to clause 10 of section 127(1) of the Act that Khodjaiants and Dubinsky disgorge to the Commission:

(a) the sum of $46,218.91 CAD in HSBC Cash Account 6Y-D17J-A and the sum of $1,016,518.79 USD in HSBC Cash Account 6Y-D 17J-B, for which they will be jointly and severally liable; and

(b) the sum of $12,267.66 USD, for which they will be jointly and severally liable, which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

[43] Staff submits that the disgorgement sanctions proposed are proportionate to the Individual Respondents' misconduct. Further, the sanctions should deter the Individual Respondents and others from engaging in the same or similar conduct in the future by attaching meaningful consequences to the Individual Respondents' actions. It is the position of Staff that the imposition of these sanctions is justified by the gravity of the actions of the Individual Respondents and the findings made by this Commission.

(c) Costs

[44] It is Staff's position that Khodjaiants' conduct in the months leading up to the Merits Hearing unduly lengthened the time it took for this proceeding to be heard, and that the steps Khodjaiants took were vexatious and unreasonable. Staff also submits that the Individual Respondents did not respect the process of the Commission, meriting a significant costs award.

[45] Staff submits that this matter was a lengthy and complicated investigation involving many members of Staff. As such, the total cost of the investigation and hearing of this matter is $1,405,268.59. Staff, however, are requesting an order that the Individual Respondents pay the costs (the "**Costs Sought**") relating to the time spent by certain Staff in the litigation phase of

this matter which is the period from November 2011 to August 2012 (the "**Merits Hearing Phase**"). The individuals whose time are included in the Costs Sought are, (i) Donna Campbell, Staff counsel, (ii) Craig Gallacher, Senior Investigator, and (iii) Anne Paiement, Investigator.

[46] Staff submitted the Bill of Costs reflecting the Costs Sought for the Merits Hearing Phase of $263,708.53. The Costs Sought reflects the total fees & disbursements of $338,708.53 less settlement costs of $75,000 allotted to Boock. Staff provided copies of the timesheets and hourly figures to support their claim. The timesheets provide dates, numbers of hours worked and tasks performed by each of the individuals listed. The Costs Sought do not include:

- any of the costs associated with the lengthy investigation conducted into this matter;
- any litigation costs in connection with the many Commission attendances prior to the Merits Hearing Phase;
- any responses to motions in respect of an application for judicial review brought by Khodjaiants and filed with the Divisional Court;
- the preparation costs related to preparing for the hearing originally scheduled for 2009;
- time spent on settlement negotiations, conferences and hearings, and the drafting of materials related to settlements with Boock, DeFreitas and Wong; and
- time spent preparing for and attending the hearing regarding sanctions.

[47] Staff submits that the Bill of Costs employs the hourly rates approved by the Commission and excludes any time spent by legal assistants or investigative staff other than that of Mr. Gallacher and Ms. Paiement. Staff submit that the Costs Sought is proportionate and reasonable in all of the circumstances, and in light of the conduct of the Individual Respondents throughout the Merits Hearing Phase.

B. The Respondents' Position

1. Alexander Khodjaiants

[48] Khodjaiants did not provide any submissions.

2. *Alena Dubinsky*

[49] Dubinsky submits, through the November 4, 2013 Email, that her role in these matters were to open brokerage accounts and to deposit stocks in order to facilitate the sale of shares that were obtained in a real estate transaction. Dubinsky did not raise any responses with respect to the submissions made by Staff.

VII. SANCTIONS

[50] The Commission has a public interest jurisdiction to order sanctions restricting or banning respondents from participating in the Ontario capital markets (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43). The Commission's role in ordering sanctions is outlined in *Re Mithras Management Ltd.*:

> … 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 so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at paras. 1610-1611)

[51] In determining the appropriate sanctions, I am guided by the factors set out in *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at 1135 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746. Any sanctions imposed must be proportionate to the circumstances and conduct of each respondent (*M.C.J.C. Holdings*, *supra*, at 1134). In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations;

(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) any mitigating factors;

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

(h) the size of any financial sanctions or voluntary payment when considering other factors;

(i) the effect any sanction might have on the livelihood of a respondent;

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

(k) the reputation and prestige of the respondent;

(l) the shame or financial pain that any sanction would reasonably cause to the respondent; and

(m) the remorse of the respondent.

(*Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at para. 26 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at paras. 25-26.)

[52] I may consider general deterrence when determining the appropriate sanctions. As the Supreme Court of Canada has held, "… 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). I may also consider "the importance of deterring not only those involved in this matter, but also like-minded people from engaging in similar conduct." (*Momentas Corp. (Re)* (2007), 30 O.S.C.B. 6475 at paras. 51-52). The Commission has concluded that:

> "[i]n order to promote both general and specific deterrence we found it necessary to impose severe sanctions including permanent cease trade orders, permanent exclusions from exemptions, and a permanent prohibition from acting as an officer or director of a reporting issuer." (*Momentas Corp. supra*)

[53] Participation in the capital markets is a privilege, not a right (*Erikson v. Ontario (Securities Commission)* (2003), 26 O.S.C.B. 1622 (Div. Ct.) at para. 47). One of the Commission's objectives in imposing sanctions is to restrain future conduct that may be harmful to investors or the capital markets. I may order sanctions restricting or banning respondents from participating in the Ontario capital markets if it is in the public interest to do so. The Supreme Court of Canada has stated that:

> … 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 OSC 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] 2 S.C.R. 132 at para. 43)

A. Factors Applicable to the Individual Respondents

1. Seriousness of the Misconduct and Breaches of the Act

[54] The securities law violations committed by each of the Individual Respondents were serious and their behaviour was egregious. In the Merits Decision, I found that the Individual Respondents traded in or acted in furtherance of trades in Asia Telecom or Pharm Control securities, which constitute distributions of those securities, contrary to subsection 53(1) of the Act. I also found that the Individual Respondents engaged in acts that were deceitful, falsehoods or constitute other fraudulent means. I accepted Staff's submissions in the Merits Hearing that this included:

- opening trading accounts for the express purpose of selling significant quantities of Issuer Respondent shares;

- making statements on the Trading Account applications which were untrue or inaccurate, specifically with respect to Dubinsky's income, to enhance the likelihood that the application would be granted;

- depositing and selling the Issuer Respondent shares in concert with the Eight Traders to optimize the proceeds realized from sales; and

- selling shares in increasingly significant quantities to effectively liquidate the shares of certain hijacked companies, specifically Pharm Control and Asia Telecom securities.

(Merits Hearing, s*upra*, at para. 116)

[55] The Individual Respondents had the subjective awareness that they engaged in conduct which they knew or ought to have known would perpetrate a fraud on investors.

[56] I also found that Ms. Dubinsky, on the direction of Khodjaiants, opened the Trading Accounts in her own name and made untrue and inaccurate statements on the RBC and HSBC application forms for the Trading Accounts. Ms. Dubinsky also repeatedly endorsed and deposited share certificates with her name on them even though she had not purchased the shares and had no knowledge of them until Khodjaiants presented them to her, and deposited over one hundred million shares of Asia Telecom and Pharm Control into the HSBC Account. I recognize Ms. Dubinsky's lesser involvement in this scheme, however, Ms. Dubinsky's involvement does not minimize the seriousness of her actions as described in the Merits Decision. (Merits Decision, *supra*, at para. 119)

2. The Individual Respondents did not Express Remorse

[57] The Individual Respondents provided no submissions that allow me to conclude that they acknowledge the seriousness of their conduct or that they are remorseful. Khodjaiants chose not to attend the Sanctions and Costs Hearing or provide any submissions. Dubinsky was wilfully blind as to Khodjaiants trading activity in the Trading Accounts opened in her name, and chose not to attend neither the Merits Hearing nor the Sanctions and Costs Hearing.

3. Size of Profit Gained or Loss Avoided from Illegal Conduct

[58] The conduct of the Individual Respondents deprived investors of $1,028,786.45 USD and $46,218.91 CAD. (Merits Decision, *supra* at paras 60, 67, 119, 120.)

4. Prohibitions on Participation in the Capital markets and the Deterrence of Like Minded People

[59] The Individual Respondents contributed to a scheme to defraud investors and have failed to demonstrate, either by oral or written submissions at the Sanctions and Costs Hearing, that they recognized the severity of their fraudulent conduct.

[60] Fraud is "one of the most egregious securities regulatory violations." (*Re Al Tar Energy Corp*. (2010), 33 O.S.C.B. 5535 at para. 214) The Individual Respondents committed a series of acts that included the illegal distribution and unregistered trading of securities and an ongoing course of deceitful and fraudulent conduct. The actions of the Individual Respondents' put investors' financial interests at risk and caused significant harm to the integrity of the capital markets.

[61] The Individual Respondents have no prior history with the Commission and did not conceive of the corporate hijacking scheme. They did, however, participate the in the scheme for a period of nine months in concert with others and continued to engage in the fraudulent liquidation of Issuer Respondent shares. The Individual Respondents possessed the subjective awareness that their actions were deceitful and ought to have known that their facilitation and acquiescence of the fraudulent scheme could have as a consequence the placed investors' financial interests at risk.

[62] The evidence presented at the Merits Hearing showed that Khodjaiants directed Dubinsky to open the Trading Accounts so that he could trade in securities. He also encouraged Dubinsky to make untrue and inaccurate statements on the RBC and HSBC application forms and controlled trading of Issuer Respondent shares in the Trading Accounts. Khodjaiants also acknowledged, under cross-examination at the Merits Hearing, that the HSBC Account was opened when RBC stopped accepting the share certificates.

[63] Dubinsky was reckless, wilfully blind and acted upon the instructions of Khodjaiants. Dubinsky knowingly opened the Trading Accounts in her name for the purpose of relinquishing control of the Trading Accounts to Khodjaiants. Dubinsky also repeatedly endorsed and deposited into the Trading Accounts, share certificates that she received from Khodjaiants.

[64] Taking into consideration the various factors considered in previous decisions of the Commission, staff's submissions, and having regard to all of the circumstances, including the conduct of the Individual Respondents and their different levels of participation and culpability in this matter, I am of the view that the Individual Respondents cannot be trusted to participate in the capital markets.

[65] The conduct of the Individual Respondents was egregious, which leads me to conclude that they should be prevented from participating in the capital markets for a lengthy period of time. Given the gravity of their misconduct and the risk to the public, it is appropriate to find that

the Individual Respondents be banned from trading in or acquiring securities or relying on exemptions for 15 years as requested by Staff.

5. Mitigating Factors

[66] There are no mitigating factors applicable to the Individual Respondents in this matter. The Commission has held that sanctions imposed upon respondents should be proportionate and take into consideration the sanctions imposed on the settling respondents. Sanctions agreed to in settlement reflect, among other things, acknowledgement of wrongdoing and cooperation with Staff.

[67] Each of Boock, DeFreitas and Wong admitted to breaching subsections 126.1 (a) and (b) of the Securities Act, engaging in conduct contrary to the public interest and agreed to the settlement sanctions issued by the Commission (the "**Settlement Sanctions**"). (*Re Irwin Boock et al.* (2012) 35 O.S.C.B. 1718; (2012) 35 O.S.C.B. 888; and (2012) 35 O.S.C.B. 1128, respectively). DeFreitas cooperated with Staff, provided Staff of the Commission and the SEC with evidence which assisted the investigations of both regulators, and appeared as a witness at the Merits Hearing. These mitigating factors are reflected in the Settlement Sanctions. When considering the proportionality of the sanctions sought against Khodjaiants, no such mitigating factors are applicable to Khodjaiants.

B. Disgorgement

[68] I am permitted, pursuant to clause 10 of section 127(1) of the Act, to order a person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law. This includes all the money illegally obtained from investors.

[69] The factors to consider for disgorgement are set out in *Re Limelight* as follows:

(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.

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

[70] Staff submits that the entire amount obtained by the Individual Respondents from investors should be ordered disgorged, based on consideration of the following *Re Limelight* factors:

i. the entire amount was obtained as a result of the Individual Respondents' illegal distribution of securities and facilitated by their fraudulent conduct;

ii. the Individual Respondents' misconduct was extremely serious and investors were seriously harmed by the fraud perpetrated by the Individual Respondents;

iii. the amount obtained by the Individual Respondents has been precisely ascertained; and

iv. a disgorgement order for the entire amount raised by the Individual Respondents would have a significant specific and general deterrent effect.

[71] Having considered the relevant factors set out in *Re Limelight*, I find that imposing a disgorgement order in the amount of $1,028,786.45 USD and $46,218.91 CAD is appropriate in these circumstances which constitutes the amounts obtained by the Individual Respondents as a result of their fraudulent misconduct and non-compliance with the Act. The Individual Respondents should not benefit from their breaches of the Act and other like-minded individuals may be deterred from engaging in similar misconduct.

C. Administrative Penalties

[72] As I have previously stated, the actions of the Individual Respondents are egregious, fraudulent and constitute significant contraventions of the Act.

[73] I find that it is in the public interest to impose administrative penalties in this case to deter others from similar misconduct. In *Re Al-Tar Energy Corp*, the Commission found that:

> … to be a deterrent, the amount of an administrative penalty must bear some reference to the amount raised from investors through the investment scheme. In addition, in cases where fraud and repetitive conduct over an extended period is involved, higher administrative penalties are necessary. In order to deter, an administrative penalty must be more than a fee for or a cost of carrying out a fraudulent scheme. (*Re Al-Tar Energy Corp.*, *supra*, at para. 49)

[74] Clause 9 of section 127(1) of the Act provides that the maximum administrative penalty for each contravention of the Act is $1 million. In determining the appropriate administrative penalties in this matter, I have considered the cases identified by Staff including *Re Al-Tar Energy Corp, Re Sulja Bros* and *Re Rowan*. In *Re Sulja Bros*. the Commission recognized the lesser culpability of two respondents and found that the quantum requested by Staff was proportional to the culpability of their conduct. In *Re Rowan*, the Commission stated that the penalty "may not act as a sufficient deterrent if its magnitude is inadequate compared with the benefit obtained by noncompliance." (*Re Rowan, supra* at para. 74)

[75] When considering the purpose for an administrative penalty, which is both specific to the amount raised from investors through the scheme and general deterrence, I am satisfied that it is

in the public interest to impose administrative penalties in this case to deter others from similar misconduct.

[76] I find that the amount requested by staff, of $100,000 against Khodjaiants is appropriate. I am also of the view that the quantum of $75,000, requested by staff, for Ms. Dubinsky is proportionate to the culpability of Ms. Dubinsky's conduct and an appropriate administrative penalty.

[77] I accept Staff's submissions that Khodjaiants, in the broader scheme, was not a directing mind and he was not at the centre of the scheme as a whole. Khodjaiants, however, in carrying out the task of depositing and liquidating the shares, actively solicited Dubinsky to assist him and controlled all of the trading in the Trading Accounts. (Merits Decision, *supra*, at paras. 115-120)

[78] I also accept Staff's position that Dubinsky was a willing, although passive, participant. Despite the fact she played a lesser role than Khodjaiants, Dubinsky was instrumental in establishing the Trading Accounts to facilitate the sale of shares, by Khodjaiants, of the hijacked companies. (Merits Decision, *supra*, at para. 45)

VIII. COSTS

[79] I accept the Costs Sought by Staff in the amount of $263,708.53, against the Individual Respondents for which they will be jointly and severally liable. The Costs Sought is supported by the Bill of Costs and represents a small portion of the total costs of the investigation, prosecution and the time spent by Staff during the Merits Hearing Phase.

IX. CONCLUSION

[80] For the reasons above, I find that it is in the public interest to make the following orders for which I will issue a separate order giving effect to the decision on sanctions and costs.

[81] For the Individual Respondents I order:

(a) pursuant to clause 2 of section 127(1) of the Act that trading in any securities by each of Khodjaiants and Dubinsky cease for a period of 15 years;

(b) pursuant to clause 2.1 of section 127(1) of the Act that the acquisition of any securities by each of Khodjaiants and Dubinsky is prohibited for a period of 15 years;

(c) pursuant to clause 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to each of Khodjaiants and Dubinsky for a period of 15 years;

(d) pursuant to clause 6 of subsection 127(1) of the Act reprimanding each of Khodjaiants and Dubinsky;

(e) pursuant to clause 9 of section 127(1) of the Act requiring Khodjaiants to pay an administrative penalty of $100,000, and Dubinsky to pay an administrative

penalty of $75,000, which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(f) pursuant to clause 10 of subsection 127(1) of the Act that Khodjaiants and Dubinsky disgorge to the Commission the sum of $46,218.91 CAD in HSBC Cash Account 6Y-D17J-A and the sum of $1,016,518.79 USD in HSBC Cash Account 6Y-D 17J-B, for which they will be jointly and severally liable; which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(g) pursuant to clause 10 of section 127.1 of the Act that Khodjaiants and Dubinsky disgorge to the Commission the sum of $12,267.66 USD, for which they will be jointly and severally liable, which shall be designated for the allocation or use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

(h) pursuant to section 127.1 of the Act requiring each of Khodjaiants and Dubinsky to pay $263,708.53 on account of the costs incurred in this matter, for which they shall be jointly and severally liable; and

(i) In the event that any of the payments set out in paragraphs (e), (f) and (g) are not made in full, the provisions of paragraphs (a), (b) and (c) shall continue in force until such payments are made in full without any limitation as to time period.

[82] For the Corporate Respondents, I order:

(a) pursuant to clause 2 of section 127(1) of the Act that all trading in the securities of the Corporate Respondents, whether direct or indirect, cease permanently;

(b) pursuant to clause 2.1 of section 127(1) of the Act that all acquisitions of the securities of the Corporate Respondents, whether direct or indirect, is prohibited permanently, and

(c) pursuant to clause 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to the Corporate Respondents permanently.

Dated at Toronto on this 14th day of January, 2014.

"*Vern Krishna*"

Vern Krishna, Q.C.