



Ontario  
Securities  
Commission

Commission des  
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de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF TRANSCAP CORPORATION, STRATA-TRADE  
CORPORATION, DALE JOSEPH EDGAR ST. JEAN AND GREGORY DENNIS  
TINDALL**

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

**Decision:** February 19, 2014

**Panel:** James E. A. Turner - Vice-Chair

**Counsel:** Brooke Shulman - For Staff of the Commission

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SCHEDULE "A" – FORM OF ORDER

## REASONS FOR DECISION

### I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider whether it is in the public interest to make an order imposing market conduct restrictions against Transcap Corporation (“**TCC**”), Strata-Trade Corporation (“**STC**”), Dale Joseph Edgar St. Jean (“**St. Jean**”) and Gregory Dennis Tindall (“**Tindall**”) (together, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on November 21, 2013 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same date. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondents.

[3] On December 13, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondents were duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities. The Respondents did not file any materials or make any submissions.

#### ***Facts***

[6] The Respondents are subject to an order made by the Alberta Securities Commission (the “**ASC**”) dated July 29, 2013 (the “**ASC Order**”) that imposes sanctions, conditions, restrictions or requirements on them.

[7] In its findings on liability dated May 9, 2013, a panel of the ASC (the “**ASC Panel**”) found that St. Jean and Tindall each made materially misleading or untrue statements, contrary to subsection 92(4.1) of the Alberta *Securities Act*, R.S.A. 2000, c. S-4 (the “**ASA**”). The ASC Panel also found that the Respondents perpetrated a fraud, contrary to subsection 93(b) of the ASA.

[8] The ASC Panel further found that STC and St. Jean breached filing requirements, contrary to sections 2.9(16) and (17) and 6.1 of National Instrument 45-106 (*Prospectus and Registration Exemptions*) (“**NI 45-106**”) and that Tindall concealed or withheld information reasonably required for an investigation, contrary to subsection 93.4(1) of the ASA.

[9] The conduct for which the Respondents were sanctioned occurred between March 1, 2005 and December 10, 2009 (the “**Material Time**”).

[10] TCC and STC were both incorporated in Alberta.

[11] St. Jean was a cofounder, director and officer, and the guiding mind of TCC and STC. Tindall was also a cofounder, director and officer of TCC and STC, but played a secondary role to St. Jean in the business of both TCC and STC.

### ***The Investment Scheme***

[12] During the Material Time, the Respondents raised approximately \$52 million from investors through interest bearing bonds or promissory notes issued by TCC and STC. The Respondents represented TCC and STC to be bond trading and bridge financing firms. Investors testified that they were promised safe investments with lucrative returns of 15% to 22% per annum. Further, the Respondents held themselves out to be knowledgeable and experienced in the industry.

[13] For a time, interest payments were made to investors as promised, which in turn, lured new investors to invest and provided some assurance to existing investors that their investments were sound. Upon receiving these initial interest payments, a few investors were also prompted to reinvest, or to add to their investments. In reality, however, TCC and STC earned little or nothing from bond trading, bridge financing or from any other revenue-generating business. Payments of “returns” made to TCC and STC investors were, in fact, funded from their own and their fellow investors’ money, in what the ASC Panel deemed “an unsustainable Ponzi scheme.”

[14] Staff relies on subsection 127(10)4 of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (see paragraph 25 of these reasons).

[15] These are my reasons for the market conduct restrictions I impose on the Respondents pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

## **II. FINDINGS OF THE ALBERTA SECURITIES COMMISSION**

[16] In its reasons, the ASC Panel found that:

- (a) TCC made material misleading or untrue statements to Alberta investors and perpetrated a fraud on such investors, contrary to subsection 92(4.1) and subsection 93(b) (and its predecessor subsection 93(c)) of the ASA, respectively, and contrary to the public interest;
- (b) STC made material misleading or untrue statements to investors, breached filing requirements and perpetrated a fraud on Alberta investors, contrary to subsections 92(4.1) of the ASA, 2.9(16) or (17) and 6.1 of NI 45-106 and 93(b) (and its predecessor subsection 93(c)) of the ASA, respectively, and contrary to the public interest;

- (c) St. Jean made material misleading or untrue statements to investors, breached filing requirements and perpetrated a fraud on Alberta investors, contrary to subsections 92(4.1) of the ASA, 2.9(16) or (17) and 6.1 of NI 45-106 and 93(b) (and its predecessor 93(c)) of the ASA, respectively, and contrary to the public interest; and St. Jean authorized, permitted or acquiesced in TCC's and STC's breaches of Alberta securities laws; and
- (d) Tindall made material misleading or untrue statements to investors, concealed or withheld information reasonably required for an investigation and perpetrated a fraud on Alberta investors, contrary to subsections 92(4.1), 93.4(1) and 93(b) (and its predecessor 93(c)) of the ASA, respectively, and contrary to the public interest; and Tindall authorized, permitted or acquiesced in TCC's and STC's breaches of Alberta securities laws.

### *The ASC Order*

[17] The ASC Order imposed the following sanctions, conditions, restrictions or requirements on the Respondents:

- (a) against TTC and STC:
  - (i) pursuant to subsection 198(1)(a) of the ASA, all trading in or purchasing must cease permanently in respect of any securities of TCC or STC;
  - (ii) pursuant to subsection 198(1)(b) of the ASA, TCC and STC must each cease permanently trading in or purchasing any securities;
  - (iii) pursuant to subsection 198(1)(c) of the ASA, all of the exemptions contained in Alberta securities laws do not apply to TCC or STC, permanently;
  - (iv) pursuant to subsection 198(1)(e.2) of the ASA, TCC and STC are each prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter; and
  - (v) pursuant to subsection 198(1)(e.3) of the ASA, TCC and STC are each prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
- (b) against St. Jean:
  - (i) pursuant to subsections 198(1)(b) and (c) of the ASA, St. Jean must cease trading in or purchasing any securities permanently, and all of the exemptions contained in Alberta securities laws do not apply to him permanently;
  - (ii) pursuant to subsections 198(1)(d) and (e) of the ASA, St. Jean must resign any position that he currently holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited permanently from becoming

or acting as a director or officer (or both) of any issuer, registrant or investment fund manager;

- (iii) pursuant to subsection 198(1)(e.3) of the ASA, St. Jean is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
  - (iv) pursuant to subsection 198(1)(i) of the ASA, St. Jean must, jointly and severally with Tindall, pay to the Alberta Securities Commission \$9.6 million obtained as a result of his non-compliance with Alberta securities laws;
  - (v) pursuant to section 199 of the ASA, St. Jean must pay an administrative penalty of \$1.2 million; and
  - (vi) pursuant to section 202 of the ASA, St. Jean must pay \$30,000 of the costs of the investigation and hearing;
- (c) against Tindall:
- (i) pursuant to subsections 198(1)(b) and (c) of the ASA, Tindall must cease trading in or purchasing any securities permanently, and all of the exemptions contained in Alberta securities laws do not apply to him permanently;
  - (ii) pursuant to subsections 198(1)(d) and (e) of the ASA, Tindall must resign any position that he currently holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited permanently from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager;
  - (iii) pursuant to subsection 198(1)(e.3) of the ASA, Tindall is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;
  - (iv) pursuant to subsection 198(1)(i) of the ASA, Tindall must, jointly and severally with St. Jean, pay to the Alberta Securities Commission \$9.6 million obtained as a result of his non-compliance with Alberta securities laws;
  - (v) pursuant to section 199 of the ASA, Tindall must pay an administrative penalty of \$750,000; and
  - (vi) pursuant to section 202 of the ASA, Tindall must pay \$35,000 of the costs of the investigation and hearing.

## **A. SUBMISSIONS OF STAFF**

[18] Staff submits that in order to protect Ontario investors and the integrity of Ontario capital markets it is in the public interest for the Commission to impose market conduct restrictions on the Respondents consistent with the sanctions imposed by the ASC pursuant to the ASC Order.

[19] Staff requests the following market conduct restrictions against TCC:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities of TCC cease permanently;
- (b) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities by TCC cease permanently;
- (c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by TCC cease permanently;
- (d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to TCC permanently; and
- (e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, TCC be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

[20] Staff requests the following market conduct restrictions against STC:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities of STC cease permanently;
- (b) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities by STC cease permanently;
- (c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by STC cease permanently;
- (d) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to STC permanently; and
- (e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, STC be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

[21] Staff requests the following market conduct restrictions against St. Jean:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by St. Jean cease permanently;

- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by St. Jean cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to St. Jean permanently;
- (d) pursuant to paragraph 7 of subsection 127(1) of the Act, St. Jean resign any positions that he holds as a director or officer of an issuer;
- (e) pursuant to paragraph 8 of subsection 127(1) of the Act, St. Jean be prohibited permanently from becoming or acting as a director or officer of an issuer;
- (f) pursuant to paragraph 8.1 of subsection 127(1) of the Act, St. Jean resign any positions that he holds as a director or officer of a registrant;
- (g) pursuant to paragraph 8.2 of subsection 127(1) of the Act, St. Jean be prohibited permanently from becoming or acting as a director or officer of a registrant;
- (h) pursuant to paragraph 8.3 of subsection 127(1) of the Act, St. Jean resign any positions that he holds as a director or officer of an investment fund manager; and
- (i) pursuant to paragraph 8.4 of subsection 127(1) of the Act, St. Jean be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

[22] Staff requests the following market conduct restrictions against Tindall:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Tindall cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Tindall cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Tindall permanently;
- (d) pursuant to paragraph 7 of subsection 127(1) of the Act, Tindall resign any positions that he holds as a director or officer of an issuer;
- (e) pursuant to paragraph 8 of subsection 127(1) of the Act, Tindall be prohibited permanently from becoming or acting as a director or officer of an issuer;
- (f) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Tindall resign any positions that he holds as a director or officer of a registrant;
- (g) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Tindall be prohibited permanently from becoming or acting as a director or officer of a registrant;

- (h) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Tindall resign any positions that he holds as a director or officer of an investment fund manager; and
- (i) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Tindall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager.

[23] Staff does not request the imposition of administrative penalties or other monetary order against the Respondents.

[24] Staff submits that I am entitled to issue an order imposing these market conduct restrictions based on the evidence before me, which consists of the ASC Order and the ASC Panel's reasons for issuing the ASC Order.

### III. ANALYSIS

#### *(a) Subsection 127(10) of the Act*

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

**127 (10) Inter-jurisdictional enforcement** – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

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

[26] The ASC Order makes the Respondents subject to an order of the ASC that imposes sanctions, conditions, restrictions or requirements on them, within the meaning of paragraph 4 of subsection 127(10) of the Act.

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

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

*(Euston Capital, supra, at para. 26)*

[28] I therefore find that I have the authority to make a public interest order against the Respondents under subsection 127(1) of the Act, in reliance on subsection 127(10) of the Act,

based on the ASC Order. To do so, I must conclude that such an order is in the public interest because it is necessary to protect Ontario investors or the integrity of Ontario capital markets. An important consideration is that the Respondents' conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if that conduct had occurred in Ontario (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 (“*JV Raleigh*”)).

[29] I must also determine whether, based on the ASC Order, the market conduct restrictions proposed by Staff are appropriate in the circumstances.

***(b) Exercising the Commission's Public Interest Discretion in Reliance on the ASC Order***

[30] The ASC Panel imposed permanent market conduct sanctions against the Respondents based on its findings that the Respondents breached the ASA and engaged in a course of conduct that they knew would perpetrate a fraud. The Commission has consistently held that an act of fraud in connection with the issue of or trading in securities is one of the most serious securities violations. Staff submit that in order to prevent possible future harm to Ontario investors and to protect the integrity of Ontario capital markets, the Commission should exercise its jurisdiction to impose market conduct restrictions in the public interest that are substantially identical to those imposed under the ASC Order.

[31] In *McLean v. British Columbia (Securities Commission)* 2013 SCC 67 (“*McLean*”), the Supreme Court of Canada held that, given the reality of inter-provincial capital markets, there can be no disputing the indispensable nature of inter-jurisdictional co-operation among securities regulators in Canada. The Supreme Court observed in *McLean* that as a consequence of the “twin orders” of the Ontario and British Columbia Securities Commissions in that case, the appellant in question was prohibited from engaging in “substantially identical conduct” in both Ontario and British Columbia for identical periods of time (*McLean, supra*, at paras. 15, 51 and 67). Accordingly, the Court upheld the issue of the reciprocal order by the British Columbia Securities Commission.

[32] The Commission has held that a transactional nexus to Ontario is not a necessary precondition to the exercise of the Commission's public interest jurisdiction. Rather, a connection to Ontario is only one of a number of factors to be considered in the exercise of the Commission's public interest discretion under section 127 of the Act (*Euston Capital, supra*, at para. 42). Further, Staff is not required in this proceeding to establish that investors in Ontario were harmed by the Respondents' previous conduct. The question is whether Ontario market conduct restrictions should be imposed on the Respondents to prevent possible future harm to Ontario investors or Ontario capital markets. The only evidence of the possibility of such harm is the ASC Order and the reasons of the ASC Panel sanctioning the Respondents for their past conduct in Alberta.

## A. SHOULD MARKET CONDUCT RESTRICTIONS BE IMPOSED?

### *The Commission's Public Interest Jurisdiction*

[33] In exercising the Commission's public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

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

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

[35] Further, the Divisional Court in *Erikson v. Ontario (Securities Commission)* [2003] O.J. No. 593 (Div. Ct.) at para. 55 acknowledged that "participation in the capital markets is a privilege and not a right."

[36] The Supreme Court of Canada has held that the purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets (*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132 ("*Asbestos*") at paras. 42 to 43). As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[37] Accordingly, the Commission's public interest jurisdiction may be exercised to prevent possible future harm to Ontario investors and capital markets (see *Asbestos, supra*, at para. 42).

[38] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets. (See *McLean, supra*, at para. 31 of these reasons, *JV Raleigh, supra*, at paras. 21 to 26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22 to 27)

### ***Reliance on Subsection 127(10) of the Act***

[39] The Commission held in *Elliott, Re* (2009), 23 OSCB 6931 at para. 24 (“*Elliott*”) that “subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.”

[40] While the Commission may rely on the findings in another jurisdiction, it must satisfy itself that any order it makes is in the public interest:

The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.

(*Elliott, supra*, at para. 27)

[41] As discussed above at paragraph 32 of these reasons, in issuing a public interest order made in reliance on subsection 127(10), the Commission can rely upon the findings made in other jurisdictions and does not require a direct connection between the misconduct that occurred and Ontario capital markets (*McLean and Euston Capital, supra, Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

### ***Reliance on the ASC Order***

[42] In considering the imposition of market conduct restrictions in this matter, I am relying on the ASC Order and the reasons of the ASC Panel. In my view, it is not appropriate in doing so to revisit or second-guess the ASC Panel’s findings.

[43] The ASC’s findings are set out in paragraph 16 of these reasons. Had the relevant conduct of the Respondents occurred in Ontario, that conduct would have contravened Ontario securities law and would have been harmful to investors and the Ontario capital markets. The Respondents’ conduct involved perpetrating a fraud on investors. Both Respondents by their conduct have demonstrated that they should not be permitted to freely participate in the Ontario capital markets. That was the conclusion of the ASC Panel with respect to participation by the Respondents in the Alberta capital markets.

[44] I find that imposing market conduct restrictions on the Respondents is necessary and in the public interest to protect Ontario investors and the Ontario capital markets from possible future harm.

## **B. THE APPROPRIATE MARKET CONDUCT RESTRICTIONS**

[45] Staff submits that the market conduct restrictions imposed in the ASC Order are appropriate to the misconduct of the Respondents and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on

the Respondents, substantially identical to those imposed by the ASC Order, are appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents.

[46] In determining the nature and duration of the appropriate market conduct restrictions in these circumstances, I must consider the relevant facts and circumstances before me, including:

- (a) the seriousness of the Respondents' conduct and breaches of the ASC Act;
- (b) the harm to investors in Alberta;
- (c) whether or not the restrictions I impose will serve to deter the Respondents from engaging in similar abuses of Ontario investors and Ontario capital markets; and
- (d) the terms of the ASC Order.

[47] The most compelling facts in these circumstances are that the Respondents were found by the ASC Panel to have breached Alberta securities law and were found to have perpetuated a fraud on Alberta investors.

[48] The ASC Panel found that the Respondents perpetrated a fraud on investors and stated that:

Significant and direct financial harm was done to the investors in this Ponzi scheme. Having invested money, they were deprived both of promised income (interest payments having stopped) and the return of their principal. The amounts were large, both in the aggregate and (as we learned from investor witnesses) as a proportion of the assets of affected individuals and families from or about whom we heard. Investors' losses are real and probably unrecoverable ... no money remains in TCC and STC.

This widespread direct financial harm will foreseeably have indirect, but not insignificant, ramifications in the form of diminished confidence in the Alberta capital market and a decreased willingness - on the part of the investor victims and others who learn of their plight - to invest again, particularly in the prospectus-exempt portion of that market. That in turn impairs the ability of legitimate businesses to raise money there.

(*ASC Order* at paras. 24 to 25)

[49] The ASC Panel further found that Tindall concealed or withheld information from ASC investigators required for their investigation. The ASC Panel considered Tindall's lying under oath to ASC Staff to be serious misconduct, and an aggravating factor, and noted his misconduct "epitomized dishonesty."

[50] The ASC Panel found that St. Jean's previous experience and working knowledge of the securities and financial industries, as well as his role as the guiding mind of TCC and STC, to be aggravating factors against him.

[51] The ASC Panel identified no mitigating factors. While acknowledging that certain interest payments were made by TCC and STC to various investors, the ASC Panel stated that:

The payments, however, do not amount to mitigation. If anything, the contrary might be posited. As stated, this was a Ponzi scheme. Investors were enticed to part with their money based on false promises, including descriptions of a supposedly sound business. To the extent that investors received payments, those came from their own or others' investments, not from an operating business. But the very existence of such payments presented a false picture of a genuine and sustainable business. The investments were bound to fail, given that absence of a real, underlying operating business - but so long as payments kept being made, new investors could still be lured.

*(ASC Order at paras. 37, 39 and 40)*

[52] In the absence of any evidence to show that investors' funds were used in the manner promised to them by the Respondents, the ASC Panel concluded that the Respondents were enriched by their misconduct, stating:

[I]t is clear - and we find - that TCC, St. Jean and Tindall intended to, and did, benefit financially from the materially untrue or misleading statements made to investors and the overall fraudulent scheme.

*(ASC Order at para. 22)*

[53] The ASC Panel noted the scale of the Respondents' dishonesty, and concluded that without significant sanctions, they present a serious risk of future harm to investors and to Alberta capital markets.

[54] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing on the Respondents the market conduct restrictions set out below. Those market conduct restrictions are substantially identical to those imposed under the ASC Order and are for the same duration.

[55] I therefore impose the following market conduct restrictions on TCC:

- (a) trading in securities of TCC shall cease permanently;
- (b) trading in any securities by TCC shall cease permanently;
- (c) the acquisition of any securities by TCC shall cease permanently;
- (d) any exemptions contained in Ontario securities law shall not apply to TCC permanently; and
- (e) TCC shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

[56] I impose the following market conduct restrictions on STC:

- (a) trading in securities of STC shall cease permanently;
- (b) trading in any securities by STC shall cease permanently;
- (c) the acquisition of any securities by STC shall cease permanently;
- (d) any exemptions contained in Ontario securities law shall not apply to STC permanently; and
- (e) TCC shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

[57] I impose the following market conduct restrictions on St. Jean:

- (a) trading in any securities by St. Jean shall cease permanently;
- (b) the acquisition of any securities by St. Jean shall cease permanently;
- (c) any exemptions contained in Ontario securities law shall not apply to St. Jean permanently;
- (d) St. Jean shall resign any positions that he holds as a director or officer of an issuer;
- (e) St. Jean shall be prohibited permanently from becoming or acting as a director or officer of an issuer;
- (f) St. Jean shall resign any positions that he holds as a director or officer of a registrant;
- (g) St. Jean shall be prohibited permanently from becoming or acting as a director or officer of a registrant;
- (h) St. Jean shall resign any positions that he holds as a director or officer of an investment fund manager; and
- (i) St. Jean shall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;

[58] I impose the following market conduct restrictions on Tindall:

- (a) trading in any securities by Tindall shall cease permanently;
- (b) the acquisition of any securities by Tindall shall cease permanently;
- (c) any exemptions contained in Ontario securities law shall not apply to Tindall permanently;

- (d) Tindall shall resign any positions that he holds as a director or officer of an issuer;
- (e) Tindall shall be prohibited permanently from becoming or acting as a director or officer of an issuer;
- (f) Tindall shall resign any positions that he holds as a director or officer of a registrant;
- (g) Tindall shall be prohibited permanently from becoming or acting as a director or officer of a registrant;
- (h) Tindall shall resign any positions that he holds as a director or officer of an investment fund manager; and
- (i) Tindall shall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager.

#### **IV. CONCLUSION**

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

**DATED** at Toronto this 19<sup>th</sup> day of February, 2014.

*"James E. A. Turner"*

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James E. A. Turner

**Schedule "A"**



Ontario  
Securities  
Commission

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valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**-AND -**

**IN THE MATTER OF TRANSCAP CORPORATION, STRATA-TRADE  
CORPORATION, DALE JOSEPH EDGAR ST. JEAN AND GREGORY DENNIS  
TINDALL**

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

**WHEREAS** on November 21, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of TransCap Corporation ("TCC"), Strata-Trade Corporation ("STC"), Dale Joseph Edgar St. Jean ("St. Jean") and Gregory Dennis Tindall ("Tindall") (together, the "Respondents");

**AND WHEREAS** on the same day, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

**AND WHEREAS** the Respondents are subject to an order dated July 29, 2013 made by the Alberta Securities Commission (the "ASC") that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act (the "ASC Order");

**AND WHEREAS** on December 13, 2013, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

**AND WHEREAS** Staff filed written submissions, a hearing brief and a brief of authorities;

**AND WHEREAS** the Respondents did not file any written materials or make any submissions;

**AND WHEREAS** I find that that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

**IT IS HEREBY ORDERED:**

(a) against TCC that:

- (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities of TCC shall cease permanently;
- (ii) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities by TCC shall cease permanently;
- (iii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by TCC shall be prohibited permanently;
- (iv) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to TCC permanently; and
- (v) pursuant to paragraph 8.5 of subsection 127(1) of the Act, TCC shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(b) against STC that:

- (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities of STC shall cease permanently;
- (ii) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities by STC shall cease permanently;
- (iii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by STC shall be prohibited permanently;
- (iv) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to STC permanently; and
- (v) pursuant to paragraph 8.5 of subsection 127(1) of the Act, STC shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

- (c) against St. Jean that:
- (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by St. Jean shall cease permanently;
  - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by St. Jean shall cease permanently;
  - (iii) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to St. Jean permanently;
  - (iv) pursuant to paragraph 7 of subsection 127(1) of the Act, St. Jean shall resign any positions that he holds as a director or officer of an issuer;
  - (v) pursuant to paragraph 8 of subsection 127(1) of the Act, St. Jean shall be prohibited permanently from becoming or acting as a director or officer of an issuer;
  - (vi) pursuant to paragraph 8.1 of subsection 127(1) of the Act, St. Jean shall resign any positions that he holds as a director or officer of a registrant;
  - (vii) pursuant to paragraph 8.2 of subsection 127(1) of the Act, St. Jean shall be prohibited permanently from becoming or acting as a director or officer of a registrant;
  - (viii) pursuant to paragraph 8.3 of subsection 127(1) of the Act, St. Jean shall resign any positions that he holds as a director or officer of an investment fund manager; and
  - (ix) pursuant to paragraph 8.4 of subsection 127(1) of the Act, St. Jean shall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager;
- (d) against Tindall that:
- (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Tindall shall cease permanently;
  - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Tindall shall cease permanently;
  - (iii) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Tindall permanently;
  - (iv) pursuant to paragraph 7 of subsection 127(1) of the Act, Tindall shall resign any positions that he holds as a director or officer of an issuer;

- (v) pursuant to paragraph 8 of subsection 127(1) of the Act, Tindall shall be prohibited permanently from becoming or acting as a director or officer of an issuer;
- (vi) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Tindall shall resign any positions that he holds as a director or officer of a registrant;
- (vii) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Tindall shall be prohibited permanently from becoming or acting as a director or officer of a registrant;
- (viii) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Tindall shall resign any positions that he holds as a director or officer of an investment fund manager; and
- (ix) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Tindall shall be prohibited permanently from becoming or acting as a director or officer of an investment fund manager.

**DATED** at Toronto this 19<sup>th</sup> day of February, 2014.

*“James E. A. Turner”*

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James E. A. Turner