



Ontario
Securities
Commission

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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 WON SANG SHEN CHO, also known as CRAIG CHO,
doing business as CHOSEN MEDIA and GROOPS MEDIA**

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

Decision: August 1, 2014

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

Counsel: Keir D. Wilmut - For Staff of the Commission

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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 Won Sang Shen Cho (also known as Craig Cho) (“**Cho**”), Chosen Media and Groops Media (collectively, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on April 23, 2014 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 May 14, 2014, 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 and 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 provided written submissions, a hearing brief and a brief of authorities. The Respondents did not appear and did not file any responding materials.

Facts

[6] The Respondents are subject to an order made by the British Columbia Securities Commission (the “**BCSC**”) dated October 22, 2013 (the “**BCSC Order**”) that imposes sanctions, conditions, restrictions or requirements upon them.

[7] In its findings dated August 1, 2013 (the “**Findings**”), a panel of the BCSC (the “**BCSC Panel**”) found that the Respondents engaged in an illegal distribution of securities, contrary to section 61(1) of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 (the “**BC Act**”). The BCSC Panel also found that Cho made misrepresentations with the intention of trading in securities, and that Cho and Chosen Media perpetrated a fraud, contrary to subsections 50(1)(d) and 57(b), respectively, of the BC Act.

[8] Staff are seeking an order against the Respondents pursuant to subsection 127(1) of the Act, based on the BCSC Order.

[9] The conduct for which the Respondents were sanctioned occurred between January 2011 and February 2012 (the “**Material Time**”).

[10] During the Material Time, Cho was a resident of British Columbia. Cho conducted businesses as a sole proprietor, under names that included Chosen Media and Groops Media. Chosen Media purports to be an online media company, website design company and media buying agency. Groops Media purports to be a media company operating various websites.

[11] Cho, Chosen Media and Groops Media have never been registered with the BCSC and have never filed a prospectus under the BC Act.

[12] During the Material Time, Cho promoted and distributed Chosen Media securities on the Craigslist website, seeking minimum investments of \$5,000. Cho admitted to promising investors high rates of return (30% to 50% in 40 to 70 days) and to telling prospective investors that their funds would be deposited into accounts at various sports-betting websites. Cho further admitted to telling investors that profit would be generated by “generous sign-up and reload bonuses” provided by those websites.

[13] Cho told prospective Chosen Media investors that the online wagering would be risk free, and that there were more investors with Chosen Media than there actually were. He also used multiple identities in correspondence with investors to create the impression there were more employees with Chosen Media than there actually were.

[14] In December 2012, during the course of the BCSC's Chosen Media investigation, Cho sent an e-mail to an undercover BCSC investigator, who had previously communicated with Cho, promoting a Groops Media investment requiring a minimum \$10,000 investment. Cho guaranteed the BCSC investigator a minimum return of 20% within six months.

[15] Cho admits attempting to distribute Groops Media securities after receiving a warning from the BCSC that he had to comply with the prospectus requirements when distributing securities of Chosen Media (see paragraph 21 below).

[16] Staff relies in this matter 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 which 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 [24] of these reasons).

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

II. FINDINGS OF THE BRITISH COLUMBIA SECURITIES COMMISSION

[18] In its reasons, the BCSC Panel concluded that:

- (a) the Respondents engaged in an illegal distribution of securities, contrary to section 61(1) of the BC Act;
- (b) Cho made misrepresentations with the intention of trading in securities, contrary to

section 50(1)(d) of the BC Act; and

- (c) that Cho and Chosen Media perpetrated a fraud, contrary to section 57(b) of the BC Act.

[19] The BCSC Panel held that:

The return that one could expect to make from an investment, and the degree of risk associated with that investment, are clearly factors that would reasonably be expected to have a significant effect on the price and value of the investment. The value of any investment is inextricably linked to the risk associated with it. Not only did Cho not tell his investors the risks associated with the high rate of return, he went further and told them that no money would be lost and hence the investment was “risk-free”.

...

...The most serious misrepresentation and dishonesty was in [Cho's] promises of “risk-free” rates of return of 30% to 70% in 30 to 90 days (which would equate to an annual non-compounded rate of return of 120% to 840%), and a guaranteed minimum return of 20% within six months (which would equate to an annual non-compounded return of 40%).

BCSC Decision at paras. 27, 32-36 and 41

[20] The BCSC Panel further found that Cho and Chosen Media perpetrated a fraud, one of the most serious offences under securities law. The BCSC Panel noted that three of five investors suffered actual losses, and that there was no evidence to suggest that the investors' losses could be recovered. (*BCSC Decision* at para. 42)

[21] The BCSC Panel identified no mitigating factors, and found Cho's past misconduct and regulatory history to be an aggravating factor:

Cho also received but ignored prior warnings from the Commission about illegal distributions. The evidence shows that in 2002, Cho, using the name Interpower, sent e-mails to solicit investments from prospective investors. Cho described Interpower as an online gambling company. At that time, a Commission staff investigator warned Cho, first by telephone and then documented in a letter, that his investor relations activities and future distributions of securities with respect to Interpower must be made in full compliance with securities legislation.

BCSC Order at paras. 12-14

[22] The BCSC Panel concluded in respect of Cho's conduct: "Cho has been given several chances to correct his behaviour and has not taken them. It is clear that he poses a serious and continuing risk to investors and to our markets." (*BCSC Order* at para. 15)

The BCSC Order

[23] The BCSC Order imposed the following sanctions, conditions, restrictions or requirements:

(a) upon Cho, Chosen Media and Groops Media:

(i) pursuant to section 161(l)(b) of the BC Act, that Cho, Chosen Media and Groops Media cease trading in, and are prohibited from purchasing, any securities permanently;

(ii) pursuant to section 161(l)(d)(v) of the BC Act, that Cho, Chosen Media and Groops Media are permanently prohibited from engaging in investor relations activities;

(b) upon Cho:

(i) pursuant to sections 161(l)(d)(i) and (ii) of the BC Act, that Cho resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant;

(ii) pursuant to section 161(l)(d)(iv) of the BC Act, that Cho is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

(iii) pursuant to section 161(l)(g) of the BC Act, that Cho pay to the BCSC \$20,569, being the outstanding amount obtained, directly or indirectly, as a result of contraventions of the BC Act; and

(iv) pursuant to section 162 of the BC Act, that Cho pay to the BCSC an administrative penalty of \$200,000.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[24] Subsection 127(10) of the Act provides in part 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.

...

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

[26] Accordingly, based on the BCSC Order, the Commission may make one or more orders under subsections 127(1) of the Act, if in its opinion it is in the public interest to do so.

[27] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) of the Act 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 Findings and the BCSC Order.

[29] I must determine whether, based on the Findings and the BCSC Order, the market conduct restrictions proposed by Staff would be in the public interest. An important consideration is whether the respondent's 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*”).

B. SUBMISSIONS OF THE PARTIES

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

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

- (a) against Cho that:
 - (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Cho cease permanently;
 - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Cho be prohibited permanently;
 - (iii) pursuant to paragraph 7 of subsection 127(1) of the Act, Cho resign any positions that he holds as director or officer of an issuer;
 - (iv) pursuant to paragraph 8 of subsection 127(1) of the Act, Cho be prohibited permanently from becoming or acting as an officer or director of an issuer;
 - (v) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Cho resign any positions that he holds as director or officer of a registrant; and
 - (vi) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Cho be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (b) against Chosen Media that:
 - (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Chosen Media cease permanently; and
 - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Chosen Media be prohibited permanently;
- (c) against Groops Media that:
 - (i) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Groops Media cease permanently; and
 - (ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Groops Media be prohibited permanently.

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

C. SHOULD SANCTIONS BE IMPOSED?

[33] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in section 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] The Divisional Court in *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55) acknowledged that when considering imposing an order under subsection 127(1), it should be remembered that “participation in the capital markets is a privilege and not a right.”

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

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 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] 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. (*JV Raleigh, supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27)

[38] In imposing the market conduct restrictions in this matter, I am relying on the Findings, the BCSC Panel’s reasons for imposing sanctions on the Respondents and the BCSC Order. In my view, it is not appropriate in doing so to revisit or second-guess the Findings.

[39] I find that it is necessary to protect Ontario investors and the integrity of Ontario’s capital markets to impose market conduct restrictions against the Respondents in the public interest.

D. THE APPROPRIATE MARKET CONDUCT RESTRICTIONS

[40] In determining the nature and duration of the appropriate market conduct restrictions, I must consider the relevant facts and circumstances, including:

- (a) the seriousness of the Respondents’ conduct and breaches of the BC Act;
- (b) the potential harm to investors;

- (c) whether or not the restrictions imposed may serve to deter the Respondents from engaging in similar abuses of the Ontario capital markets; and
- (d) the effect any Ontario restrictions may have on the ability of the Respondents to participate without check in Ontario capital markets.

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

[41] The following facts and circumstances are particularly relevant in determining the market conduct restrictions that should be ordered against the Respondents:

- (a) the Respondents were found by the BCSC Panel to have breached British Columbia securities law; and
- (b) the conduct for which the Respondents were sanctioned under the BCSC Order would likely have constituted a contravention of Ontario securities law if that conduct had occurred in Ontario, specifically a contravention of sections 53, 126.1(2) and 126.1 of the Act.

[42] In particular, the breaches of British Columbia securities law in this matter include both illegal distributions of securities and the perpetration of a fraud.

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

[44] I have reviewed the Commission and other decisions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26).

[45] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 (“**McLean**”), the British Columbia Court of Appeal held that when issuing an order reciprocating an order originally made in Ontario, the BCSC has a duty to provide reasons, however brief, for the order it is imposing and why they are in the public interest (*McLean, supra*, at paras. 28-29).

[46] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 at para. 31, the British Columbia Court of Appeal interpreted *McLean, supra*, as holding that the Commission “must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction.”

[47] 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.”

[48] While the Commission may rely on the findings made in another jurisdiction, it must satisfy itself that an order is necessary in the public interest in Ontario:

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)

[49] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required a direct connection to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608, *Shantz (Re)* (2013), 36 OSCB 5993, *TransCap Corp. (Re)* (2014), 37 OSCB 2119, *De Gouveia (Re)* (2014), 37 OSCB 4501).

[50] The Supreme Court of Canada has affirmed that the Commission may make an order under section 127 of the Act for the purposes of deterrence, stating that “it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative.” (*Cartaway Resources Corp.*, 2004 SCC 26 at para. 60 (“*Cartaway*”))

[51] The Supreme Court emphasized that deterrence may be specific to the individual or general to deter the public at large. The Supreme Court held that “[i]n both cases, deterrence is prospective in orientation and aims at preventing future conduct.” (*Cartaway, supra* at para. 52)

[52] Staff has no evidence to suggest that Ontario investors were harmed by the Respondents’ conduct; however, based on the Findings and the reasons of the BCSC Panel, Staff submit that it is in the public interest to protect Ontario investors from the Respondents by preventing or limiting their future participation in Ontario's capital markets.

[53] Staff submits that the market conduct restrictions imposed by the BCSC Order are appropriate to the misconduct by 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 similar to those imposed by the BCSC Order, are appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents.

[54] I accept Staff’s submissions in paragraphs 52 and 53 above.

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

Against Cho that:

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

- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities or derivatives by Cho shall cease permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, Cho shall resign any positions that he holds as director or officer of an issuer;
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, Cho shall be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Cho shall resign any positions that he holds as director or officer of a registrant; and
- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Cho shall be prohibited permanently from becoming or acting as an officer or director of a registrant;

Against Chosen Media that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Chosen Media shall cease permanently; and
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities or derivatives by Chosen Media shall cease permanently;

Against Groops Media that:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Groops Media shall cease permanently; and
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities or derivatives by Groops Media shall cease permanently.

IV. CONCLUSION

[56] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

DATED at Toronto this 1st day of August, 2014.

“James E. A. Turner”

James E. A. Turner

Schedule “A”



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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 WON SANG SHEN CHO, also known as CRAIG CHO,
doing business as CHOSEN MEDIA and GROOPS MEDIA**

**ORDER
(Subsections 127(1) and 127(10) of the Act)**

WHEREAS on April 23, 2014, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing 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 Won Sang Shen Cho (also known as Craig Cho) (“Cho”), Chosen Media and Groops Media (collectively, the “Respondents”);

AND WHEREAS on April 23, 2014, Staff of the Commission (“Staff”) filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on May 14, 2014, the Commission heard an application by Staff to convert the 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;

AND WHEREAS the Commission granted Staff’s application to proceed by written hearing and established a schedule for the submission of materials by the parties;

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

AND WHEREAS the Respondents did not appear and did not file any materials;

AND WHEREAS the Respondents are subject to an order dated October 22, 2013 made by the British Columbia Securities Commission that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act for the reasons set forth in my reasons and decision dated the date of this Order;

IT IS HEREBY ORDERED THAT:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Cho shall cease permanently;
- (b) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Chosen Media shall cease permanently;
- (c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Groops Media shall cease permanently;
- (d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities or derivatives by Cho shall cease permanently;
- (e) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities or derivatives by Chosen Media shall cease permanently;
- (f) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities or derivatives by Groops Media shall cease permanently;
- (g) pursuant to paragraph 7 of subsection 127(1) of the Act, Cho resign any positions that he holds as director or officer of an issuer;
- (h) pursuant to paragraph 8 of subsection 127(1) of the Act, Cho be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (i) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Cho resign any positions that he holds as director or officer of a registrant; and
- (j) (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Cho be prohibited permanently from becoming or acting as an officer or director of a registrant.

DATED at Toronto this 1st day of August, 2014.

James E. A. Turner