



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
MORGAN DRAGON DEVELOPMENT CORP.,
JOHN CHEONG (aka KIM MENG CHEONG),
HERMAN TSE, DEVON RICKETTS
and MARK GRIFFITHS**

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

Hearing: June 12, 2014

Decision: September 9, 2014

Panel: Edward P. Kerwin - Commissioner and Chair of the Panel

Appearances: Jonathon T. Feasby - For Staff of the Ontario Securities
Commission

No one appeared for - Devon Ricketts
- Mark Griffiths

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I. INTRODUCTION

[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 Devon Ricketts (“**Ricketts**”) and Mark Griffiths (“**Griffiths**”) (collectively, the “**Respondents**”).

[2] The hearing on the merits was held in writing (the “**Merits Hearing**”) and the decision on the merits was issued on April 15, 2014 (*Re Morgan Dragon Development Corp. et al* (2014), 37 O.S.C.B. 4141 (the “**Merits Decision**”). On that date, the Commission ordered that the hearing with respect to sanctions and costs be held on June 12, 2014 (the “Sanctions and Costs Hearing Order”).

[3] Prior to the Merits Hearing, Morgan Dragon Development Corp. (“**MDDC**”), John Cheong (“**Cheong**”), Herman Tse (“**Tse**”) (collectively, the “**Settling Respondents**”), settled with the Commission in respect of conduct stemming from the same statement of allegations as this matter (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 4233 (the “**Settlement Agreement**”). Their settlement agreement was approved by order of April 10, 2013 (*Re Morgan Dragon Development Corp. et al.* (2013), 36 O.S.C.B. 4212 (the “**Settlement Order**”).

[4] On June 12, 2014, the Commission held the hearing to consider submissions from Staff and the Respondents regarding sanctions and costs (the “**Sanctions and Costs Hearing**”).

[5] On May 5, 2014, Staff filed written submissions on sanctions and costs. Staff also appeared and made oral submissions at the Sanctions and Costs Hearing.

[6] The Respondents were not represented and did not participate in the Sanctions and Costs Hearing or the Merits Hearing. In the Merits Decision, I decided that I was satisfied that the Respondents had been given reasonable notice of the Merits Hearing. I am also satisfied that the Sanctions and Costs Hearing Order was posted on the Commission’s website and by the Affidavit of Tia Faerber, sworn May 6, 2014, that Staff served the Respondents with Staff’s written submissions on sanctions and costs. Therefore, I proceeded with the Sanctions and Costs Hearing in the absence of the Respondents who did not appear, in accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended and Rule 7.1 of the Commission’s *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the “**Rules of Procedure**”).

II. THE MERITS DECISION

[7] In the Merits Decision, I concluded that:

- (a) The Respondents traded in securities and/or engaged in acts in furtherance of trades in securities without having been registered under the Act to do so, contrary to subsection 25(1)(a), for conduct predating September 28, 2009 and subsection 25(1), for conduct on and after September 28, 2009, of the Act; and
- (b) The Respondents engaged in an illegal distribution of securities contrary to subsection 53(1) of the Act.

(Merits Decision, *supra* at para. 115)

III. SANCTIONS AND COSTS REQUESTED

[8] Staff has requested that the following sanctions and costs orders be made against Ricketts:

- (a) an order pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Ricketts cease for a period of 7 years, except that, once Ricketts has fully satisfied the conditions in clauses (l), (m) and (n), below, he may trade in securities for the account of any Registered Retirement Savings Plan (“RRSP”) as defined in the *Income Tax Act*, R.S.C. 1985, c. 1., as amended (the “**Income Tax Act**”), in which he has sole legal and beneficial ownership;
- (b) an order pursuant to clause 2.1 of subsection 127(1) of the Act that the acquisition of any securities by Ricketts is prohibited for a period of 7 years, except that, once Ricketts has fully satisfied the conditions in clauses (l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;
- (c) an order pursuant to clause 3 of subsection 127(1) of the Act that any exemptions in Ontario securities law do not apply to Ricketts for a period of 7 years;
- (d) an order pursuant to clause 6 of subsection 127(1) of the Act that Ricketts is reprimanded;
- (e) an order pursuant to clause 7 of subsection 127(1) of the Act that Ricketts resign any position he holds as a director or officer of an issuer;
- (f) an order pursuant to clause 8 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as director or officer of any issuer for a period of 7 years;
- (g) an order pursuant to clause 8.1 of subsection 127(1) of the Act that Ricketts resign any position he holds as director or officer of a registrant;
- (h) an order pursuant to clause 8.2 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as director or officer of any registrant for a period of 7 years;
- (i) an order pursuant to clause 8.3 of subsection 127(1) of the Act that Ricketts resign any position he holds as director or officer of any investment fund manager;
- (j) an order pursuant to clause 8.4 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as director or officer of any investment fund manager for a period of 7 years;
- (k) an order pursuant to clause 8.5 of subsection 127(1) of the Act that Ricketts is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 7 years;
- (l) an order pursuant to clause 9 of subsection 127(1) of the Act that Ricketts pay an administrative penalty of \$50,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

- (m) an order pursuant to clause 10 of subsection 127(1) of the Act that Ricketts disgorge to the Commission a total of \$177,094.50, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and
- (n) an order pursuant to clause 127.1 of the Act that Ricketts pay a total of \$22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Griffiths.

[9] Staff has requested that the following sanctions and costs orders be made against Griffiths:

- (a) an order pursuant to clause 2 of subsection 127(1) of the Act that trading in any securities by Griffiths cease for a period of 5 years, except that, once Griffiths has fully satisfied the conditions in clauses (l), (m) and (n), below, he may trade in securities for the account of any RRSP in which he has sole legal and beneficial ownership;
- (b) an order pursuant to clause 2.1 of subsection 127(1) of the Act that the acquisition of any securities by Griffiths is prohibited for a period of 5 years, except that, once Griffiths has fully satisfied the conditions in clauses (l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;
- (c) an order pursuant to clause 3 of subsection 127(1) of the Act that any exemptions in Ontario securities law do not apply to Griffiths for a period of 5 years;
- (d) an order pursuant to clause 6 of subsection 127(1) of the Act that Griffiths is reprimanded;
- (e) an order pursuant to clause 7 of subsection 127(1) of the Act that Griffiths resign any position he holds as a director or officer of an issuer;
- (f) an order pursuant to clause 8 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as director or officer of any issuer for a period of 5 years;
- (g) an order pursuant to clause 8.1 of subsection 127(1) of the Act that Griffiths resign any position he holds as director or officer of a registrant;
- (h) an order pursuant to clause 8.2 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as director or officer of any registrant for a period of 5 years;
- (i) an order pursuant to clause 8.3 of subsection 127(1) of the Act that Griffiths resign any position he holds as director or officer of any investment fund manager;
- (j) an order pursuant to clause 8.4 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as director or officer of any investment fund manager for a period of 5 years;
- (k) an order pursuant to clause 8.5 of subsection 127(1) of the Act that Griffiths is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years;

- (l) an order pursuant to clause 9 of subsection 127(1) of the Act that Griffiths pay an administrative penalty of \$20,000 to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;
- (m) an order pursuant to clause 10 of subsection 127(1) of the Act that Griffiths disgorge to the Commission a total of \$51,192.50, to be designated for allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and
- (n) an order pursuant to clause 127.1 of the Act that Griffiths pay a total of \$22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Ricketts.

IV. STAFF'S SUBMISSIONS

[10] Staff submits that the Respondents' conduct involved serious contraventions of the Act by engaging in unregistered trading and an illegal distribution of securities. Staff notes that Ricketts also assisted with training and managing of sales staff who were engaged in the illegal activities of MDCC.

[11] Staff submits that neither of the Respondents was registered from September 2007 to July 2011 (the "**Material Time**"). However, Staff submits that Ricketts admitted that he was studying for the limited market dealer course because he was told that, due to a change in the law, he could not sell limited partnership units of MD Land Pool Limited Partnership ("**Phase 1**"), MD Land Pool Phase 2 Limited Partnership ("**Phase 2**"), and MD Land Pool Dundurn Limited Partnership ("**Dundurn**") (collectively, the "**LP Units**") until he is licensed. Staff also refers the Panel to Ricketts' admission that he took the Canadian Securities Course, but did not pass the exam, and understood that investors with MDCC were "accredited". This, Staff argues, supports their submission that Ricketts ought to have been aware of the registration and prospectus requirements of the Act.

[12] In written submissions, Staff argues that the Respondents' conduct was organized and prolonged over the Material Time of four years and resulted in MDCC illegally raising over \$5 million. At the Sanctions and Costs Hearing, Staff acknowledged that Ricketts was found to have engaged in such conduct for four years, but Griffiths only for two years. Staff submits that each profited from their violations of the Act, Ricketts in the amount of \$177,094.50 in commission payments and Griffiths in the amount of \$51,192.50 in commission payments. Staff attributes Ricketts greater earnings partially to his more prolific sales activity and partially due to additional managerial and training responsibilities.

[13] In support of its submissions on market bans, Staff relies upon findings with respect to conduct of salespersons in *Simply Wealth*, *Imagin*, *Allen* and *Sabourin* (*Re Simply Wealth Financial Group Inc.* (2013), 36 O.S.C.B. 5099 ("**Simply Wealth**"), *Re IMAGIN Diagnostic Centres Inc.* (2009), 32 O.S.C.B. 1441 ("**Imagin**"), *Re Allen* (2006), 29 O.S.C.B. 3944 ("**Allen**") and *Re Sabourin* (2010), 33 O.S.C.B. 5299 ("**Sabourin**"). Staff submits that in those cases the Commission ordered market bans ranging from five years to permanent bans. Staff also refers the Panel to five-year bans ordered against the Settling Respondents.

[14] Staff submits that, given the Respondents' conduct, Ricketts should be subject to seven-year trading, acquisition and exemption application bans and Griffiths should be subject to five-year trading, acquisition and exemption application bans, both subject to a carve-out for certain

personal trading upon payment of any order for disgorgement, administrative penalty and/or costs. Staff also submits that Ricketts should be subject to seven-year director and officer bans and Griffiths should be subject to five-year director and officer bans. Staff submits that the Commission has noted that, in the absence of fraud, a five-year market ban is appropriate (*Simply Wealth, supra* at paras. 29 and 47). However, Staff also submits that in *Sabourin*, salespersons who were found to have solicited clients to invest, met with clients to provide promotional material and explain investment schemes, helped clients complete required paperwork and received clients' investment cheques were ordered to be subject to permanent bans (*Sabourin, supra* at paras. 7 and 64). Staff submits that the periods of bans sought for the Respondents are appropriate, and distinguish Ricketts's conduct on basis of his greater knowledge of the markets, more prolific sales and managerial and training roles.

[15] Staff relies upon *Simply Wealth, Majestic* and *Sabourin*, as well as the Settlement Order, in support of its submissions with respect to appropriate administrative penalties (*Re Majestic Supply Co.* (2013), 36 O.S.C.B. 11642 ("*Majestic*"). Staff submits that in those cases the Commission ordered administrative penalties ranging from \$15,000 to \$150,000. Staff argues that, taking into account the disgorgement and totality of the sanctions, administrative penalties in the amount of \$50,000 for Ricketts and \$20,000 for Griffiths are proportional.

[16] Staff further submits that Ricketts should be ordered to disgorge \$177,094.50 and Griffiths to disgorge \$51,192.50 because the amounts were obtained as a result of non-compliance with the Act, amounts were reasonably ascertained by Staff and were found to be obtained by the Respondents in the Merits Decision and the order would have a deterrent effect on both the Respondents.

[17] In support of its submission on costs Staff filed the Affidavit of Kathleen McMillan, sworn on May 2, 2014, which attaches time dockets of Staff pertaining to this matter. Staff submits that it employed a conservative approach to its calculation of costs, which accounts for time spent by senior litigation counsel in preparation for the Merits Hearing after the Settlement Agreement was signed. Therefore, Staff is claiming \$22,447.50 in costs and submits that Ricketts and Griffiths should be jointly and severally liable for those costs.

V. THE LAW ON SANCTIONS

[18] The Commission's mandate is to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act). The Commission's role is to protect the public interest by preventing conduct in the future that may be detrimental to the integrity of the capital markets, not to punish past conduct (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at p. 10).

[19] The Commission must ensure that the sanctions imposed are proportionate to the circumstances of the case and conduct of each respondent. Factors the Commission has considered in determining appropriate sanctions include:

- (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 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 Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 (“**Belteco**”) at paras. 23-26; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 (“**M.C.J.C. Holdings**”) at para. 26)

[20] Deterrence is an important factor that the Commission may consider when determining appropriate sanctions. In *Cartaway*, the Supreme Court of Canada stated that: “...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).

[21] The panel in *Limelight Sanctions* considered the deterrent purpose of administrative penalties. Specifically the Commission stated:

The purpose of an administrative penalty is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets.

(*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 (“**Limelight Sanctions**”) at para. 67)

[22] There is no formula for determining an administrative penalty. Factors to be considered in determining an appropriate administrative penalty include: the seriousness of the misconduct; whether there were multiple and/or repeated breaches of the Act; the amount of money raised from investors; and the level of administrative penalties imposed in other cases (*Limelight Sanctions*, *supra* at paras. 71 and 78).

[23] Subsection 127(1)10 of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission “any amounts obtained as a result of the non-compliance”. When determining the appropriate disgorgement orders, the

Commission is guided by a non-exhaustive list of factors set out in *Limelight Sanctions* at para. 52, including:

- (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.

VI. SPECIFIC SANCTIONING FACTORS

[24] In determining appropriate sanctions, the Commission is guided by the factors set out in *Belteco* and *M.C.J.C. Holdings*. I have considered the factors summarized in the following paragraphs to be applicable in this matter.

A. Seriousness of Misconduct and Breaches of the Act

[25] The Respondents participated in serious contraventions of the Act by engaging in unregistered trading, contrary to section 25 of the Act, and the distribution of securities without a prospectus, contrary to section 53 of the Act. Registration is a cornerstone of securities law which serves as a gate-keeping function to ensure only properly qualified individuals are permitted to trade with, or on behalf of, the public (*Re Limelight Entertainment Inc. et al.* (2008), 31 O.S.C.B. 1727 at para. 135; *Majestic*, *supra* at para. 82). The prospectus fulfills an important disclosure requirement to ensure that investors are able to make informed decisions (*Simply Wealth*, *supra* at para. 30).

[26] During the Material Time, Ricketts solicited investors, provided investors with instructions on how to make payments, assisted investors with filling out subscription agreements and sent investors promotional materials (Merits Decision, *supra* at para. 100). Griffiths was found to have solicited investors, sent a subscription agreement to an investor, provided investors with instructions on how to make payments and assisted investors with filling out the paperwork and confirmed receipt of payment from investors (Merits Decision, *supra* at para. 104). I note, however, that neither was a directing mind of MDDC.

B. The Respondents' Experience in the Marketplace

[27] Neither of the Respondents was registered under the Act in any capacity during the Material Time (Merits Decision, *supra* at paras. 101 and 105). However, I accept that Ricketts had some experience in the marketplace by virtue of his own admission that he studied the limited market dealer course manual and took the Canadian Securities Course exam, albeit not passed (Merits Decision, *supra* at para. 67). Ricketts also admitted that he was advised that due to a change in the law he could not sell the LP Units until he became registered (*Ibid*).

C. Level of Activity in the Marketplace

[28] Over a prolonged period of three to four years MDDC raised over \$5 million from investors from the distribution of LP Units (Merits Decision, *supra* at para. 44). The evidence presented in the Merits Hearing supports that Ricketts's participation occurred throughout the Material Time, while Griffiths compensation began nearly two years later in July 2009 (Merits Decision, *supra* at para. 78).

D. Specific and General Deterrence

[29] Given the seriousness of the conduct, it is important that the Respondents and like-minded individuals should be deterred from doing so in the future by imposing appropriate sanctions. I find that specific deterrence is necessary for both the Respondents in this case. However, I am attuned to the fact that the Respondents were not proponents of a scheme or in this case not even principals of MDDC. On the other hand, both of the Respondents actively promoted and sold the securities in contravention of the Act and Ricketts managed certain sales activities in furtherance of the illegal enterprise.

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

[30] I found that Ricketts was paid \$177,094.50 during the Material Time for commissions based on the value of the securities he sold in this matter and that a portion of that compensation was for his training of sales staff and managerial duties at MDDC (Merits Decision, *supra* at para. 100). I found that Griffiths was paid \$51,192.50 during the Material Time, via Halfatree Enterprises ("**Halfatree**"), a sole proprietorship registered by Griffiths, as commissions based on the value of the securities he sold in this matter (Merits Decision, *supra* at para. 104). The Respondents' conduct in those respects constituted trading or acts in furtherance of trading LP Units and, therefore, compensation received was obtained as a result of non-compliance with the Act.

F. The Effect any Sanction Might Have on the Livelihood of a Respondent

[31] Aside from the fact that Ricketts has taken the Canadian Securities Course exam and gave evidence that he was studying for the limited market dealer course when he was working for MDDC, the Respondents have provided no indication that they wish to continue to pursue a career in the capital markets.

VII. APPROPRIATE SANCTIONS IN THIS MATTER

[32] In determining the appropriate sanctions, I have remained cognizant of the particular conduct of each of the Respondents.

A. Trading, Acquisition and Exemption Prohibitions

[33] I have considered decisions cited by Staff in which the Commission determined appropriate sanctions following findings that salesperson respondents engaged in unregistered trading and the illegal distribution of securities. I agree that the conduct of the Respondents warrants the imposition of certain trading, acquisition and exemption prohibitions that are commensurate each one's conduct.

[34] In *Simply Wealth*, the Commission considered circumstances in which respondents solicited and promoted investments for a forex trading program that, in reality, was a ponzi

scheme (*Simply Wealth, supra* at paras. 1-2). In that matter, the Commission ordered five-year prohibitions on trading in or acquisition of securities and exemption application, in circumstances where respondents were found to have violated sections 25 and 53 of the Act (*Simply Wealth, supra* at paras. 3 and 54). The panel also permitted the individual respondents to have a trading, acquisition and exemption application carve-out for an RRSP after they fully satisfy orders for administrative penalties, disgorgement and costs (*Simply Wealth, supra* at paras. 47 and 54).

[35] In *Allen*, the salesperson respondents, who were found to have contravened sections 25 and 53 of the Act, were ordered to cease trading in securities and that exemptions contained in Ontario securities law would not apply to them for a period of seven years, subject to a carve-out for personal trading or the account of an RRSP under certain terms (*Allen, supra* at paras. 5 and 58-60). I note that in the *Allen* decision, the panel considered aggravating factors, including that two of the respondents were previously registered and the other had a lengthy criminal record, which are not present in this case.

[36] Although cited by Staff, I do not find the permanent prohibitions ordered against salesperson respondents in *Sabourin* to be of assistance here as that matter dealt with respondents who were former registrants, at least one of whom misled Staff and another who told investors to ignore inquiries from the Commission, they sold “sham” investments and continued to do so after being interviewed by Staff (*Sabourin, supra* at paras. 7, 61 and 64). Deceptive conduct has not been found in the circumstances of this case; the illegal trades were in units of limited partnerships that hold and develop interests in real estate in the Province of Saskatchewan.

[37] The Settling Respondents, who were the directing minds of MDDC and responsible for conduct of the company pursuant to section 129.2 of the Act, were ordered to cease trading or acquiring securities and that exemptions would not apply to them for a period of five years, subject to a carve-out for personal trading in an RRSP (Settlement Agreement, *supra* at paras. 10-11, 30 and 32; Settlement Order, *supra*). I accept Staff’s oral submissions that the Settling Respondents genuinely aspired to comply, they had been the subject of a compliance investigation by Staff, had received lifetime prohibition from becoming registered and, therefore, the sanctions imposed upon them reflect a degree of cooperation and considerations relevant to the settlement context, which are not present for Ricketts and Griffiths. Nevertheless, I am mindful that the Settling Respondents were principals of MDDC and registrants.

[38] As noted above, the Respondents engaged in acts in furtherance of trades, without being registered to do so, over a sustained period of time and resulting in a distribution of securities, contrary to sections 25 and 53 of the Act (Merits Decision, *supra* at para. 115). These are serious breaches of the Act. I acknowledge, however, that the Respondents were not principals of MDDC and there were no findings of deceptive conduct. Further, I distinguish between Ricketts, who managed sales staff and engaged in the conduct for a longer period of time, and Griffiths. Therefore, in the circumstances of this matter and in view of the decisions noted above, I find that it is in the public interest to order that they cease trading in securities, be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to them, in the case of Ricketts for a period of five years and in the case of Griffiths for a period of three years.

[39] The Commission has previously granted a carve-out from a cease trade order for personal trading in an RRSP where the panel found that such carve-out would not significantly increase the risk to the capital markets (*Re Foreign Capital Corp.* (2005), 28 O.S.C.B. 4221 at para. 51 and *Re Duic* (2008), 31 O.S.C.B. 9531 at para. 60). As the panel determined in *Simply Wealth*, I find that the Respondents should be granted a carve-out for personal trading in an RRSP trading upon full satisfaction of payments ordered in respect of administrative penalties, disgorgement and costs for each (*Simply Wealth, supra* at paras. 47 and 54). In my view, such an exception would not significantly increase the risk to the capital markets given the circumstances.

B. Other Market Prohibitions and Director and Officer Bans

[40] Given their misconduct, I agree that certain market and director and officer prohibitions should be imposed upon the Respondents.

[41] In *Simply Wealth*, the Commission ordered the individual respondents to resign and prohibited them from becoming or acting as directors or officers of any issuer, registrant or investment fund manager for five years, in circumstances where certain of respondents authorized, permitted or acquiesced in breaches of sections 25 and 53 of the Act by corporate respondents in their respective capacities as directors of those companies (*Simply Wealth, supra* at paras. 3 and 54).

[42] In *Imagin*, the salesperson respondents engaged in unregistered trading of securities contrary to section 25 of the Act and one respondent specifically, Allan McCaffrey (“**McCaffrey**”), oversaw the sales team’s conduct in that respect (*Imagin, supra* at paras. 9 and 12). McCaffrey was prohibited from becoming or acting as a registrant or a director or officer of any issuer, registrant or investment fund manager for a period of 10 years and similar prohibitions were ordered against the other salesperson respondents for a period of five years (*Imagin, supra* at paras. 31-34). I note that in *Imagin* the Commission was approving settlement agreements between Staff and each of those respondents (*Imagin, supra* at para. 3).

[43] The Settling Respondents were prohibited from becoming or acting as a registrant for five years. Cheong and Tse, the directing minds of MDDC, were also were prohibited from becoming or acting as investment fund managers or promoters for the same period (Settlement Order, *supra*). Cheong and Tse were further ordered to resign and were prohibited from becoming or acting as directors or officers of MDDC and certain other prohibited companies for five years (Settlement Order, *supra*). Lastly, Cheong and Tse were prohibited from becoming or acting as directors or officers of a registrant or investment fund manager for five years (Settlement Order, *supra*). I accept Staff’s submission that Tse and Cheong had previously been the subject of a compliance review by Staff and were permanently prohibited from becoming registrants prior to the approval of the Settlement Agreement.

[44] Having reviewed the above-noted cases, I am guided by previous findings of the Commission that market prohibitions and director and officer bans are found to be appropriate in matters involving unregistered trading and an illegal distribution. I find that the Respondents should not be entitled to become or act as registrants, investment fund managers or as promoters for a period of seven years for Ricketts and five years for Griffiths. Ricketts had some experience in the marketplace through his involvement in studying the limited market dealer manual and having taken the Canadian Securities Course exam, which I find to be an aggravating factor (Merits Decision, *supra* at para. 67). Ricketts’ conduct in breach of the Act also occurred for a longer period relative to Griffiths (Merits Decision, *supra* at para. 78).

[45] While neither of the Respondents were officers, directors and/or directing minds of corporate entities in this matter, I agree with Staff's submission that the Respondents should resign and be prohibited from becoming directors or officers of any registrant or investment fund manager for a period of seven years for Ricketts and five years for Griffiths. In my view, those positions engage the precise registerable activities that were at issue in this matter. However, given that the Respondents were not principals of the companies that distributed the securities, I find that an order that the Respondents resign and be prohibited from becoming directors or officers of an issuer for a period of five years for Ricketts and three years for Griffiths is proportionate and will serve sufficient specific and general deterrence in the circumstances.

[46] In my view, the orders for resignation, the imposition of varying director and officer bans and other market prohibitions will ensure that the Respondents will not be placed in a position of control or trust with respect to issuers, registrants or investment fund managers in the near future. These orders serve to ensure general and specific deterrence for the Respondents and like-minded individuals.

C. Disgorgement

[47] I have considered the non-exhaustive list of factors set out in *Limelight Sanctions* in determining appropriate disgorgement orders (*Limelight Sanctions*, *supra* at para. 52). The Commission has decided that, in considering what is the appropriate disgorgement, "the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity" (*Limelight Sanctions*, *supra* at para. 43).

[48] Ricketts was paid \$177,094.50 during the Material Time as commissions based on the value of the securities he sold in this matter, a portion of which related to his training of sales staff and managerial duties at MDDC (Merits Decision, *supra* at para. 100). Griffiths was paid \$51,192.50 during the Material Time, via Halfatree, as commissions based on the value of the securities he sold in this matter (Merits Decision, *supra* at para. 104). The Respondents' conduct in those respects constituted trading or acts in furtherance of trading LP Units and, therefore, I find that the compensation received was obtained as a result of non-compliance with the Act. The amounts of \$177,094.50 for Ricketts and \$51,192.50 for Griffiths are reasonably ascertainable based on the evidence and findings in the Merits Decision.

[49] The Respondents participated in serious contraventions of the Act (Merits Decision, *supra* at para. 115). There is no evidence that particular investors were seriously harmed by the Respondents' conduct and therefore it is not known whether there would be a need for investors to obtain redress. However, I accept Staff's submission that violations of the Act, including illegal distributions, are harmful to the capital markets.

[50] The Respondents should not be permitted to profit from their conduct contrary to the Act. In the circumstances, I find that it is appropriate to order Ricketts to disgorge \$177,094.50 and Griffiths to disgorge \$51,192.50, obtained by each as a result of their non-compliance with the Act.

D. Administrative Penalties

[51] I have considered the factors noted above to be considered in determining an appropriate administrative penalty (*Limelight Sanctions*, *supra* at paras. 71 and 78).

[52] Each of the Respondents committed multiple, serious and repeated violations of the Act. The sales of LP Units raised over \$5 million from investors over a period of three to four years (Merits Decision, *supra* at para. 44).

[53] In matters involving unregistered trading and illegal distributions, the Commission has ordered individual salesperson respondents to pay administrative penalties in varying amounts, including \$15,000 in *Simply Wealth* and \$75,000 in *Majestic* (*Simply Wealth*, *supra* at para. 54; *Majestic*, *supra* at para. 158). In *Imagin*, the Commission approved a settlement agreement in which McCaffery, who held a managerial position similar to Ricketts, was ordered to pay a \$15,000 administrative penalty (*Imagin*, *supra* at paras. 9 and 31). I note that the *Imagin* decision was premised upon a settlement agreement in that matter, which took into account mitigating factors that are not present in this matter.

[54] As a result of the approved settlement agreement related to this matter, Cheong and Tse were ordered by the Commission to pay \$37,500 each as administrative penalties (Settlement Order, *supra*). I accept Staff's submission that the Settlement Agreement reflects cooperation by Tse and Cheong, including payments made towards administrative penalties and costs orders prior to the settlement hearing and that they genuinely aspired to comply with the Act. However, I continue to distinguish between the Respondents and the directing minds who operated MDDC from its inception and employed the Respondents to engage in the conduct contrary to the Act. The Respondents were in sales positions more akin to respondents in the matters considered above.

[55] I also find the fact that Ricketts had more experience in the marketplace and that his conduct occurred for a longer period relative to Griffiths, to be aggravating factors requiring more specific deterrence (Merits Decision, *supra* at paras. 67 and 78). Further, I note that Ricketts held a managerial position with MDDC (Merits Decision, *supra* at para. 100).

[56] Staff requests that Ricketts be order to pay \$50,000 and Griffiths \$30,000 as administrative penalties. I disagree. In considering the factors above and the level of administrative penalties imposed in other cases and Settlement Agreement, I find that orders for administrative penalties against Ricketts in the amount of \$30,000 and Griffiths in the amount of \$15,000 are proportional and appropriate in the circumstances. The scope and seriousness of the Respondents' misconduct warrants strong deterrence for each of them, which, in my view, is served by the imposition of these administrative penalties.

VIII. COSTS

[57] The Commission has discretion to order a person to pay the costs of an investigation and hearing if the Commission is satisfied that the person has not complied with the Act or has not acted in the public interest (section 127.1 of the Act). I have considered the factors at Rule 18.2 of the Commission's *Rules of Procedure* in exercising my discretion to order costs.

[58] I find that the costs sought and apportioned by Staff to be generally reasonable and conservative. Staff seeks to recover \$22,447.50 in costs for the time spent by one senior litigation counsel in this matter. Staff does not claim time of counsel during the investigation, time preparing for the Sanctions and Costs Hearing or disbursements. Further, Staff's claim for costs is made after the Settlement Agreement to avoid seeking costs that may be attributable to the Settling Respondents.

[59] In support of this request, Staff provided written submissions and filed the Affidavit of Kathleen McMillan, sworn on May 2, 2014, which attaches time dockets of Staff for time

incurred in the Merits Hearing litigation phase of the proceeding, as required by Rule 18.1(2)(b) of the *Rules of Procedure*. The time docket records numbers of hours worked and details of the tasks performed by senior litigation counsel and the affidavit speaks to hourly rate of counsel. I am satisfied that the evidence supports an adequate record of costs.

[60] This was not a complex proceeding and Staff presented its case efficiently by way of a written hearing. Neither of the Respondents participated or contributed to the Merits Hearing or the Sanctions and Costs Hearing. While Ricketts did appear for an examination by Staff during the investigation stage, Griffiths did not respond in any way (*Merits Decision, supra* at para. 60).

[61] Taking into account the foregoing, I accept that Ricketts and Griffiths should be ordered to pay a total of \$22,447.50 relating to hearing costs incurred by the Commission, for which they shall be jointly and severally liable, pursuant to subsection 127.1(2) of the Act.

IX. CONCLUSION

[62] In my view, the sanctions imposed in this matter reflect the seriousness of the misconduct that occurred and should deter the Respondents and like-minded individuals from engaging in future conduct that violates securities law. Accordingly, I conclude that following sanctions are proportionate to the circumstances and conduct of each of the Respondents and that it is in the public interest to make these orders:

1. With respect to Ricketts:

- (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Ricketts cease for a period of five years, except that, once Ricketts has fully satisfied the conditions in clauses 1.(l), (m) and (n), below, he may trade in securities for the account of any RRSP as defined in the *Income Tax Act*, in which he has sole legal and beneficial ownership;
- (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Ricketts is prohibited for a period of five years, except that, once Ricketts has fully satisfied the conditions in clauses 1.(l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;
- (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Ricketts for a period of five years;
- (d) pursuant to clause 6 of subsection 127(1) of the Act, that Ricketts is reprimanded;
- (e) pursuant to clause 7 of subsection 127(1) of the Act, that Ricketts resign any position he holds as a director or officer of an issuer;
- (f) pursuant to clause 8 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any issuer for a period of five years;
- (g) pursuant to clause 8.1 of subsection 127(1) of the Act, that Ricketts resign any position he holds as director or officer of a registrant;

- (h) pursuant to clause 8.2 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any registrant for a period of seven years;
- (i) pursuant to clause 8.3 of subsection 127(1) of the Act, that Ricketts resign any position he holds as director or officer of any investment fund manager;
- (j) pursuant to clause 8.4 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as director or officer of any investment fund manager for a period of seven years;
- (k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Ricketts is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of seven years;
- (l) pursuant to clause 9 of subsection 127(1) of the Act, that Ricketts pay an administrative penalty of \$30,000, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;
- (m) pursuant to clause 10 of subsection 127(1) of the Act, that Ricketts disgorge to the Commission a total of \$177,094.50, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
- (n) pursuant to subsection 127.1(2) of the Act, that Ricketts pay a total of \$22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Griffiths.

2. With respect to Griffiths:

- (a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by Griffiths cease for a period of three years, except that, once Griffiths has fully satisfied the conditions in clauses 2.(l), (m) and (n), below, he may trade in securities for the account of any RRSP as defined in the *Income Tax Act*, in which he has sole legal and beneficial ownership;
- (b) pursuant to clause 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by Griffiths is prohibited for a period of three years, except that, once Griffiths has fully satisfied the conditions in clauses 2.(l), (m) and (n), below, he may acquire securities for the account of any RRSP in which he has sole legal and beneficial ownership;
- (c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Griffiths for a period of three years;
- (d) pursuant to clause 6 of subsection 127(1) of the Act, that Griffiths is reprimanded;
- (e) pursuant to clause 7 of subsection 127(1) of the Act, that Griffiths resign any position he holds as a director or officer of an issuer;

- (f) pursuant to clause 8 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any issuer for a period of three years;
- (g) pursuant to clause 8.1 of subsection 127(1) of the Act, that Griffiths resign any position he holds as director or officer of a registrant;
- (h) pursuant to clause 8.2 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any registrant for a period of five years;
- (i) pursuant to clause 8.3 of subsection 127(1) of the Act, that Griffiths resign any position he holds as director or officer of any investment fund manager;
- (j) pursuant to clause 8.4 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as director or officer of any investment fund manager for a period of five years;
- (k) pursuant to clause 8.5 of subsection 127(1) of the Act, that Griffiths is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of five years;
- (l) pursuant to clause 9 of subsection 127(1) of the Act, that Griffiths pay an administrative penalty of \$15,000, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;
- (m) pursuant to clause 10 of subsection 127(1) of the Act, that Griffiths disgorge to the Commission a total of \$51,192.50, designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
- (n) pursuant to subsection 127.1(2) of the Act, that Griffiths pay a total of \$22,447.50 for costs of the hearing, for which he shall be jointly and severally liable with Ricketts.

[63] I will issue a separate order giving effect to my decision on sanctions and costs.

Dated this 9th day of September, 2014.

“Edward P. Kerwin”

Edward P. Kerwin