Ontario Securities Commission	Commission des valeurs mobilières de l'Ontario	P.O. Box 55, 22nd Floor 20 Queen Street West Toronto ON M5H 3S8	CP 55, 22e étage 20, rue queen ouest Toronto ON M5H 3S8

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

- AND -

ALEXANDER CHRIST DOULIS (aka ALEXANDER CHRISTOS DOULIS, aka ALEXANDROS CHRISTODOULIDIS) and LIBERTY CONSULTING LTD.

REASONS AND DECISION (Section 127 of the Act)

Hearing:	February 4, 7, 8, 11 and 13, 2013 April 3, 4 and 5, 2013 July 3 and 30, 2013	
Decision:	September 18, 2014	
Panel:	Vern Krishna, CM, QC, LSM	Commissioner
Counsel:	Jon Feasby	For Staff of the Ontario Securities Commission
Appearances:	Alexander Doulis	Self-represented John Eversley for April 4 and 5, 2013
		No one appeared for Liberty Consulting Ltd.

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REASONS AND DECISION

I. BACKGROUND

A. The Allegations

[1] This proceeding was commenced on January 14, 2011, when the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") on and dated January 14, 2011. Staff alleges that:

> (a) between January 1, 2004 and September 2010 (the "**Material Time**"), Alexander Christ Doulis also known as Alexander Christos Doulis, also known as Alexandros Christodoulidis ("**Doulis**") and Liberty Consulting Ltd., also known as Liberty Consulting for the Offshore and also known as Liberty Consulting of the Turks and Caicos Island ("**Liberty**" or "**Liberty Consulting**") engaged in the business of advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law in any category of adviser, contrary to subsection 25(1)(c) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") (in force until September 28, 2009) and subsection 25(3) of the Act (in force as of September 28, 2009); and
>
> (b) between July 2009 and September 2010, Doulis made statements to Staff that in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act.

Doulis denies both allegations. Liberty did not participate in the proceeding.

B. The Temporary Order Hearing

[2] On March 10, 2011, a different Panel of the Commission (the "**Temporary Order Panel**") heard Staff's application for a temporary order ("**Temporary Order**") pursuant to section 127 of the Act that, until the completion of the hearing on the merits in this matter (the "**Merits Hearing**"): (i) Doulis and Liberty (together, the "**Respondents**") cease trading in and acquiring any securities except for the benefit of Doulis personally or that of his spouse, Sally Doulis; and (ii) any exemptions contained in Ontario securities law do not apply to the Respondents (the "**Application**").

[3] At the hearing of the Application (the "**Temporary Order Hearing**"), Staff relied on the Affidavit of Larry Masci ("**Masci**"), a Senior Investigator with Staff, sworn February 17, 2011, with two binders of exhibits attached (the "**February 2011 Affidavit**", and a Supplementary Affidavit of Masci, sworn March 3, 2011, with several exhibits attached (the "**March 2011 Affidavit**" and together with the February 2011 Affidavit, the "**Masci Affidavits**").

[4] The Respondents relied on the Affidavit of Doulis, sworn March 8, 2011, with several exhibits attached (the "**Doulis Affidavit**"). Doulis was cross-examined on the Doulis Affidavit at the Temporary Order Hearing. Doulis also called two investors to testify on his behalf, Investor One and Investor Two (as defined below) and presented a support letter provided by one of the investor witnesses (the "**Investor One Letter**"), and an invoice sent to an investor who did not testify (the "**February 2011 Invoice**").

[5] On September 9, 2011, the Temporary Order Panel, granted the Application, except that the request for a temporary order prohibiting the acquisition of securities under paragraph 2.1 of subsection 127(1) of the Act was declined in the absence of submissions as to whether subsection 127(5) of the Act gave the Commission authority to issue such an order on a temporary basis (the "**Temporary Order Decision**").

C. The Merits Hearing

[6] The Merits Hearing was held over five days in February 2013 and three days in April 2013 respectively. Staff and Doulis filed written submissions, and preliminary matters and their oral closing submissions were heard on July 3 and 30, 2013 respectively.

[7] I reserved my decision at the close of the Merits Hearing.

II. THE RESPONDENTS

A. Doulis

[8] Doulis is a Canadian citizen. He is also a citizen of Greece. Doulis was listed as the sole director and sole shareholder of Liberty from February 19, 2002 (Exhibit S12 -- Volume 1B, Tab G, p. 61-69) until June 2005. On or about June 2005, Doulis transferred his formal ownership of Liberty to a trust constituted under the laws of the Isle of Man on February 3, 2003 (the "**Paladin Trust**").

[9] Doulis was registered with the Commission in various capacities from May 24, 1979 to December 15, 1989. Doulis is not currently registered with the Commission in any capacity and has not been registered under that Act after December 15, 1989. Doulis resides at 160 Frederick Street, Suite 203, in Toronto, Ontario.

B. Liberty

[10] Liberty is a corporation incorporated pursuant to the laws of the Turks and Caicos on November 15, 1995 (Exhibit S12 -- Volume 1B, Tab G, p. 61-69) with its registered office listed as of February 19, 2002 as 160 Frederick Street, Suite 203, Toronto, Ontario (the "**Liberty Office**"). (Exhibit S12 -- Volume 1B, Tab G, p. 61-69) Liberty is not currently and has never been registered under the Act. (Exhibit 39 -- Volume 1B, Tab D, p. 19-23)

[11] The Liberty Office is a residential condominium (the "**Condominium**") owned by Minotaur Capital Corporation ("**Minotaur Capital**"). (Exhibit S47 -- Volume 1B, Tab N, p. 181) Minotaur Capital is a company incorporated in Ontario in 1987. The Ontario government corporation profile report for Minotaur Capital dated August 13, 2009, lists Doulis as director, secretary and president of Minotaur Capital beginning March 22, 1993. Sally Doulis, the spouse

of Doulis, succeeded Doulis as president and secretary of Minotaur Capital on October 30, 1994. (Exhibit S46 -- Volume 1B, Tab M, p. 172) As of August 13, 2009, she held the positions of president, director, secretary and treasurer of Minotaur Capital. Minotaur Capital rents the Condominium to Liberty.

III. THE ISSUES

[12] The two issues before me in the Merits Hearing are whether:

(a) during the Material Time, each of the Respondents engaged in the business of advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law in any category of adviser, contrary to subsection 25(1)(c) of the Act (in force until September 28, 2009) and subsection 25(3) of the Act (in force as of September 28, 2009) (the "**Unregistered Advising**" allegation); and

(b) between July 2009 and September 2010, Doulis made statements to Staff that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to subsection 122(1)(a) of the Act.

The Merits Hearing is a hearing *de novo*, and Staff bears the onus of proving its allegations on a balance of probabilities.

[13] In contrast to the issues in the Merits Hearing, the issue in the Temporary Order Hearing was whether it was in the public interest to issue a temporary order against the Respondents pending the completion of the Merits Hearing. Although the issues in the Merits Hearing arise out of the same underlying facts and law as the issues in the Temporary Order Hearing, the findings in the Temporary Order Decision are not *res judicata*.

IV. THE STANDARD OF PROOF

[14] The standard of proof applicable in Commission proceedings is proof on a balance of probabilities. Staff referred us to *F.H. v. McDougall*, [2008] 3 SCR 41 ("***McDougall***"), a Supreme Court of Canada decision, which states that:

> ...in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.
>
> (*McDougall,* at para 49)

[15] The Supreme Court of Canada further stated that:

> ...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.
>
> (*McDougall*, *supra*, at para 46)

[16] In this matter, Staff makes serious allegations against each of the Respondents. Accordingly, I must be satisfied that there is sufficient clear, convincing and cogent evidence to support my finding. I must scrutinize the evidence with care in deciding whether the alleged events are more likely than not to have occurred.

V. JURISDICTION

[17] Doulis submitted that the Commission does not have jurisdiction in this matter because Liberty is advising clients in the Turks and Caicos Islands. The question that I must consider is whether the activities of Doulis and Liberty that are alleged to contravene the Act, as a whole, had a significant nexus to Ontario.

[18] The Supreme Court of Canada addressed this issue. In *Gregory & Co. Inc. v Quebec Securities Commission et al*, [1961] SCR 584, ("***Gregory***"), the corporate respondent argued that its business activities were not subject to the jurisdiction of the Quebec Securities Commission. Although the respondent had its head office in Montreal, mailed promotional materials and telephoned investors from Montreal, and directed investors to mail cheques for payment to Montreal, where it maintained its bank account, the investors resided outside Quebec. The Supreme Court of Canada concluded that the respondent did carry on the business of trading in securities and acting as investment counsel in Quebec. The Supreme Court of Canada held that:

> The fact that the securities traded by [the] appellant would be for the account of customers outside of the province or that its weekly bulletins would be mailed to clients outside of the province, does not, as decided in the Courts below, support the submission that [the] appellant was not trading in securities or acting as investment counsel, in the province, within the meaning and for the purposes of the Act Respecting Securities.
>
> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.
>
> (*Gregory,* at pp. 588-589)

[19] The Commission has applied this principle, as set out in *Gregory,* in other cases and found that respondents have acted in furtherance of trades even though there was no evidence that the trades involved investors in Ontario. For example, in *Re Patrick Fraser Kenyon Pierrepont Lett et al,* (2004), 27 OSCB 3215 ("***Re Lett***"), the Commission found that the respondents had acted in furtherance of trades and that those acts occurred in Ontario, although there was no evidence that the trades involved investors in Ontario:

> The Respondents were all based in the Toronto area, had bank accounts in the Toronto area, [and] carried on business in the Toronto area. Most, if not all, of the documents referred to in the Agreed Statement of Facts and in the six volumes of documents composing the Joint Hearing Brief consist of documents that were either sent by the Respondents from the Toronto area or addressed to them in the Toronto area. (*Re Lett* at para 66)

[20] In addition, in *Re Allen* (2005), 28 OSCB 8541 ("***Re Allen***"), the Commission found that it had,

> jurisdiction over a trade in securities, notwithstanding that the purchaser was in a different province, provided that some substantial aspect of the transaction occurred within Ontario.

[21] In *Re Allen,* the Commission citing *Gregory,* found that,

> …sales of securities of Andromeda were made by the Respondents to investors in Ontario and in Alberta. A substantial portion of the activities surrounding the sales of these securities by the Respondents took place in Ontario. The issuer is located in Welland, Ontario. The Respondent's offices and operations were based in Toronto, Ontario. The promotional materials were mailed from Toronto. The phone calls made by the Respondents were made from their Toronto offices and cheques in payment for the purchase of Andromeda securities were also sent to this location.
>
> (*Re Allen* at para 20)

[22] The Supreme Court of Canada in *Libman v The Queen*, [1985] 2 SCR 178 ("***Re Libman***"), held that the accused could be charged with fraud and conspiracy to commit fraud under the Criminal Code, R.S.C. 1985, c. C-46, as amended, even though some elements of the offences occurred outside Canada. In *Re Libman*, the Supreme Court also noted that an offence can occur in more than one place:

> Although offences are local, the nature of some offences is such that they can properly be described as occurring in more than one place. This is peculiarly the case where a transaction is carried on by mail from one territorial jurisdiction to another, or indeed by telephone from one such jurisdiction to another. This has been recognized by the common law for centuries.
>
> (*Re Libman*, *supra* at para 53 citing *R v W. McKenzie Securities Ltd.,* [1966] 4 CCC 29 at p 37-38)

[23] Libman and his employees allegedly telephoned U.S. residents and attempted to sell them shares in two Costa Rican gold mining companies. Promotional materials were mailed out from Costa Rica or Panama, investors were told to send their money to offices in Costa Rica or Panama, and Libman met with associates in Costa Rica and Panama to receive his share of the proceeds. However, the "boiler room" was located in Toronto and some of the proceeds were wired back to Toronto.

[24] I conclude that the conduct of the Respondents during the Material Time had a significant and substantial connection to Ontario. In coming to this conclusion, I considered the following factors, that during the Material Time: (i) the Liberty Office and Doulis were located in Ontario; (ii) the Investor Witnesses were located in Toronto; (iii) the emails and invoices originated in Toronto from the Liberty Office, and were sent to Clients in Ontario; (iii) the Client Accounts (as defined below) and the "*General Authorization*" form at Desjardins Securities authorizing Doulis to act as a power of attorney over the Client Accounts (as defined below) (the "**POA Forms**") originated and were signed in Ontario; (iv) duplicate copies of the account statements of the Investor Witnesses were mailed from Desjardins Securities and sent to Doulis at the Liberty Office in Toronto; (iv) the brokerage accounts of the Investor Witnesses were located in Toronto; (v) certain Clients wired funds to the Liberty Account (as defined below) and to Doulis from Toronto; and certain Clients mailed cheques to Liberty at the Liberty Office in Toronto for portfolio services.

[25] Therefore, I find that the Commission has jurisdiction over the conduct of the Respondents in this matter.

VI. POSITIONS OF THE PARTIES

A. Staff

[26] Staff submitted that each of Doulis and Liberty engaged in Unregistered Advising activity during the Material Time. Staff submitted that during the Material Time, Doulis used the powers of attorney ("**POA(s)**") he had over the brokerage accounts (the "**Client Accounts**") of twelve individuals and corporations (the "**Clients**") at Desjardins Securities Inc. ("**Desjardins Securities**") to provide investment advisory services to the Clients for a business purpose. The POAs authorized Doulis to make all trading decisions and issue trading instructions in the Client Accounts for the Clients. The POAs permitted Doulis to have complete discretionary trading authority over the Client Accounts.

[27] Staff further submitted that Doulis personally invoiced the Clients for his services through Liberty, setting out the remuneration the Clients would pay; and that Doulis received both a direct and indirect benefit of the funds paid by the Clients.

[28] Staff also submitted that Doulis misled Staff of the Commission during the course of their investigation of his advising activity and made a number of false and/or misleading statements during:

(i) a voluntary, joint interview by the Investment Industry Regulatory Organization of Canada ("**IIROC**") and Staff on July 15, 2009 (the "**Phone Interview**");

(ii) a compelled examination under oath on July 13, 2010 pursuant to a section 13 examination under the Act (the "**Compelled Examination of Doulis**"); and

(iii) in letters and emails that Doulis voluntarily wrote to Staff on numerous occasions (the "**Doulis Correspondence**").

[29] Staff submitted that in the Phone Interview, the Compelled Examination of Doulis, and the Doulis Correspondence, Doulis made statements that:

(i) falsely minimized his role with Liberty;

(ii) he did not send, nor was he aware that anyone had sent, invoices to the Clients;

(iii) he did not know what remuneration Liberty received; and

(iv) he was not being paid directly or indirectly by any of the Clients.

B. The Respondents

[30] Doulis submitted at the Merits Hearing that there is "no evidence whatsoever of any sort that Doulis advised anyone anywhere to buy a security" (Hearing Transcript, July 30, 2013, p. 81, lines 18-21) and that, in substance, no advice was provided. Accordingly, there is no evidence of advising.

[31] Doulis also submitted that there is no connection between the benefits that he received from Liberty and the function that he was providing for the Clients. Doulis maintains that both the office space that he was provided at the Liberty Office and the retainer he received from Liberty were not connected to his functions with the Clients.

[32] No submissions were made by Liberty.

VII. THE EVIDENCE

A. Staff

1. Overview

[33] Staff called Tom Anderson ("**Anderson**") and Joan Chambers ("**Chambers**"), who are investigators with Staff, and Staff also called four investors: Investor One, Investor Two, Investor Three, and Investor Four (collectively, the "**Investor Witnesses**").

[34] At the start of the Merits Hearing, Staff and Doulis agreed that the documents admitted at the Temporary Order Hearing could be admissible at the Merits Hearing. Staff introduced five volumes of hearing briefs and a number of loose exhibits (Staff's "**Hearing Brief**"). Four volumes of Staff's Hearing Brief consisted of the hearing transcript of the Temporary Order Hearing ("**Transcript of the Temporary Order Hearing**") and the documentary evidence admitted at the Temporary Order Hearing, including the Masci Affidavits, the Doulis Affidavit, the Investor One Letter and the February 2011 Invoice. The exhibits appended to the Masci Affidavits included, among other documents, the transcripts of the compelled examination of the Investor Witnesses, with appended exhibits, including new client application forms from Desjardins Securities, POA Forms, and correspondence with Doulis with respect to their investments.

[35] Also appended to the Masci Affidavits were transcripts of compelled examinations, with attached exhibits, of each of Edward Milewski ("**Milewski**") and Elisa Baker-Moteeram

("**Baker**"), formerly of Desjardins Securities, who executed the trades. The fifth volume of Staff's Hearing Brief included, among other documents, additional correspondence from Doulis. Staff's documentary evidence also included: (i) certificates issued under section 139 of the Act, each dated November 10, 2010 (the "**Section 139 Certificates**") and issued by the Compliance and Registrant Regulation Branch of the Commission regarding Doulis and Liberty; (ii) corporation profile reports and other business documents relating to Liberty, the Paladin Trust and Minotaur Capital; and (iii) bank records relating to two Liberty bank accounts in the Turks and Caicos Islands.

2. Transcripts

[36] Staff included in its Hearing Brief, the transcripts of several compelled examinations of non-Respondents, which were obtained pursuant to section 13 of the Act, including those of the four Investor Witnesses who testified before me at the Merits Hearing, and were available to Doulis for cross-examination. I regard the testimony of the Investor Witnesses at the Merits Hearing as the most cogent and reliable evidence. Accordingly, I have disregarded the transcripts of compelled examination of the Investor Witnesses, except where used to impeach their credibility.

[37] For the same reason, I have taken the same approach to the Hearing Transcript from the Temporary Order Hearing, included in Staff's Hearing Brief.

3. Anderson

[38] Anderson is an investigator employed with Staff of the Enforcement Branch of the Commission and for 15 years. Prior to his employment with the Commission, Anderson was a member of the Royal Canadian Mounted Police.

[39] Anderson was Staff's primary witness in terms of identifying materials and describing, to the extent necessary, the investigation of Doulis and Liberty (the "**Investigation**"). Anderson provided a general overview of the Investigation and identified Staff's documentary evidence that was obtained.

[40] Anderson testified that Staff received a letter, dated December 2, 2008, from Brigitte Hubert, Senior Compliance Officer of Desjardins Securities advising that Doulis had an association with a number of Client Accounts (the "**Desjardins Complaint Letter**"). The Desjardins Complaint Letter expressed that Desjardins Securities was concerned that Doulis was required to register under the Act in order to conduct himself with respect to the Client Accounts. Staff also received, along with the Desjardins Complaint Letter, correspondences between Desjardins Securities and the Investor Witnesses, as well as correspondence that Desjardins Securities had received from or exchanged with Doulis.

[41] Anderson testified that after the Desjardins Complaint Letter was received by the Commission, the matter was referred to the Case Assessment Unit within the Enforcement Branch of the Commission and Joan Chambers was assigned to the matter (the "**Doulis Matter**").

[42] Anderson testified that he was not the initial investigator assigned to the Doulis Matter. The Doulis Matter was previously assigned to two other investigators; (i) Don Panchuk, who subsequently, took on other duties within the Commission; and (ii) Masci. Anderson assumed responsibility for the Doulis Matter in the summer of 2011 when Masci's involvement in the file ended.

Documentation Relating to Doulis and Liberty

[43] Staff tendered through Anderson, relevant documentation pertaining to Doulis and Liberty obtained by Staff in the Investigation of the Doulis Matter. Specifically, Anderson identified and Staff entered into evidence copies of two (2) passports each belonging to Doulis: one Canadian, issued on October 24, 2001; and one Greek, identifying Doulis as a Canadian and Greek citizen, respectively. The Greek passport was issued on January 25, 1999 and expired on January 24, 2004. It also identified the residency status of Doulis as "Canada".

[44] Staff also tendered, through Anderson, relevant documentation showing that Doulis (i) established the Paladin Trust which owned Liberty, and (ii) established and controlled the activities in bank and brokerage accounts belonging to Liberty (the "**Liberty Accounts**"), including the following:

(i) Doulis Establishes the Paladin Trust

[45] In a trilogy of email exchanges beginning November to December, 2002, from Doulis to Mark Wilkinson, Isle of Man ("**Wilkinson**"), Doulis outlined the particulars pertaining to the establishment of the Paladin Trust. On November 21, 2002 (the "**November 21, 2002 Email**") Doulis sent an email to an address of Wilkinson, advising:

> Mark,
>
> The company will be settling a trust and the securities it holds will be transferred to the trust. I have instructed that the account will continue to be handled by yourself.
>
> I also have in my possession some certificates that are in the corporate name and as you know for which I have signing authority. The acceptable manner in Canada would be for me to sign off on them and have my signature witnessed by Canadian bank [sic]. Seeing as the certificates will be registered in Canada I would suspect that that should suffice for your office.
>
> (Exhibit S41 --Volume 1B, Tab F, p. 58)

[46] The Subject line of the November 21, 2002 Email stated "Elifthiria."

[47] In a subsequent email from Doulis to Wilkinson dated November 23, 2002 (the "**November 23, 2002 Email**"), Doulis stated:

> Further to the Paladin Trust being established at ICSL and settled by Elifthiria under Canadian tax law a trust settled by a Canadian is taxable irrespective of where it is domiciled. As a result Paladin Trust is being settled by a resident

> and citizen of Greece. The beneficiary will be a Canadian citizen. There will be not [sic] tax liabilities in Canada.
>
> 1) The due diligence issues are not as simple as might be first imagined. Elifthiria has a beneficial owner Alexander Christodoulidis, a Greek Citizen and resident. This is the settlor of the trust. Liberty will have as a director, the beneficiary of the trust a Canadian citizen.
>
> 2) The new owner of the securities will be an existing Turks & Caicos company, Liberty that will be owned by the Paladin Trust. Liberty's ownership is being transferred to ICSL.
>
> 3) Canadian registrars will by and large accept certificates signed off by a corporate officer if the signature if guaranteed [sic] by the corporation's broker and the signature has been witnessed by a Canadian Bank. The same applies to Powers of Attorney for securities. I agree that it is best to use PA's rather than the certificates.
>
> 4) After I finish with the Paladin Trust I would like to maintain an account at CIL for myself. Can the existing KYC information you have for me be used to open the new account?
>
> […]
>
> Please arrange for all of Elifthiria's securities to be transferred to Liberty and advise me of what other documentation you will need from me and Elifthiria. I have a deadline of December 20th to have all of this wound up.

[48] In a third email from Doulis to Wilkinson dated December 19, 2002 (the "**December 19, 2002 Email**"), Doulis writes:

> The Paladin Trust will have its beneficiaries Alex Doulis (Canadian Citizen) and Sally Doulis (US Citizen). The account you have currently for Elifthiria is administered by Alexander Christos Doulis (Greek Citizen). He is the beneficial owner of Elifthiria.
>
> Elifthiria will be wound up as of the end of the year as it is settling its assets into the Paladin Trust.
>
> Liberty Consulting is being sold by Alex Doulis to the Paladin Trust. Liberty will be the operating entity for the Paladin Trust.

[49] On February 3, 2003, a trust deed was made between N.V. Macor, a company incorporated and existing under the laws of the Netherlands Antilles with its registered office in Pietermaai, Curacao, Netherlands Antilles (the "**Settlor**") and ICSL Trustees Limited, a company incorporated and existing under the laws of the Isle of Man and having its registered office at Sovereign House, St. John's, the Isle of Man (the "**Trustee**") establishing the Paladin Trust Indenture (the "**Paladin Trust Indenture**").

[50] The Paladin Trust Indenture was established under, and constructed in accordance with, the laws of the Isle of Man. The eligible beneficiary of the Paladin Trust is Doulis and his address is listed as c/o 160 Frederick Street, Suite 203, Toronto, Ontario. Christos Doulis is listed as the protector for the time being of the Paladin Trust Indenture. The Paladin Trust Indenture states that "Protector" means "such person, or persons listed in Schedule Three hereof and such other person or persons as may from time to time be nominated or substituted by the settler giving notice in writing to the trustee". (Exhibit S40 --Volume 1B, Tab E, p. 31)

[51] The Paladin Trust Indenture stated, among other things, that the:

> Trustee shall keep accurate accounts of this trusteeship and provide a financial accounting to the protector by the 15th of January each year with the first accounting to end on 31st December 2003 and may have them audited annually at the expense of the trust fund or the income thereof as the trustee shall determine by a firm of Chartered or similarly qualified Accountants selected by the Trustee.
>
> (Exhibit S40 -- Volume 1B, Tab E, p. 37)

The Paladin Trust Indenture also states, among other things, that the Protector is entitled to request and promptly receive information and accounts in respect of the trust from the Trustee.

[52] By letter dated December 1, 2005 (the "**December 1, 2005 Letter**"), Doulis informed Wilkinson that Liberty is owned by the Paladin Trust, the protector of which is Christos Doulis. In the December 1, 2005 Letter, Doulis asked that Christos Doulis be provided with power of attorney over the Liberty Accounts to be able to do certain things including direct the purchase and sale of securities for the Liberty Account, and to direct the payment of cash balances in the Liberty Accounts as required. In the December 1, 2005 Letter, Doulis stated that Christos Doulis will not have the ability to remove or place assets in the account.

[53] A document on Liberty letterhead dated November 30, 2004 regarding a meeting of the Board of Directors identified Wilkinson as appointed Secretary of Liberty. The document is signed by Doulis as president and sole director. Sally Doulis signed as witness. An email from Wilkinson dated 02/04/2004 identifies Doulis as "the discretionary manager to Leaven Investments and is the beneficial owner of Liberty". (Exhibit S44 – Volume 1B, Tab J, p. 75)

(ii) Doulis Establishes and Controls the Activity in the Liberty Accounts

[54] In an email exchange between Marlon Joseph ("**Joseph**"), the Turks and Caicos Financial Services Commission and A. Higgs, FirstCaribbean Int'l Bank Turks & Caicos Islands dated August 5, 2010, Joseph advises that:

> Doulis is a principal of Liberty Consulting and has been associated with Liberty Consulting accounts since May 1997. Other individuals associated with the accounts are:
>
> - Sally Doulis – Signing Officer
> - Christos Doulis – Signing Officer

> Liberty Consulting is a holder of our secured credit card and maintains a United States dollar account # 1400093 [(“**Liberty USD Bank Account**”)] and a Canadian dollar account # 1400085 [(“**Liberty CAD Bank Account**”)]. The company nature of business is said to be “Investment Holding.”

[55] In a series of email exchanges between Doulis and Wilkinson dated March 2, 2003 (the “**March 2, 2003 Email**”) and March 13, 2002 (the “**March 13, 2002 Email**”) Doulis advises Wilkinson that he has arranged a bank account for Liberty with Barclays Bank PLC Providenciales Turks & Caicos Islands. In the March 2, 2003 Email, Doulis advises that the account number is the Liberty USD Bank Account and in the March 13, 2002 Email Doulis advises that the account should be “operational.”

[56] Additionally, brokerage account documents for the Liberty Accounts at Capital International Limited and copies of e-mails directing the transfers of shares and funds from the Capital International account identified the client reference for the client name “Liberty Consulting” as “CALIBCON.” The notes to the account document states:

> introduced by Alex Doulis – see Elifthiria NV”. The notes also state: “the Elifthiria NV file contains further information concerning source of funds, which reveal that the source of funds is savings and the principle beneficiary is a retired partner and director of a Toronto Stock Exchange Firm – details not supplied at this point in time

[57] The document is signed by Wilkinson. A corporate resolution for Liberty dated April 20, 2005 also authorizes Doulis, as president, “to sell, assign, and transfer securities registered in the name of Liberty Calibcon.” (Exhibit S43 -- Volume 1B, Tab I, p. 74)

Payments made to Minotaur Capital from Liberty Accounts

[58] Staff tendered through Anderson, a series of emails from each of Doulis and Sally Doulis to Wilkinson from 2009-2010 requesting wire transfers from CALIBCON to Minotaur Capital for the payment of office rent for the Liberty Office.

The Doulis Correspondence

[59] Staff also tendered through Anderson, the Doulis Correspondence, and other correspondence Doulis sent to the Investor Witnesses and as well as the CFA Institute. The Doulis Correspondence includes specifically:

- as Exhibit S63 an email dated July 13, 2009, to Ms. Peggy Dowdall-Logie Executive Director of the Commission, signed by Doulis;
- as Exhibit S73, a letter dated February 24, 2009, on letterhead of the CFA Institute to Rod Kenny, Manager of Compliance at Raymond James LTD;
- two letters sent by Joanna Fallone (“**Fallone**”) to Doulis, dated August 18, 2009 and September 3, 2009 and entered as Exhibits S74 and S75 respectively;
- as Exhibit S78, an email sent by Doulis to certain clients, copying Fallone, dated September 8, 2009; and

- as Exhibit S79, an email with the subject line entitled "Witch Hunts" dated June 13, 2010 from Doulis to the Investor Witnesses, copying Panchuk.

[60] In a letter dated January 21, 2011 (the "**January 21, 2011 letter**"), to Masci, Doulis writes:

> You ask for certain documents that you believe are in my possession. With regards to Liberty Consulting you should be aware that I am not
>
> 1) An employee of Liberty Consulting
>
> 2) A shareholder of Liberty Consulting
>
> 3) A director of Liberty Consulting
>
> and cannot therefore have any of the documents you request. For any documents that you may require of Liberty please consult the managing director.
>
> […]
>
> As you may know I am in a dispute with the Canadian Revenue Agency over an amount owing to me. I therefore refuse to pay them until I have been fully reimbursed; they would like to seize my assets including any funds on deposit without paying their debt to me. I therefore have no bank accounts anywhere or any assets in Canada….
>
> You asked that I provide you with documents regarding Minotaur Capital. Again I have no positions.
>
> […]
>
> The O.S.C. will not be able to prove that I am an "advisor" as I have never given investment advice since leaving the investment industry in 1990. Therefore it will have to ignore the evidence and act to decree me as being something, either a dealer or advisor….
>
> (Exhibit S69 -- Volume 2, Tab 27)

[61] In a letter to Chambers dated September 17, 2009 (Exhibit S57 -- Volume 1C, Tab Z, Tab JJ, p. 334), Doulis writes:

> My activities do not require me to be registered with the O.S.C. and forcing me to register would be harmful to the interests of investors.
>
> […]
>
> Seeing as I am not a 'portfolio manager' nor an 'advisor' and I am receiving no remuneration (refer to the recording of our conversation and as well

carefully read the power of attorney forms signed by the individuals you refer to) your office has no discretion over me and my private affairs.

[…]

My opinion is that I should not be registered in Ontario under the Act because I am not a portfolio manager or investment advisor, I am an attorney acting for individuals. I would suggest that my qualifications and past portfolio performance would indicate that I am over qualified to be registered as either.

[…]

There would be no advantage to me or investors to be registered and there would in fact be a disadvantage as the costs to register me and maintain that, would have to [sic] borne by the investors.

[….]

The result of demanding that I be registered would be to deprive some elderly ladies of diligent oversight of their investments forcing them to revert to having their funds mismanaged by incompetent registered representatives and portfolio managers from whom they have fled…

[…]

…forcing me to register with the O.S.C. would be against the interests of the people you have been communicating with…

(Exhibit S69 -- Volume 2, Tab 27)

[62] In a letter dated January 28, 2011 (the "**January 28, 2014 Letter**"), on the letterhead of Doulis to Fallone, Doulis writes:

As you state, I am acting for a number of individuals as an 'attorney'. I have signed forms admitting this. As an attorney I instruct brokers to buy and sell shares for my clients. They are my clients because as a result of my background I would be considered a 'professional person' in the context of the definition of 'client'. I do not discuss beforehand with the clients involved, the securities I am going to negotiate. In other words I 'act', I do not 'advise' as my clients have no knowledge of which securities are being negotiated on their behalf until their contracts arrive through the mail.

[…]

Let me make is [sic] perfectly clear. I am an attorney not an adviser as I **act** I do not **advise**. The Act has nothing to say about attorneys. Therefore kindly desist from prying into my personal and business matters.

(Exhibit 72 -- Volume 2, Tab 30)

[63] In a letter dated November 11, 2010 on the letterhead of Doulis to Feasby (the "**November 11, 2010 Letter**") which was appended to an email to Feasby from Doulis, the same day, Doulis writes:

> The Clients did not buy or sell securities.
>
> […]
>
> …I have no bank account and that one is necessary to cash a cheque.
>
> […]
>
> When the Commission questioned me I responded on the basis of its jurisdiction and in keeping with the laws of the Turks and Caicos Islands under which I am obligated to not discuss the business matters of corporations established in that country.
>
> […]
>
> The Commission asked what I did for Liberty in Canada, (see question 157 through 186 which are all around the events in Canada) I told them all of what I did for Liberty in Canada as its question implied. You made the statement "you were at the time managing the investments of Clients on behalf of Liberty" and that I managed Liberty's portfolio. Liberty does not manage money. I do. <u>I am not an employee of Liberty and therefore cannot work on its behalf.</u>
>
> […]
>
> (ii) No-one has been sent invoices charging for my *advising services* as I am not an adviser… I stand by that today and will continue to stand by that as I do not advise anyone, anywhere at any time. Therefore I cannot charge for advising services. Liberty is not in the business of advising clients on the matters of investments.
>
> […]
>
> You cannot provide a cheque made payable to me from 2006 (upon my return to Canada) and endorsed by me as I do not have a bank account can only be described as ridiculous [sic]. I admitted that I received mail for and instructed Liberty's client to send their mail through me to Liberty. There is a very valid reason for this as mail service to the Company's offices is erratic at the best, therefore I courier everything to them. I stand by my statement.
>
> […]
>
> (iv) I am not a director, officer, shareholder or employee of Liberty Consulting. I receive a yearly retainer from that company… I was asked if I knew how much Liberty collected from clients. I cannot know that as I do not

see Liberty's books. Liberty may provide other services than just portfolio measurement to its clients I can't know that.

[…]

(v) From the year 2006 I have received no remuneration from anyone in Canada. Any of Liberty's funds received by me were sent to Liberty… In making your allegations, you should be aware that I do not have a bank account therefore I cannot cash a cheque…Let me make it perfectly clear. I do not charge for my services. I receive a flat fee retainer from Liberty irrespective of their income in Canada.

[…]

I formed [sic] Brian Collins Toombs (who was conducting an illegal investigation into my affairs under IIROC's file 1245/nov 08/Liberty Consulting-Alex Doulis) and your Ms Joan Chambers who colluded with him, to not rely on the testimony, as you have, of elderly women. These ladies do not know the difference between an attorney and an adviser or a bond and broomstick and cannot validate your conclusions as they know nothing of the investment business which is why they depend on me. Any testimony of there [sic] is irrelevant and probably lead or coerced by the Commission's investigator.

(Exhibit 67 -- Volume 2, Tab 25 and Exhibit 68 -- Volume 2, Tab 26)

[64] In a letter dated July 28, 2009, to Peggy Dowdall-Logie Executive Director of the Commission, signed by Doulis (the "**July 28, 2009 Letter**"), Doulis writes:

I am not now a registrant under the Ontario Securities Act.

[…]

My reason for asking Ms Chambers to call was that I had received messages from ladies, whose accounts I have power of attorney over, that they were being called on numerous occasions by Ms Chambers and Mr. Brian Connell-Toombs. My concern was that these <u>financially unsophisticated</u> and aged ladies were being annoyed and personal questions were being asked about me.

The Phone Interview

[65] Staff also tendered through Anderson, excerpts of statements Doulis made in the recorded Phone Interview, with respect to bank accounts, Liberty, advising, remuneration, and soliciting and referrals of clients.

[66] With respect to bank accounts, Doulis stated:

I have no brokerage account. I have no bank accounts. I have no financial attachments to Canada whatsoever.

... I have no connection with any brokerage firm whatsoever." (Transcript, July 15, 2009, Phone Interview, p. 10, lines 15-16.)

[67] With respect to Liberty, Doulis stated:

Q. And who is Liberty Consulting?

Doulis: Liberty Consulting is a company which exists in the Turks and Caicos...." (Transcript, July 15, 2009, Phone Interview, p. 7, lines 6-8.)

[…]

Q. What is your association with Liberty Consulting?

Doulis: Liberty Consulting pays me a retainer to advise them on the state of Canadian capital markets;" (Transcript, July 15, 2009, Phone Interview p. 7, lines 20-22.)

[68] With respect to securities advising activity, Doulis stated:

Doulis; I provide no services whatsoever. What happens is people of my acquaintance come to me. They approach me and ask me if I would act as power of attorney on their accounts.

Q. How would they know to approach you?

Doulis: By virtue of the fact that I've written a book called *Lost on Bay Street, The Bond's Revenge, Tackling the Taxman, Take Your Money and Run* and *My Blue Haven.* (Transcript, July 15, 2009, Phone Interview, p. 6, lines 12-20)

[…]

I have contacted Elisa Baker on behalf of a client of mine who I manage her account..." (Transcript, July 15, 2009, Phone Interview, p. 10, line 24)

[…]

... What happens is people call me, ask me to take over the power of attorney on their accounts. I do that and I call Elisa Baker and I place orders. (Transcript, July 15, 2009, Phone Interview, p. 15, lines 13-16)

[…]

Q. And when you've been negotiating with Desjardins with respect to this, what are the, what are the terms and conditions that you've agreed to?

Doulis: I agree to providing the best, the lowest possible commission that the firm will accept with regard to my clients. I demand the lowest possible spread on bond prices. I demand that the broker be willing to accept delivery against payment from other brokers when they cannot provide the securities I want. I demand that I have the maximum position in any underwriting the firm may undertake.

Q. And you've indicate [sic] you've gotten —

Doulis: These are - let me put in on the record. These are benefits not for me, not for Desjardins [Securities] but for the client. (Transcript, July 15, 2009, Phone Interview, p. 17, lines 4-17)

[69] With respect to remuneration and payment of services, the following exchange occurred between Doulis and Staff:

Q. And do these Individuals who make use of your services reimburse you?

Doulis: They do not pay me a dime.

Q. Do they pay Liberty Consulting?

Doulis: They pay Liberty Consulting for a review of their portfolios.

Q. Do they pay for any ongoing services?

Doulis: There is not an ongoing service. There is an annual review of the portfolio carried about by Liberty Consulting. (Transcript, July 15, 2009, Phone Interview, p. 6, lines 21-29)

[…]

Q. And what is it, the remuneration that Liberty Consulting receives for carrying out the review of the portfolio?

Doulis: I don't know. You'll have to discuss that with Liberty Consulting. (Transcript, July 15, 2009, Phone Interview, p. 7, lines 1-5)

[…]

Q. So if I understand it correctly, the – [Investor Four], using [Investor Four] as an example, she is paying Liberty Consulting. Is that correct?

Doulis: She has paid nobody. (Transcript, July 15, 2009, Phone Interview, p. 7, lines 23-26)

[…]

Q. When you say you don't receive remuneration is that directly or indirectly?

Doulis: Directly and indirectly. (Transcript, July 15, 2009, Phone Interview, p. 11, lines 28-30)

[…]

Q. But in your case with [Investor Four], [Investor One] and [Investor Two], which are the three names you mentioned, are you charging any fees on any of these accounts?

Doulis: Let me be perfectly clear. I have received no remuneration whatsoever …

Q. So your role …

Doulis: … on any account over which I have power of attorney. (Transcript, July 15, 2009, Phone Interview, p. 18, line 29; p. 19, line 5)

[70] With respect to solicitation and referrals of Clients, Doulis stated:

> Let me say, I have never solicited anybody to manage, look after, look into, review or in any way interfere with their investment account, unless of course you consider writing the book, *The Bond's Revenge.* (Transcript, July 15, 2009, Phone Interview, p. 11, lines 24-27)
>
> […]
>
> … I do not advertise. I do not solicit. I do not seek... (Transcript, July 15, 2009, Phone Interview, p. 19, line 27)

Doulis Correspondence with Desjardins Securities

[71] Staff also tendered through Anderson, correspondence between Doulis and Desjardin Securities that was obtained during the Investigation where Doulis identified his activities with the Client Accounts at Desjardin Securities. By letter dated September 15, 2008 (the "**September 15, 2008 Letter**"), from Doulis, on the letterhead of Liberty, to senior vice-president of Desjardins Securities, Doulis, referring to himself as an account manager, writes: "I

have the pleasure of managing a few million dollars of investor securities held by your firm...". (Transcript, February 4, 2013, p. 10, lines 18-22)

[72] In another letter dated November 2, 2008 (the "**November 2, 2008 Letter**") to Desjardins Securities, Doulis reiterated that he was managing accounts and wrote that he did not want further questions asked about him, "<u>my clients</u> or any one [sic] or anything associated with me". In a third letter dated November 20, 2008 (the "**November 15, 2008 Letter**") Doulis explains that he is in a position to direct accounts to Desjardins Securities and that he can move away million dollar accounts from Desjardins Securities. (Exhibit S31 – Volume 1D, Tab 1)

[73] Doulis wrote a letter dated November 2, 2008 to Mr. Yves Neron, Senior Vice President of Desjardins Securities, on Doulis' personal letterhead stating:

> I wrote you on September 15, last, posing five questions regarding a request for my photo identification by your firm. So far your employees have, through their enquiries, determined that I do have power of attorney over a number of accounts held at Desjardins Securities, I am competent to manage those accounts (irrespective that my letter was signed showing my C.F.A. designation and any such inquiries therefore fatuous) and that my credentials would allow me to be appointed managing director of your firm. However none of their enquiries [sic] will serve to answer my question.
>
> My questions to you remain. To those questions I will add, when will your employees stop making enquiries [sic] about me and the private matters surrounding me and provide me the answer to the questions posed to you? There would seem to be a matter of core competency on the part of your employees when choosing to ask about me rather than answer the question posed to them.
>
> Let me make It [sic] perfectly clear that I do not want anymore [sic] questions asked about me, my clients or any one [sic] or anything associated with me.
>
> […]
>
> […]
>
> I am currently negotiating a $2.6 million Helios or annuity contract with your Ms. Carol Isaacs and considering bringing a $1 million RRSP to your firm. Do you believe it to be prudent to continue those pursuits if I cannot trust the supplier of those services to answer simple questions? Would it be prudent to bring more custom [sic] to a firm whose employees pride themselves on inquiring into my private affairs?
>
> (Transcript, February 7, 2013, Testimony of Doulis, pp. 305-307)

[74] By letter dated November 17, 2008, Diane Lamothe, Manager of Compliance of Desjardins Securities advised Doulis of the following, after having reviewed his letters dated September 12 and November 2, 2008:

> As for your letter dated November 2, 2008, your competencies to manage the concerned accounts were never questioned but, as you must know, the first rule in the securities industry is 'Know your Client'.
>
> Consequently, we were justified to ask as many questions we deemed necessary in order to achieve this goal.
>
> It seems our queries were not in vain, since we understand from your last correspondence that you are managing client accounts without necessarily having the proper licences.
>
> Consequently, we wish to inform you that we have referred the matter to the Ontario Securities Commission for their review and decision.
>
> We have informed our clients of these necessary measures taken to ensure their protection and compliance with current regulations.
>
> (Transcript, February 7, 2013, Testimony of Doulis, pp. 306-307, 310-311)

[75] In a letter dated January 21, 2011, on the letterhead of Doulis to Ms. Monique F. Leroux ("**Leroux**") at Desjardins Securities, Doulis writes:

> In the month of March somewhere between $15 million and $17 million of assets left Desjardins Securities at the demand of Mr. Sylvan Perreault. These accounts were under the administration of Mr. E. Milewski and had assigned to me the power of attorney to trade the accounts. …
>
> All of the affected accounts left to join other firms so as to continue to have the benefit of my investment performance (the longest account shows 40% average annual increase or 12% compounded annually over 20 years).
>
> (Exhibit S71 -- Volume 2, Tab 29)

Admissions and Statements of Doulis in his Compelled Examination

[76] Staff also tendered through Anderson, the transcripts of the Compelled Examination of Doulis (the "**Compelled Examination Transcripts**"). During the Compelled Examination of Doulis, Doulis admitted that he "perfectly" understood that he had to answer Staff's questions "accurately and truthfully". During the Compelled Examination of Doulis, Doulis submitted that his last known address was Sorrento Road, in Dublin, Ireland and that he "did not rent or own a property anywhere". Doulis also stated that Staff could "reach [him] at 160 Frederick Street" which was an apartment owned by Minotaur Capital. Doulis stated that he was "not a director, officer, employee or in any way connected with Minotaur Capital" and identified Sally Doulis as the director of Minotaur Capital. During the Compelled Examination of Doulis, Doulis refused to state the name of his child, however, he stated that he did not have a relative that was registered with the Commission, nor was he aware that any relative of his was ever registered with the Commission.

[77] In an exchange between Staff and Doulis in the Compelled Examination of Doulis, about where he was working and for whom, Doulis stated the following:

> Doulis: I am a boulevardier.
> Q. A boulevardier?
> Doulis. Yes.
> Q. What do you do?
> Doulis**.** Lunch.
> Q: How do you make income?
> Doulis: How do I make income?
> Q: Yes.
> Doulis: I live off of the generosity of my friends and family.
> Q: So you have no other income but income from your friends and family?
> Doulis: I have a retainer which is paid to me by Liberty Consulting.

(Transcript, July 13, 2010, Compelled Examination of Doulis, p. 11, lines 1-25; p. 12. 1ine 1; Exhibit S16 -- Volume 1B, Tab K 1 & 2)

Liberty

[78] The Compelled Examination Transcripts show that Doulis stated that Liberty is a “Turks and Caicos Corporation of whom the director is Mr. Shaun Cairns…Castletown, Isle of Man.” Doulis stated that he represented Liberty “as their agent” for which he receives a “retainer”. Doulis also testified that he has represented Liberty since “97/98” and that he is paid twelve thousand dollars ($12,000) on the 2nd of January annually “to provide services to Liberty Consulting in Canada.”

[79] Doulis stated that Liberty was incorporated in the Turks and Caicos Island and that he knew this because he sent his “reports to the Turks and Caicos”. Doulis testified that he did not know about the nature of Liberty’s business or who incorporated the company. Doulis stated that there is no written agreement that describes his relationship with Liberty, but that there is an oral agreement he made with either “Zammit,” the previous director of Liberty “back in the 90s”, or a woman, whose name he could not remember, who was a representative of Granite Corp. Doulis identified Granite Corp as a corporation that was acting as director of Liberty.

[80] During the Compelled Examination of Doulis, Doulis stated that he did not own a bank account in Canada and that he did not own “assets anywhere in the world.” When he received the $12,000 annually from Liberty in January, it came via “a number of ways: bank draft, money order, sometimes in cash”. Doulis stated that he would cash the bank drafts and money orders from Liberty at the bank they were called upon including the Royal Bank, CIBC, Bank of Montreal or HSBC.

Doulis’ Role with Liberty

[81] Doulis stated that he maintains Liberty’s representation in North America, and provided Liberty with a maximum of ten hours a month, beyond which he would bill them for a hundred dollars an hour. Doulis testified that Liberty is a “very quiet corporation” that “hardly” did

anything. Doulis stated that there are no other representatives of Liberty in Canada and he is the sole representative in North America.

[82] Doulis stated that his role with Liberty is to pass on information about setting up an offshore account, mailings, collecting fees when they have fees due to them, and writing comments on "how the laws are changing with regard to using the offshore by Canadians, recent tax changes, [and] current methods being used by other Canadian firms to develop offshore businesses". He also stated that Liberty sends him bulk mail to mail out, but that he does not read the mail, he "just get[s] envelops". Doulis stated that he also sends emails to Liberty but that he does not keep a copy of those emails.

[83] Doulis also stated that he will meet with Liberty clients and has met with "dozens, hundreds, thousands…over the years". Doulis testified that he could not remember the number of clients that he met with over the years "going back to a situation that started sometime in the "90s," including "hundreds" of Canadian clients. Doulis stated that once a client opens up an account with Liberty, he has no more contact with that client. (Transcript, July 13, 2010, Compelled Examination of Doulis, p. 29, lines 14-20, p. 30, lines 11-16)

The Power of Attorney

[84] With respect to the POAs over a number of individuals, Doulis stated: "I have a level of power of attorney which allows me to make trading transaction for the account". Doulis further stated that "I do not have access to the assets themselves. It was set up specifically for that purpose so that I could never abscond with a client's funds".

[85] Doulis stated that he obtains the power of attorney from the brokers, and the broker encourages the Powers of Attorney:

> …You have just lost 50 percent of your portfolio dealing with [brokerage firm]. You say, oh, my God, this is appalling. That man has done 47 trades in my account. I'm 68 years old, arthritic and I don't buy green bananas, and this man has bought me Best Buy, Shoppers. I should be in Province of Ontarios. How can I get past this problem with this man who wants to turn my account? Ah, I remember, my old friend Alex Doulis. He was a good friend of my husband's. They were competitors in the investment business. I'll call Alex. Alex, would you please manage my account? I say, I don't manage but I'll act as attorney on your account. How can I do that, Alex? You go to your broker, ask him for a Power of Attorney form. I will come into your broker's office and sign it. If you appoint me as attorney, I will sign my acceptance in front of the broker.
>
> (Transcript, July 13, 2010, Compelled Examination of Doulis, p. 36, line 18; p. 38, line 2; Exhibit S16 -- Volume 1B, Tab K 1 & 2)

[86] He further stated that "I only have power of attorney on the account. It is not my account. It is not my real client. I am the attorney".

Doulis' Activities in the Client Accounts

[87] During the Compelled Examination of Doulis, Doulis confirmed that the power of attorney gave him the authority to do the trading on the client account and that he knew what to trade because he was "a top-ranked mining analyst for five years in this country". Doulis also stated, during the questioning by Staff, that:

> Doulis: I am a financial analyst. I'm one of the best financial analysts in Canada. It's not that hard.
> Q: So you analyze what you have to buy and sell?
> Doulis: Not sell, what I have to buy.
> Q: Trade?
> Doulis: What I have to buy. And let me give you the formula: high yield with lots of assets backing the security so that if the company does miss an interest payment, there are more than enough assets to cover the bond holder.
>
> (Transcript, July 13, 2010, Compelled Examination of Doulis, p. 38, lines 14-25; Exhibit S16 -- Volume 1B, Tab K 1 & 2)

[88] Doulis stated that he does not inform the client that he is going to buy a particular security, but that "the client only finds out that he or she, most often she, bought a security when a contract falls through her mail slot". Doulis stated that he does not phone clients because they have given him power of attorney over the account to do as he believes is best. Doulis states: "they don't want to hear from me. They would be appalled to hear from me".

[89] Doulis admitted that he does not go over client's objectives, but that his clients' objectives are what he believes is best for them. He also does not go over any Know Your Client (KYC) forms with Clients, but conducts analysis and risk assessment for the Client. Doulis stated that he is buying securities for clients, but he is not getting paid for it. He is doing it for free. Clients do not pay for the services he provides to them as power of attorney and he is not aware of whether they pay anybody else. Doulis stated that he incurs minimal expenses providing these services for clients. His costs include the internet, which is minimal.

[90] Doulis stated that he does not send an invoice to Clients, and he did not know whether anyone sent an invoice to a client. Doulis also stated that he did receive a cheque from a client, sometime between "95" and 2005, on one account, but that the client had asked Doulis to send the cheque to her account. Other than this situation, Clients did not send Doulis cheques for any other purpose. Doulis also stated that he did not know whether his Clients were aware of Liberty.

[91] In the Compelled Examination of Doulis, Doulis stated:

> I have never given financial advice or investment advice to anybody anywhere at any time since the year 1990, and I am using the term 'financial advice' and 'investment advice' as defined in the Ontario Securities Act". Doulis further stated: "I have never provided investment advice or discussed investment matters as defined in the Ontario Securities Act with anybody in Canada for the last 25 years.

(Transcript, July 13, 2010, Compelled Examination of Doulis, p. 50 lines 12-16; Exhibit S16 -- Volume 1B, Tab K 1 & 2)

4. Objection to Anderson's Evidence

[92] Doulis objected to Staff's reliance on the testimony of Anderson, and stated his intention to call Masci, who was the lead investigator in the Investigation, to testify on his behalf. Staff advised that Masci was not available to testify and that he would not be called by Staff to testify. Doulis did not call Masci.

[93] I noted the objection by Doulis and overruled it pursuant to the statute, since relevant hearsay evidence is entirely admissible.

[94] Hearsay evidence is admissible in administrative proceedings before the Commission, pursuant to subsection 15(1) of the *Statutory Powers Procedure Act,* RSO 1990, c S 22 as amended (the "**SPPA**"), which states:

> Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[95] The Commission's approach to hearsay evidence was summarized in *Re Sunwide Finance Inc.* (2009), 32 OSCB 4671 at para. 22, in the following statement:

> Although hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability.
>
> (*Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115)

[96] Although it is generally preferable for Staff to call investigation evidence from the lead investigator and any other investigator who has direct evidence in any matter, this may sometimes be impractical. In this case, I am not satisfied that Doulis is prejudiced by Masci's unavailability because Staff's case relies to a great degree on documentary evidence that speaks for itself, including documents generated by Doulis and the Investor Witnesses. I heard the differing interpretations of those documents given by Staff and Doulis, which were fully addressed in the evidence and submissions.

[97] Doulis began to cross-examine Anderson on February 11 and 13, 2013. When the Merits Hearing resumed on April 3, 2013, Doulis resumed his cross-examination of Anderson with the assistance of John Eversley ("**Eversley**"), a lawyer who had represented Doulis at the Temporary

Order Hearing. Eversley stated that he had a limited scope retainer in the matter from Doulis. The scope of Eversley's engagement was limited to the role of legal adviser or resource to Doulis. This included being available to answer any legal questions or provide advice with respect to, for example, the admissibility of evidence or process how exhibits are marked. The limited scope retainer did not extend so far as to permit Eversley to act as counsel of record or to speak on record on behalf of Doulis. Apart from assisting with the cross-examination of Anderson, Eversley's only other role at the Merits Hearing was to ask Doulis questions during his examination in chief and during cross-examination.

5. Chambers

[98] Chambers is an investigator with the Commission, and had been for 33 years at the time of the Merits Hearing. Chambers became involved with the investigation of Doulis and Liberty when she was assigned to perform a case assessment in April 2009 until January 2010.

[99] Chambers testified that the case assessment commenced as a result of the Desjardins Complaint Letter. During the course of the case assessment, Chambers requested documents from Desjardins Securities, which they provided to the Commission on a voluntary basis, and from IIROC. Desjardins Securities was a member of IIROC. Chambers also spoke with certain Clients and conducted the Phone Interview.

6. Investor Witnesses

(a) Investor One

Relationship with Doulis and Desjardins Securities

[100] Investor One was a resident of Ontario during the Material Time and has known Doulis for over thirty years. She testified that Doulis began assisting her with her accounts since 1999. Investor One testified that she opened a brokerage account at Desjardins Securities where she completed and signed a "*New Client Application Form and Agreements*" (the "**New Client Form**") on January 23, 2003 with Milewski.

[101] Investor One testified that in her initial interview with Milewski, Doulis advised Milewski that Investor One's RRSP account would be for dealing with the investments and that Milewski's activity would not be required. (Transcript, February 4, 2013, Testimony of Investor One, p. 70, lines 5-8) On the New Client Form, Investor One identified her risk tolerance as "low" because of her age and this was the only instructions that she provided in respect of her account. Investor One stated that she did not complete a similar type of new client form with Doulis or Liberty. (Transcript, February 4, 2013, Testimony of Investor One, p. 65-66, p. 67, lines 18-22)

[102] Investor One testified that Doulis assisted her with her accounts by making investment in her portfolio at Desjardins Securities and the money increased. (Transcript, February 4, 2013, Testimony of Investor One, p. 55, lines 7-10) Investor One testified that she relied on the judgment of Doulis, with respect to her account. Investor One testified that, because she knew that Doulis "had been quite successful increasing his own money and those of his clients" she relied on him continuing to do so for her. (Transcript, February 4, 2013, Testimony of Investor

One, p. 64, lines 1-14) She testified that Doulis did not call her to discuss a proposed trade or to inform her that he had executed a trade on her behalf. Investor One testified that she did not provide written instructions to Doulis with respect to the type of investment she wanted him to make on her behalf, but that that she found out about the trades from her statements. (Transcript, February 4, 2013, Testimony of Investor One, p. 64, lines 1-14) She stated that she rarely dealt with Milewski at Desjardins Securities, but dealt with Baker to obtain her account statements.

[103] At the Merits Hearing, Investor One identified a POA Form that she and Doulis had signed. Investor One acknowledged that the POA Form authorized Doulis to act as a power of attorney over her accounts at Desjardins Securities. She stated that she crossed out the section in the POA Form that permitted the “attorney” to make deposits, withdraw and transfer funds in the account. Investor One testified that “there have been a number of accounts in the newspaper of people who have taken funds from their clients for their own use and I didn't want that to happen, although, of course, I didn't suspect that Alex [Doulis] would, and then Alex [Doulis] also preferred that it should be stricken [sic] out”.

[104] Investor One also testified that the POA Form included a direction that said “copies of all statements and contracts to care of 160 Frederick Street, number 203, Toronto” which she identified as the address where Doulis and his spouse resided when they are in Toronto.

[105] Investor One testified that she did not pay Doulis for the services he provided. She testified that in the first few years there was no payment. However, from 2005, she began to pay Liberty half of one percent of the value of the portfolio at the end of the year which amounted to approximately $4000 - $5000 annually. (Transcript, Testimony of Investor One, Vol. 1, p.58, lines 17-18)

Invoice from Liberty

[106] At the Merits Hearing, Investor One identified an invoice dated November 14, 2011 (the “**November 14, 2011 Invoice**”) from Liberty addressed to her. The November 14, 2011 Invoice was for a service fee at 0.5 percent of the value of her portfolio for services that were provided in 2010, prorated in the amount of $3,681.00. Investor One identified these services as “an assessment of [her] portfolio” that Doulis had arranged. When questioned by Staff as to why the November 14, 2011 Invoice was prorated for a partial year, Investor One explained that it was because of the Temporary Order for which she felt “great umbrage”.

[107] The November 14, 2011 Invoice directed Investor One to make payment through the Bank of Montreal to an account at the Royal Bank of Scotland in the name of Liberty. Investor One testified that she did not know who sent the November 14, 2011 Invoice from Liberty, but that Doulis had arranged for the portfolio assessment. Investor One testified that she knew that Liberty resides in the Turks and Caicos and she understood Doulis had some connection with it. Investor One testified that she understood that she paid Liberty for the appraisal of her portfolio.

[108] Investor One testified that she did not deal with Doulis through Liberty with the exception of his advising her to have the assessment. Investor One testified that she paid the invoice to Liberty and that she did not send a cheque, money order or wire transfer to Doulis personally. Investor One testified that she paid for the same service each year for three or four

years. She also stated that the invoiced amounts varied based on the balance in her portfolio at the end of the year.

[109] At the Merits Hearing, Investor One identified and read the following statement from an undated letter that she submitted to the Commission, where she wrote:

> I have known Alex Doulis for more than thirty years. Throughout that period he has to my knowledge always behaved ethically and honestly. In 2002 he undertook at my request to monitor my investments. This arrangement has continued to this day in 2011. I am fully satisfied.
>
> Initially Alex [Doulis] maintained this stewardship gratis. Beginning in 2005 an annual payment of 0.5% of the total value was remitted to Liberty Consulting Corporation in the Turks and Caicos Islands. My portfolio has more than doubled despite the market slump in [2008].
>
> (Transcript, Testimony of Investor One, Volume 1, p. 84, lines 2-14 and 19-25, p. 85, lines 1-6)

[110] Investor One confirmed that, other than the reference to "2002" which should be "1999", everything that she wrote in the letter is correct and that she stood by the contents of the letter.

(b) Investor Two

Relationship with Doulis and Desjardins Securities

[111] Investor Two was a resident of Ontario during the Material Time and has known Doulis since 2003. Investor Two testified that the business relationship between Doulis and herself developed as a result of a conversation with Sally Doulis. Investor Two testified that she was looking for a financial adviser because she was not happy with where her investments were at that time. Investor Two testified that Sally Doulis mentioned to her that she "might want to talk to Alex [Doulis]". Investor Two testified that she spoke with Doulis, liked what she heard, "and that's how it started".

[112] Investor Two testified that she opened a margin account at Desjardins Securities and completed a form dated June 10, 2003 where she rated her investment knowledge and risk tolerance as "Good." Investor Two testified that she did not complete similar account opening documents or know your client documents with Doulis or Liberty, but there was a discussion of what would be appropriate. (Transcript, July 8, 2010, Testimony of Investor Two, pp. 124-144)

[113] Investor Two testified that Doulis provided advice on her portfolio at Desjardins Securities. She testified that Doulis instructed Desjardins Securities to make trades in her portfolio acting as her adviser, and Milewski and Baker executed those trades. She also provided authorization so that duplicate copies of her account documentation would be sent to Doulis. Investor Two indicated that without those documents, Doulis could not advise her.

[114] Investor Two testified that Milewski and Baker did not have an active role with her other than executing the trades because Doulis was her adviser. She only dealt with Milewski and Baker with respect to monthly withdrawals from her account which they organized.

[115] Investor Two testified that she signed a POA Form dated December 28, 2009 giving Doulis power of attorney over her account at Desjardins Securities. Investor Two was of the view that the POA Form was required for Doulis to advise Desjardins Securities about her investments. She also maintained that the POA Form authorized Doulis to give instructions to Desjardins Securities in case a reorganization notice is given for a company for which Investor Two held securities. Investor Two also stated that she was aware that the POA Form authorized Doulis, "without any restriction whatsoever" to make deposits, withdrawals and transfers funds to and for the account holder's exclusive benefit and also to deliver or receive securities in the exclusive name of the account holder.

[116] Investor Two testified that she did not discuss the trades made in her account with Doulis, or provide any written instructions as to what trades he should make. She also did not discuss the trades with Doulis in advance or after they were made.

Invoices from Liberty dated 2006 - 2009

[117] Investor Two testified that she received an invoice dated February 2, 2006 (the "**2006 Invoice**") from Doulis for $2,112 U.S which she identified at the Merits Hearing. The 2006 Invoice was for the services performed on her portfolio for the year 2005. The 2006 Invoice stated "[b]elow is Liberty's invoice for portfolio services and the wiring instructions". The invoice also stated "For payment to: Doulis".

[118] Investor Two testified that she understood the 2006 Invoice to be for the services of Doulis as her adviser, to instruct Desjardins Securities to make trades in her portfolio. The 2006 Invoice also included the following statement: "I would recommend that you transfer some securities into your RRSP to take advantage of the tax break that you will incur." Investor Two could not recall whether she acted on that advice.

[119] At the Merits Hearing, Investor Two also identified a series of invoices and emails including an invoice dated January 2, 2007 (the "**2007 Invoice**") which was on the same letterhead as the 2006 Invoice. The 2007 Invoice stated "for investment management services for the year 2006", which Investor Two testified was for the services performed on her portfolio for the year 2006. The 2007 Invoice stated: "[w]e would prefer to be paid in US funds which would equate to $2552 at a $0.855 exchange rate wire transferred to." The 2007 Invoice provided payment instructions and it indicates credit to an account at Standard Bank, Isle of Man, "[f]or Payment to: Doulis." Investor Two testified that the 2007 Invoice also included the following statement: "I am currently seeking new clients and any referrals would be appreciated." However, she did not refer any clients to Doulis as she did not have friends with a lot of money.

[120] Investor Two also identified two other invoices; (i) an invoice dated January 16, 2008 (the "**2008 Invoice**") which was for the investment management services of the year 2007; and (ii) an invoice dated February 18, 2009 (the "**2009 Invoice**") for investment management services for the year 2008.

[121] The 2008 Invoice directed Investor Two to forward payment to Doulis, in an account number at the Standard Bank in the Isle of Man. The 2008 Invoice stated that "[w]e regret the 0.8. percent decrease in the portfolio value, however this has been a difficult market environment. Thankfully although the capital value of the portfolio has been diminished its

earning power has increased". It also stated: "[a]s you are aware we prefer to be paid in US dollars and based on today's exchange rate of .98 [percent] the amount due is US $2902" and was signed "Regards, Alex Doulis".

[122] The 2009 Invoice requested that Investor Two mail, to the Liberty Office, a "bank cheque (not personal) for CDN $2,313.37 payable to Liberty Consulting" for Investor Two's "portfolio oversight for the year".

Notice POA with Doulis Not Accepted at Desjardins

[123] Investor Two testified that she received a letter dated February 9, 2010 from Desjardins Securities, advising her that the POA authorizing Doulis to trade in her account on her behalf would not be accepted by Desjardin Securities after March 12, 2010. Investor Two testified that she did not continue her relationship with Desjardins Securities after receiving the letter. However, she continued to use Doulis' services at RBC Direct Investing, where she authorized Doulis with power of attorney over her accounts. (Transcript, February 4, 2013, Testimony of Investor Two, pp. 166-167) Investor Two stopped using Doulis' services to manage her investment after the Temporary Order was issued.

(c) Investor Three

Relationship with Doulis and Desjardins Securities

[124] Investor Three was a resident of Ontario during the Material Time. She met Doulis in February 2008 on the recommendation of a friend who had investments with Doulis and was very pleased. Investor Three testified that her friend introduced her to Doulis and their first meeting was exploratory in nature in terms of what she might do with her RRSP investments. As a follow up to their first meeting, Doulis introduced his services, by e-mail dated February, 21, 2008 (the "**February 21, 2008 Email**"), as follows:

> My modus operandi is to have the client move their RRSP account to a broker who will accept securities under a DAP (Delivery Against Payment) transaction because many brokers will not endeavour to find the bonds I want to put into accounts.

[125] Doulis also stated in the February 21, 2008 Email that:

> I will have trading discretion over the account, which means that I can only buy or sell securities in the account. I cannot add or remove assets. You will have on line access to the account and receive a monthly report as well as notice of any transaction in the account. For this I charge 0.5% per annum (one half of one percent) of the value of the portfolio at year end or $500, whichever is greater. You will seldom see a sale of securities as unlike a broker there is no advantage to me to 'churn' an account. I only manage.

[126] Investor Three testified that she signed a POA Form dated April 15, 2008 giving Doulis power of attorney over her account at Desjardins Securities. She stated that it was her understanding from Doulis, that when she signed the POA Form, Doulis would not have access

to the funds and the ability to withdraw funds in her account, notwithstanding the fact that the POA Form stated the following:

> I authorize, without any restriction whatsoever, my attorney to make deposits, withdrawals and transfers of funds to/for the account holder exclusive benefit and also to deliver or receive securities in the exclusive name of the account holder, all of the above in relation with the management of my account. I also authorise my attorney to give instructions to DESJARDINS [Securities] given for a company for which I hold securities.
>
> I ratify in advance all decisions taken by my attorney on the basis of this authorisation (including all the transfers made by Desjardins Securities Inc.) And I assume full responsibility in connection with same.

[127] Investor Three testified that she did not remember the above paragraph in the POA Form.

[128] Investor Three transferred her RRSP account from Assante Capital Management to Desjardins Securities on the advice of Doulis, where Doulis bought and sold securities of, "whatever he felt was appropriate," in her account. Investor Three testified that she did not discuss purchases or sales of securities in her account with Doulis beforehand but learned of the transactions in her monthly statements. She also testified that she did not discuss an investment strategy with Doulis or provide written instructions in that respect. Investor Three testified that she did not instruct Desjardins to buy or sell any securities on her behalf and that no one at Desjardins Securities ever called her to discuss whether one of Doulis' transactions in her account was appropriate.

[129] Investor Three testified that she did not deal with anyone at Liberty other than Doulis.

[130] Investor Three testified that upon receiving a letter from Desjardins that they would no longer honour the POA she granted to Doulis on her account, she moved to BMO InvestorLine and entered into a similar arrangement with Doulis. (Transcript, February 7, 2013, Testimony of Investor Three, p. 273) Investor Three testified that "Doulis acted as attorney on [her] portfolio until he was no longer allowed to do so … by the Securities Commission."

Invoices from Liberty From 2009 – 2011

[131] Investor Three testified that she received an invoice for $379 dated February 26, 2009 for "a portfolio investment oversight fee paid to Liberty Consulting" for providing an assessment of what had occurred in her account during the year. Investor Three testified that this was the fee set out in the February 21, 2008 Email from Doulis and it was "0.5 percent per annum of the value of the portfolio at year end or $500, which ever is the greater". She acknowledged, however, that she understood the commentary on the invoice that was written in the first person, to be that of Doulis. She paid the invoice by cheque and identified the canceled cheque at the Merits Hearing.

[132] Investor Three testified that she could not reconcile where her understanding came from as to why she was paying Liberty since the February 21, 2008 Email did not mention Liberty. (Transcript, February 7, 2013, Testimony of Investor Three, pp. 248-249) When questioned by me at the conclusion of her testimony about the arrangement for payment described in the

February 21, 2008 Email, Investor Three testified that she understood that agreement was with Doulis. However, she did not recall why she was paying a cheque to Liberty and she did not inquire as to why. She reiterated that it was her understanding that payment to Liberty was in reference to her portfolio and any activities within it, undertaken by Doulis who had POA to look after her portfolio. (Transcript, February 7, 2013, Testimony of Investor Three, pp. 280-282)

[133] Investor Three also identified an invoice from Liberty, dated February 16, 2011 in the amount of $1,193. (Exhibit S9 -- Volume 1D, Tab 5, pp. 27-28) Investor Three testified that she understood the invoice to be from Doulis, at Liberty, for services provided in the year 2010. (Transcript, February 7, 2013, Testimony of Investor Three, p. 265) She also confirmed that she the invoice stated:

> Liberty is still accepting accounts at $500,000 or more and would be pleased should you be willing to send referrals…

Investor Three did not refer anyone to Doulis or Liberty.

[134] Investor Three testified that she successfully made payments requested in the invoices she received for the services provided in 2008, 2009 and 2010. Notwithstanding the fact that no invoice for 2009 was entered into evidence, Investor Three testified that she assumed that she received an invoice for 2009 as it “would be logical” that she did.

[135] On cross-examination, Investor Three testified that she did not mail a cheque to Doulis personally but to Liberty at the Liberty Office which she identified as the residence of Doulis. She testified that she understood there was “some sort of relationship” between Liberty and Doulis, but that she did not know what that relationship was.

(d) Investor Four

Relationship with Doulis and Desjardins Securities

[136] Investor Four is a resident of Ontario during the Material Time and has known Doulis for forty-three years at the time of the Merits Hearing. Investor Four and her deceased husband were friends of Doulis. Investor Four testified that Doulis was a close personal friend who she had known for many years and who had comforted her through a lot of bad times. Investor Four is also the Godmother of Christos Doulis. Investor Four has no investment expertise. She also did not like risk and had discussed her risk tolerance with Doulis.

[137] Investor Four testified that in 2008, after she lost her husband, she went to Doulis because she needed help and he was a friend. Investor Four had accounts with many companies and had “been shuffled …. when people merged, [or] people left, to the point that [she] didn’t know where [she] was”. Investor Four testified that Doulis reviewed her accounts that she held at another brokerage firm and advised her that there had been an exorbitant amount of trades executed in an account. Investor Four testified that, at that point, Doulis suggested that she go to Desjardins Securities and that was the impetus for transferring her account to Desjardins Securities.

[138] Investor Four testified that Doulis made the trading decisions in her account at Desjardins Securities and was her financial manager during the Material Time “strictly out of trust.”

Investor Four testified that she authorized Doulis to buy or sell securities in her account at Desjardins Securities. She also testified that Doulis had trading discretion over her account at Desjardins Securities and that she did not provide written instructions to Doulis with respect to what trades he should make, but she trusted him. Notwithstanding the fact that she trusted Doulis, Investor Four testified that she did not want Doulis to be able to withdraw funds from her brokerage account. (Transcript, April 3, 2013, Testimony of Investor Four, p. 74, line 6)

[139] Investor Four confirmed that duplicate copies of trade confirmations and statements from her account at Desjardins Securities were forwarded to Doulis for his assistance at 160 Frederick Street suite number 203. Investor Four identified 160 Frederick Street suite number 203 as the place where Doulis and his wife lived and testified that she had been there frequently.

Invoice from Liberty

[140] Investor Four testified that she received an invoice for portfolio services dated January 20, 2010 (the "**January 20, 2010 Invoice**") from Liberty in the amount of $26,913. (Exhibit S52 -- Volume 1C, Tab GG, p. 299) The January 20, 2010 Invoice indicated a service fee at .50 percent of the ending balance in her account for service in 2009. Investor Four understood Liberty to be a company Doulis represented. Investor Four testified that she paid the January 20, 2010 Invoice as requested. She believed the January 20, 2010 Invoice to be for the trades executed on her account, by either Doulis and Liberty or Baker. Investor Four testified that she paid other fees to Desjardins Securities which were separate from the invoice that she received from Liberty. She testified that the fees that she paid to Desjardins Securities were deducted directly from her account. When questioned by me, Investor Four testified that she wrote a cheque of approximately $27,000 to Liberty for services Doulis performed for her. She did not know anything about Liberty.

[141] Investor Four testified that she had an agreement of 0.5 percent with Doulis and that he had trading discretion over her account. Investor Four could not explain why her account opening form at Desjardins Securities said that the attorney would receive no remuneration, because Doulis "was going to be paid 0.5 percent." (Transcript, April 3, 2013, Testimony of Investor Four, p. 50, lines 6-7)

(e) Summary of the Investor Evidence

[142] Each of the four Investor Witnesses testified that Doulis was their adviser, managed their respective Client Accounts through the POAs, and made decisions as to what to buy and sell in their respective Client Accounts. The relationship established between Doulis and each of the four Investor Witnesses was based on a long-time relationship with Doulis, except in the case of Investor Three, and based on trust. The four Investor Witnesses also confirmed that they each received an invoice from Liberty during the Material Time for an annual service fee of 0.5% of the value of their respective Client Accounts.

[143] Each of Investor One, Two, and Three testified that they received the following email from Doulis, dated 09/04/2009:

> Dear Client,

> […]
>
> Your investments are set up in a manner which allows you to have the seamless continuation of your investment objectives without the abysmal portfolio performance produced by mutual fund portfolio managers. Your assets are safe in that I have no access to them - only you do. It would seem that the Ontario Securities Commission is not satisfied with your investment performance or the manner in which your investments have been husbanded.
>
> If you are content with your relationship between you and your attorney then I would suggest that you inform the Ontario Securities Commission to not meddle in what is your private contract between you and me (your attorney) and to ignore any enquiries into your private affairs.
>
> Regards,
>
> Alex
>
> (Exhibit 78 -- Volume 2, Tab 23)

B. Respondent Witnesses

1. Doulis

[144] Doulis testified that Liberty was a company established to facilitate incorporations and business in foreign jurisdictions. (Transcript of the Merits Hearing, April 4, 2013, p. 74) Doulis testified that he authored five books entitled *"Take Your Money and Run"*, *"My Blue Haven", "The Bonds Revenge", "Tackling the Tax Man"* and *"Lost on Bay Street".* He testified that: "[t]he majority of the people who came to see me about offshore incorporation, I would say roughly 70 percent – and it's a number I've quoted before – do so for asset protection…and the other 30 percent for tax mitigation". (Transcript of the Merits Hearing, April 4, 2013, p. 75) Doulis testified that "when the books were written, people approached me and asked me about how they could execute what was described in the books." (Transcript of the Merits Hearing, April 4, 2013, p. 76)

[145] Doulis became a director in 2003. His personal role at Liberty was to direct Canadian business to the company and some American business as it arose from questions with regard to the use of the offshore. He also would pay for their courier bills, phone bills and rent bills in Canada and any other expenses they would incur. (Transcript of the Merits Hearing, April 4, 2013, p. 76)

[146] Doulis testified that he sold Liberty in 2005 and that Liberty is actually owned by the Paladin Trust, a Trust incorporated in the Turks and Caicos. All the shares of all the classes of Liberty were owned by the Paladin Trust. (Transcript of the Merits Hearing, April 4, 2013, p. 73) Doulis also testified that he was not the beneficiary of the Paladin Trust nor did he own the Paladin Trust. He also testified that he did not settle the Paladin Trust and he did not receive any benefits from the Paladin Trust. (Transcript of the Merits Hearing, April 4, 2013, p. 79-80)

[147] Doulis confirmed that he had full authority to buy and sell securities on Liberty Accounts at Capital International in the Isle of Man and had that authority at the time of the Merits Hearing. Doulis also confirmed that Liberty held bank accounts during the Material Time at FirstCarribbean Internationl Bank in the Turks and Caicos and that Doulis, Sally Doulis and Christos Doulis had authorization on those bank accounts.

[148] Doulis described the Clients as financially illiterate and stated that he had instructed them to get trading the authorities. Doulis testified that "being financially illiterate they would not have taken it upon themselves to provide something other than what I asked for". (Transcript of the Merits Hearing, April 4, 2013, p. 138) Doulis explained that he signed the document titled "special power of attorney" believing that the document was giving him the authority to trade and not giving him "special power of attorney" over the accounts. Doulis confirmed that he held special POA for all of the people and accounts listed in the evidence (Exhibit S35 -- Volume 1C, Tab 11HH, p. 308) except for one individual. (Transcript of the Merits Hearing, April 4, 2013, pp. 136-137) He stated that he did not read any of the documents for the eleven accounts indicating that he had special POA authorizing him to act on behalf of the Clients listed in a letter dated February 9, 2010 from Desjardins Securities. (Transcript of the Merits Hearing, April 4, 2013, p. 137)

[149] Doulis explained that he did not believe he had been given a special power of attorney because he had advised the Clients to ask for a trading authority, notwithstanding that the documents he received eleven times said in bold caps "SPECIAL POWER OF ATTORNEY". (Transcript of the Merits Hearing, April 4, 2013, pp. 143-144) Doulis testified that he understood that:

> [a] trading authority only allows the holder of the designation to be able to execute securities in an account. A power of attorney is a legal designation which allows a person to have power over the entire assets designated under that power of attorney.

[150] He explained that the difference between a trading authority and a power of attorney was that the holder of the power of attorney has access to the assets; whereas, the trading authority has no access to the assets. (Transcript of the Merits Hearing, April 4, 2013, p. 45)

[151] Doulis stated that:

> I had asked Desjardins Securities to send trading authority forms when dealing with my clients. I was under the impression that Mr. Milewski and Ms. Baker were indeed sending trading authority forms and not powers of attorney.
>
> (Transcript of the Merits Hearing, April 4, 2013, p. 59)

[152] Doulis told staff that his Clients never provided him with any written instructions with respect to trading and testified that he believed he had trading authority on the account of at least eleven persons. (Transcript of the Merits Hearing, April 4, 2013, p. 135)

[153] Doulis submitted that his mandate from the "ladies" (as he referred to the Investor Witnesses) was to act for them and the he had decided that it would be easier for them and in their interest to know to what extent over a year they had profited or lost in their accounts. (Transcript of the Merits Hearing, April 4, 2013, p. 71)

[154] Doulis testified that he did not receive, directly or indirectly, remuneration from Liberty except the $12,000 annual retainer to represent Liberty in Canada. On cross examination by Feasby, Doulis stated that the allegation by Staff, that he required payment from the Clients as compensation for his services based on a percentage of the year-end value of their assets under management, were not true. Doulis stated that: "there was no requirement to pay Liberty" and "there was no requirement for anyone to pay me". Doulis also testified that "whether or not there was a requirement to pay, I do not know".

[155] Doulis testified that he had an opportunity to review the transcripts of his various statements in evidence, including the Transcripts of the Temporary Order Hearing, the Compelled Interview of Doulis and the Phone Interview (collectively, the "**Transcript Evidence**") and testified that he made all the statements in the Transcript Evidence and was doing his best to be truthful in his statements. Doulis also acknowledged that he wrote all of the pieces of correspondence in the Merits Hearing materials including the many letters and emails bearing his name and or his email address that were marked as exhibits including the Doulis Correspondence and his correspondence with Desjardins Securities. Doulis also acknowledged that he prepared and sent the invoices that were entered into evidence on behalf of Liberty. (Transcript of the Merits Hearing, April 5, 2013, p. 29)

Doulis Charter Arguments

[156] Doulis submitted that Staff's conduct in this matter violated his rights under section 11 of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.* (the "**Charter**"). Specifically, Doulis submitted that he had a right (i) to be tried in a reasonable amount of time pursuant to section 11(b) of the Charter and that he was denied this right, and (ii) not to be compelled to be a witness in a proceeding against him under section 11(c) of the Charter. Doulis submitted that by not calling Masci as a witness, Staff placed him in a position that the only way that he was allowed to enter his evidence was to testify in the Merits Hearing which is contrary to the principles protected by the Charter.

[157] Doulis relies on the case of *Regina v. Morin* [1992] 1 S.C.R. 771 to support his position that his right to be tried in a reasonable amount of time pursuant to section 11(b) of the Charter was denied.

Staff Submissions on the Charter Arguments

[158] Staff, relying on *R. v. Wigglesworth* (1987) 2 SCR 54, submitted that section 11 of the Charter is not applicable in this regulatory proceeding and the Charter arguments raised by Doulis should not be addressed. Staff further submitted that the activities of the Commission are not punitive.

The Law and Analysis

[159] In *R. v. Wigglesworth*, the Supreme Court of Canada held that:

> The rights guaranteed by s. 11 of the Charter are available to persons prosecuted by the State for public offences involving punitive sanctions, i.e., criminal, quasi-criminal and regulatory offences, either federally or provincially enacted.
>
> (*R. v. Wigglesworth at para. 16*)

The onus is on Doulis to demonstrate the regulatory offence is punitive in nature.

[160] In *R. v. Morin*, the Supreme Court of Canada held that:

> An accused person may suffer little or no prejudice as a consequence of a delay beyond the expected and normal. Indeed, an accused may welcome the delay. On the other hand, an accused person can suffer great prejudice because of the delay. Where the accused suffers little or no prejudice, it is clear that the consistently important interest of bringing those charged with criminal offences to trial outweighs the accused's and society's interest in obtaining a stay of proceedings on account of delay, because the consequences of the delay are not great. On the other hand, where the accused has suffered clear prejudice which cannot be otherwise remedied, the balance may tip in the accused's favour and justice may require a stay.
>
> (*R. v. Morin at para. 87*)

The onus on Doulis to prove that prejudice has occurred.

[161] I find that administrative proceedings of this nature are not captured by section 11 of the Charter. The penalties sought by Staff are not penal in nature. I also find delays in proceedings of an administrative nature are not the "offence" intended to be captured by section 11 of the Charter.

[162] Doulis did not provide any submissions to demonstrate that this matter is punitive in nature and that prejudice has occurred. Doulis submitted that *R. v. Wigglesworth* is applicable to criminal and administrative proceedings, where there is a financial sanction. If he were required to pay a fine, the fine would be punishment and that is punitive. However, I do not accept this position from Doulis. A fine, is an administrative penalty, which is fundamentally regulatory and not penal.

[163] My findings are supported by previous decisions of the Commission. In *Re Rowan* (2010), 33 OSCB 91 the Commission held that a hearing under section 127 of the Act including a hearing in which an administrative penalty is sought, is fundamentally regulatory and it does not engage the Charter. The Merits Hearing is a hearing under section 127 of the Act.

[164] In *Re Boock* (2010), 33 OSCB 1589, ("***Re Boock***") the Commission also held that section 11 does not apply to a Commission proceeding and "the fact that a financial penalty may be imposed on a respondent does not make a Commission administrative proceeding under s.127 of the Act criminal or penal in nature" (*Re Boock,* para 99)

[165] In *Re Cornwall* (2008), 31 OSCB 4840 (“***Re Cornwall***”) which is analogous to this matter, the respondents took a similar position to Doulis, that their rights under section 11 of the charter were violated due to the delay by Commission staff. The Panel in *Re Cornwall*, relying on *R. v. Wigglesworth*, held that delays in proceedings of an administrative nature are not the “offence” intended to be captured by section 11 of the Charter.

2. Christos Doulis

[166] Christos Doulis (“**Christos Doulis**”) is the son of Doulis. At the time of the Merits Hearing, Christos Doulis was 41 years old and employed as a mining analyst with Stonecap Securities Inc. Christos Doulis holds a Bachelor’s Degree in economics from Queen’s University and is registered under the Act.

[167] Christos Doulis testified that he was interviewed by Masci and others at the Commission (the “**Compelled Interview of C. Doulis**”) pursuant to an order issued under section 11 of the Act dated February 22, 2010 (the (“**Section 11 Order**”). Christos Doulis testified that the Compelled Interview of C. Doulis focused on his relationship with Liberty and whether he could provide access to financial records. He testified that he was asked to sign a document relating to Liberty and to provide access to the records of Liberty.

[168] Upon cross examination by Feasby, Christos Doulis was asked to review the transcript of the Compelled Interview of C. Doulis (the “**C. Doulis Compelled Interview Transcripts**”). The C. Doulis Compelled Interview Transcripts showed that Christos Doulis had signing authority on the accounts of Liberty. The C. Doulis Compelled Interview Transcripts also showed that Masci had only asked Christos Doulis to produce certain documents and of which there was only one relevant document that he did not have access to. Christos Doulis admitted upon cross examination by Feasby that the question of whether or not he could provide access to Liberty’s accounts was not addressed in the Compelled Interview of C. Doulis.

[169] Christos Doulis also admitted upon cross examination that after he indicated that he had no such documents, there was no further discussion of the question from Masci as to whether or not he could produce documents of Liberty and that there was no request in the C. Doulis Compelled Interview Transcripts for him to provide staff with the authority to obtain documents.

[170] Christos Doulis, stated upon cross examination by Feasby that at the time he attended the Compelled Interview of C. Doulis he was completely unaware that he was a signing authority on the accounts of Liberty and that it was during the course of the Compelled Interview of C. Doulis that he became aware that he was the protector of the Paladin Trust. He also stated that it was also during the Compelled Interview of C. Doulis that he also became aware that he had a mandate to trade, buy and sell securities, in the accounts of Liberty at Capital International in the Isle of Man. Notwithstanding this testimony, Christos Doulis stated that the signing authority does not have authorization to provide access to financial documentation relating to Liberty and he knew that because that was the business of an officer or director of the company and that signing authority merely has the ability to issue cheques from the account. Christos Doulis stated that he decided not to sign the document.

[171] Christos Doulis stated that he had indicated to Staff in the Compelled Interview of C. Doulis that he may have attained the status of signing authority, and a mandate to trade and being

the protector of the trust by signing a sheaf of documents presented to him by his father. Christos Doulis stated that in the nineties he signed several documents without a fulsome review of them since he always operated on the assumption that his father has had his best interests at heart.

[172] Upon questioning by me, Christos Doulis stated that at the relevant time he had no idea that he was a protector of the Paladin Trust and that he did not know what a protector was. Christos Doulis stated that he did not know what his duties were and that he would have to consult documentation to refresh his memory as to his duties. Christos Doulis stated that it was in the fall of 2010 that he became aware of his role with the Paladin Trust and the actual nature of what that role entails. (Transcript, April 4, 2013, p. 34-36)

[173] Following the Compelled Interview of C. Doulis Christos Doulis, through his lawyer Sean J. O'Donnell from Lenczner Slaght LLP, wrote to Staff, by letter dated October 29, 2010 (the "**October 29, 2010 Letter**") indicating that Christos Doulis would not be signing the authorization. The October 29, 2010 Letter reads:

> Mr. Doulis does not wish to be uncooperative. However, he advises that to the best of his knowledge, he has no relationship with Liberty Consulting. Any bestowal of such authority to act for Liberty Consulting, if it occurred, was without his content. If Staff are in possession of documentation that suggests that he has authority to act for Liberty Consulting, we request that you provide a copy of it to us so that he may consider the documentation and obtain advice concerning whether he wishes to accept any responsibility for acting on behalf of that entity.
>
> (Transcript of the Merits Hearing, April 4, 2013, pp. 31-32; Exhibit S80 -- Fax cover sheet dated October 29, 2010 with letter from Sean O'Donnell of Lenczner Slaght dated October 29, 2010 addressed to Larry Masci Re: Christos Doulis)

[174] Christos Doulis confirmed that he did not receive further communication from the Commission regarding that matter after that letter was sent. (Transcript of the Merits Hearing, April 4, 2013, pp. 30-31)

VIII. THE LAW

A. The Commission's Public Interest Mandate

[175] Section 1.1 of the Act provides that the purposes of the Act are:

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

[176] The primary means for achieving and upholding the purposes of the Act includes imposing "restrictions on fraudulent and unfair market practices and procedures" and setting

"requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants." (*Securities Act, supra*, s. 2.1)

[177] The Supreme Court of Canada has recognized that the primary goal of securities legislation is the protection of the investing public, 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 at paras 37, 39 and 42) To achieve this goal the Commission has "a very broad discretion to determine what is in the public's interest". (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 at para 75) This broad discretion allows the Commission to intervene whenever the conduct is contrary to the public interest, even when there is no specific breach of the Act (*Re Canadian Tire Corp.* (1987), 10 OSCB 857 ("***Canadian Tire***") at paras 124-126) The scope of the Commission's discretion in defining the public interest is limited only by the general purposes of the Act. (*Gordon Capital Corp. v Ontario (Securities Commission)*, [1991] 50 OAC 258 (Div Ct) at para. 37)

B. The Registration Requirement for Advisers

[178] The Supreme Court of Canada held that:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the Province or elsewhere, from being defrauded as a result of certain activities initiated in the Province by persons therein carrying on such a business.
>
> (*Gregory & Co. Inc. v. Quebec Securities Commission et al*., [1961] S.C.R. 584*, supra* at para 11)

[179] Registration requirements are an essential element of the regulatory framework. Its purpose is achieving the regulatory objectives of the Act. The Commission has previously stated that "registration serves an important gatekeeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants". (*Re Limelight Entertainment Inc.* (2008), 31 OSCB 1727 ("**Limelight**") at para 135)

[180] Registration is a privilege, not a right, that is granted to individuals and entities that have demonstrated their suitability for registration. (*Re Trend Capital Services Inc.* (1992), 15 OSCB 1711 at para 111; *Re Istanbul (2008),* 31 OSCB 3799 at para 60) Individuals must meet certain requirements based on the fundamental principles of proficiency, integrity and solvency, in order to be registered and participate as a registrant in the capital markets. Registered firms must, among other things, meet specific and ongoing business conduct requirements such as know your client (KYC) and suitability obligations, have an effective compliance system and meet financial reporting, working capital and insurance requirements. These requirements help protect investors and the integrity of the capital markets. (Section 13.2 of the Companion Policy to National Instrument 31-103)

[181] Registrants hold positions of trust in the securities industry and towards their clients, creating a responsibility on their part to fulfill an important role directed towards the protection of investors and fostering fair and efficient capital markets and confidence in capital markets. (*Re Sawh* (2012), 35 OSCB 7431 at para 309) It is:

> …through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.
>
> (*Limelight, supra* at para 135)

The Registration Requirement

[182] Prior to September 28, 2009, subsection 25(1)(c) of the Act provided that:

> No person or company shall, act as an adviser unless the person or company is registered as an adviser, ...
>
> ... and the registration has been made in accordance with Ontario securities law. ...

[183] Prior to September 28, 2009, Section 99 of the *Ont. Reg. 1015 – General Regulation made under the Securities Act* ("**Ont. Reg. 1015**") stated that:

> Every person or company that is required to register as an adviser shall be registered and classified into one or more of the following categories:
>
> […]
>
> […]
>
> 3. Portfolio managers, being persons or companies that are registered for the purposes of managing the investment portfolio of clients through discretionary authority granted by one or more clients.

[184] Ont. Reg. 1015 was revoked with the coming into force of the Registration Amendments (as defined below).

[185] "Adviser" is defined in subsection 1(1) of the Act as:

> a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities.

[186] On September 28, 2009, the Commission adopted amendments to the registration requirements (the "**Registration Amendments**") where subsection 25(1)(c) was repealed and replaced with subsection 25(3). Subsection 25(3) provides:

> Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of advising anyone with respect to investing in, buying or selling securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as an adviser; ...

[187] Subsection 26(6) of the Act provides that:

> A person or company making an application under subsection (1) with respect to registration as an adviser shall indicate for which of the following categories of adviser registration he, she or it is applying and shall provide such information as the Director may require to verify that the activities of the person or company will be within the permitted activities for that category of adviser registration:
>
> 1. Portfolio manager, authorized to provide advice to a client with respect to investing in, buying or selling any type of security, with or without discretionary authority granted by the client to manage the client's portfolio.
>
> 2. Restricted portfolio manager, limited to the advising activities authorized under section 27 for the person's or company's registration.

[188] Subsection 7.2 (1) of *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Obligations* ("**National Instrument 31-103**") which came into force with the Registration Amendments, provides that the two categories of registration for a person or company that is required, under securities legislation, to be registered as an adviser are "portfolio manager" or "restricted portfolio manager".

[189] The definition of "adviser" as set out in subsection 1(1) of the Act did not change with the Registration Amendments.

Advising Generally

[190] A person is acting as an adviser if the person (i) offers an opinion about an issuer or its securities, or makes a recommendation about an investment in an issuer or its securities, and (ii) if the opinion or recommendation is offered in a manner that reflects a business purpose. A person who recommends an investment is advising in securities. (*Re Donas*, 1995 LNBCSC 18 ("***Re Donas***") at p 6; *Re Maguire* (1995), 18 OSCB 4623 ("***Re Maguire***") at pp 2-3; *Re First Federal Capital (Canada) Corp.* (2004), 27 OSCB 1603 ("***Re First Federal***") at paras 28-29)

[191] The British Columbia Securities Commission in *Re Donas* held that:

> A person who recommends an investment in an issuer or the purchase or sale of an issuers securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuers securities, is advising in securities.

> <u>If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose</u>, the person is required to be registered under the Act [emphasis added].
>
> (*Re Donas, supra* at p 6)

[192] Providing mere financial information as to specific securities does not constitute the giving of advice, but providing an opinion on the wisdom or value or desirability of investing in specific securities does. (*Re Canadian Shareholders Association* (1992), 15 OSCB 617 ("**Canadian Shareholders**"); *Re Costello* (2003), 26 OSCB 1617 ("***Re Costello***") at para 28)

[193] The nature of the information given or offered by a person is the key factor in determining whether that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. (*Re Donas, supra* at p 6)

[194] Since advising involves offering an opinion or recommendation to others, the Act requires advisers to be registered with the Commission and to meet certain conditions as to their education and experience. (*Re Donas, supra* at p 6; *Re Doulis* (2011), 34 OSCB 9597 at para 30 citing *Gregory, supra* at p 725)

The trigger for registration as an adviser

[195] In *Re Costello,* the Commission held that "[t]he trigger for registration as an adviser is not doing one or more acts that constitute the giving of advice, but engaging in the business of advising". (*Costello v Ontario (Securities Commission)*, [2004] 242 DLR (4th) 301 (Div Ct)at para 25)

[196] The Registration Amendments broadened the language of subsection 25 of the Act and introduced the phrase "engaging in the business of trading" directly in the legislation. In *Re Empire Consulting Inc.* (2012), 35 OSCB 7775 ("***Empire Consulting***") the Commission held:

> The phrase "engaging in the business of trading" indicates that the Commission must find a business purpose in determining whether a person or company is trading in securities pursuant to section 25 of the Act, as amended. In making this determination, the Commission must consider Companion Policy 31-103 at section 1.3, which provides as follows:
>
> > **Business trigger for trading and advising**
> >
> > We refer to trading or advising in securities for a business purpose as the "business trigger" for registration.
> >
> > We look at the type of activity and whether it is carried out for a business purpose to determine if an individual or firm must register. We consider the factors set out below, among others, to determine if the activity is for a business purpose. For the most part, these factors are from case law and regulatory decisions that have interpreted the business purpose test for securities matters.

The policy goes on to enumerate the following factors:

> (a) Engaging in activities similar to a registrant;
> (b) Intermediating trades or acting as a market maker;
> (c) Directly or indirectly carrying on the activity with repetition, regularity or continuity;
> (d) Being, or expecting to be, remunerated or compensated; and
> (e) Directly or indirectly soliciting.

The policy notes that the enumerated factors are not exhaustive and that no one factor on its own will determine whether an individual or firm is in the business of trading or advising in securities.

(*Empire Consulting* at paras 44-46; *Companion Policy NI 31-103 Registration Requirements and Exemptions,* OSC CP 31-103 (17 July 2009), s 1.3)

[197] The Commission has held that a business purpose exists where the adviser expects to be remunerated in some respect. Remuneration or expected remuneration, whether direct or indirect, reflects a business purpose. (*Re Costello*, *supra* at paras 34-35; *Re Maguire*, *supra* at pp. 2-3; *Re First Federal*, *supra* at para 29) The Commission stated in *Re First Federal,* that "where a respondent expects to be remunerated in some respect with respect to his activities, a business purpose is reflected". (*Re First Federal, supra* at paras. 29-30)

[198] There is no need for advising to be the only business the person or company in question is engaged in for there to be a business purpose. (*Costello v Ontario (Securities Commission)*, [2004] 242 DLR (4th) 301 (Div Ct) at para 62) In *Re First Federal*, the Commission stated that:

> Documentation made it clear that First Federal was to receive fees from the Trading Program. Whether the fees were payable by the Bank out of its own funds or out of the funds deposited into the deposit account by the investor is not entirely clear. What is relevant, however, in determining whether there was a commercial purpose for First Federal in giving advice is the fact that it was to receive remuneration because of its activities, regardless of the specific manner or the specific person from whom the remuneration would be paid. We note, incidentally, that the documentation required a direction to be signed by the investor, directing the Bank to pay fees to First Federal.
>
> (*Re First Federal* at para 30)

[199] In *Re Maguire*, the business purpose was evidenced by an advertisement in the Yellow Pages for "Investment Advisory Services" and by the receipt of a fee or commission relating to the investment made by the party acting on the evidence. The major business of Maguire was the giving of tax planning advice, and the securities advice was given in that context. Nevertheless, Maguire was held to be within that section. (*Re Maguire, supra* at p 1801)

[200] In *Re Hrappstead*, [1995] 15 BCSCWS 13 ("***Re Hrappstead***"), the Commission found that the business purpose element was satisfied even though there was no evidence that any

investors had acted on Hrappstead's advice (i.e. no investors appear to have invested in the Investment Program), or that he had received a payment of any kind in return for his advice. As to his business purpose, "one need look no further than what he stood to receive if the Investment Programs were successful...". (*Re Hrappstead, supra* at p. 35)

[201] Since the language of subsection 25 is more broad as a result of the Registration Amendments, the Commission has held in *Empire Consulting* that:

> …if the Panel determines that the evidence indicates that the Respondents' actions prior to September 28, 2009 were contrary to the predecessor provision then the same behaviour post-September 28, 2009 must also be in violation of the broader wording of the Act. The same does not hold true in reverse; namely, acts that are found to be in contravention of the amended subsection 25(1) of the Act post-September 28, 2009 are not necessarily in contravention of subsection 25(1)(a) pre-September 28, 2009.
>
> (*Empire Consulting* at para 43)

Portfolio Manager - A category of registration as an adviser

[202] There are different categories of registration for persons or companies required to be registered under the Act. In *Re Michalik* (2007), 30 OSCB 6717, the Commission held that:

> The different types of registration available are set out in sections 98 to 101 of the General Regulation, R.R.O. 1990, Regulation 1015 ("Ont. Reg. 1015"). Specifically, section 99 of Ont. Reg. 1015 deals with the registration of advisers. The relevant parts of section 99 of Ont. Reg. 1015 are reproduced below:
>
>> 99. Every person or company that is required to register as an adviser shall be registered and classified into one or more of the following categories:
>>
>> [...]
>>
>> 3. Portfolio managers, being persons or companies that are registered for the purpose of managing the investment portfolio of clients through discretionary authority granted by one or more clients.
>>
>> (*Re Michalik* at para 17)

[203] In interpreting the adviser registration requirement, the Alberta Securities Commission in *Re Wenzel,* (2005) ABASC 91("***Re Wenzel***") held that:

> [43] … the extent of discretion that a securities salesperson can or cannot exercise for a client is a matter of some importance under Alberta securities laws.

> [44] There are a variety of categories of registration under the Act, among them "salesperson" and “advisor”. The activities that a person can undertake are constrained by the registration category. A registered salesperson is authorized to “trade” in securities (paragraph 75(1)(a) of the Act), but only a registered advisor may "act as an advisor" (paragraph 75(1)(b) of the Act).
>
> [45] Section 17 of the Commission Rules sets out several categories of “adviser” (we attach no significance to the different spelling), including a “portfolio manager”, which subsection 1(nn) of the Act defines as:
>
> an advisor registered for the purpose of managing the investment portfolio of the advisor's clients through discretionary authority granted by the clients;
>
> [46] In this somewhat roundabout way we reach the conclusion that while registration as a “salesperson” permits trading for clients, “discretionary trading” for a client can be conducted only by an “advisor” registered in the category of “portfolio manager”.
>
> […]
>
> [49] We can summarize:
>
> When a person effects a securities transaction for a client without obtaining from the client, in advance, specifics as to four elements of the transaction - quantity, security, price and timing - that person is exercising "discretion".

[204] The exercise of discretion is restricted to those registered as “portfolio managers”, and authorization to exercise discretion must come from the client. Notwithstanding that Ont. Reg. 1015 and 1(nn) referred to in *Re Wenzel* was revoked in The Registration Amendments. The different categories of registration for persons or companies required to be registered und the Act are in National Instrument 31-103.

C. Misleading Staff

[205] Subsection 122(1)(a) of the Act states that “every person or company that makes a statement in any material, evidence or information submitted to . . . any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading” is guilty of an offence.

[206] The Commission has held in *Biovail Corp. (Re)* (2010), 33 OSCB 8914 that:

> …material, evidence or information “submitted to the Commission” for purposes of subsection 122(1)(a) means material, evidence or information submitted to the Commission for its review or consideration with the intention or expectation that the Commission would rely on that material, evidence and information in connection with the administration of the Act. That would

> clearly include statements and representations made to the Commission or Staff in connection with an investigation or an examination under Part VI of the Act…
>
> (*Biovail Corp.* at para 368)

[207] The importance of providing full and accurate information to the Commission was emphasized by the Ontario Court of Appeal in *Wilder et al v Ontario (Securities Commission)*, (2001) 53 OR (3d) 519 (CA) at para 22, and restated in *Re Moncasa Capital Corp.* (2013), 36 OSCB 5320 at para 149:

> The [Commission] is charged with the statutory obligation to do its best to ensure that those involved in the securities industry provide fair and accurate information so that public confidence in the integrity of the capital markets is maintained. It is difficult to imagine anything that could be more important to protecting the integrity than ensuring that those involved in those markets, whether as direct participants or as advisers, provide full and accurate information to the [Commission].

D. Credibility

[208] An assessment of a witness' credibility refers to the process undertaken by the trier of fact to assess the trustworthiness or believability of the witness' testimony. This process will involve:

> (a) as assessment of the general integrity, powers of observation, capacity to remember and accuracy of statements of the witness;
>
> (b) the extent to which the witness' evidence is internally consistent;
>
> (c) the extent to which the witness' evidence is consistent with other proven or undisputed facts; and
>
> (d) in the rarest of cases, the demeanour of the witness.
>
> (CED (Ont 4th), vol 31, title 82 at s 126)

[209] In *Springer v Aird & Berlis LLP* (2009), 96 OR (3d) 325 the Court, citing *R v Pressley* (1948), 94 CCC 29 (BCCA) ("***Re Springer***"), held that the "most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case". (*Re Springer* at para 14) In cases where there is conflicting testimony and where the trier of fact is deciding on a balance of probabilities whether a fact occurred,

> provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the

> important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant…
>
> (*McDougall, supra* at para 86)

IX. FINDINGS AND ANALYSIS

A. In the business of advising

[210] There is clear and convincing evidence and on a balance of probability that each of Doulis and Liberty acted as an adviser to Ontario investors, including the Clients and the Investor Witnesses without being registered as an adviser, or registered as a representative of a registered adviser in accordance with Ontario securities law during the Material Time prior to September 28, 2009. I also find that each of Doulis and Liberty engaged in the business of advising investors with respect to investing in, buying or selling securities without registration under the Act during the Material Time after September 28, 2009.

[211] I also find that Doulis acted as a portfolio manager, which is a category of adviser, for registration, for the purpose of managing the investment portfolios of the Clients through discretionary authority granted to him by each Client through the POAs. Doulis provided discretionary account management services to the Clients and Investor Witnesses, bought and sold securities in the Client Accounts though the POA and offered this advice in a manner that reflected a business purpose. I find that Doulis prepared and sent invoices to the Clients and the Investor Witnesses for the discretionary account management services he provided through Liberty. I also find that each of Doulis and Liberty held himself and itself out respectively as being in the business of providing portfolio management services to the Clients during the Material Time by soliciting the Clients for portfolio management services on the Client invoices and charged the Clients for "portfolio services". Additionally, Doulis used Liberty as the vehicle to collect the fees that he charged for his advising the Clients.

[212] Each of the Respondents should have taken the necessary steps to ensure that the proper registrations were in place and that their activities were in compliance with Ontario securities law. As a former registrant who identifies himself as a founding partner of Gordon Capital, former director of McNeil Mantha and a top ranked analyst, having previously passed the Chartered Financial Analyst exam and having taken the Directors and Officers exam, Doulis had a higher level of awareness of the requirements under Ontario securities law and knew or ought to have known the importance of those requirements to the capital markets of Ontario. (Exhibit S13 -- Tab 3, Letter from Doulis, November 20, 2008)

[213] In concluding that each of the Respondents were in the business of advising in the buying or selling of securities without being registered in accordance with Ontario securities law in any category of adviser, contrary to subsection 25(1)(c) of the Act (in force until September 28, 2009) and subsection 25(3) of the Act (in force as of September 28, 2009) I considered the following factors; whether the Respondents were,

(a) engaging in activities similar to a registrant,

(b) being, or expecting to be, remunerated or compensated, and

(c) directly or indirectly soliciting clients on the basis of providing advice.

[214] In *Empire Consulting*, the Commission considered whether the respondents in that matter were intermediating trades or acting as a market maker. I do not find it necessary or relevant to consider whether Doulis or Liberty were intermediating trades or acting as market maker in assessing the allegations before me.

1. Engaging in activities similar to a registrant

Acting as an Adviser

[215] I find that each of Doulis and Liberty engaged activities that were similar to that of an adviser registered in the category of portfolio manager. An individual or firm will be considered to be engaging in activities similar to those of a registrant and advising for a business purpose if the individual or firm is promoting securities or stating that the individual or firm will buy or sell securities. An individual or firm that establishes a business to promote securities or to buy or sell securities is advising for a business purpose.

[216] During the Material Time, Doulis offered portfolio management services to Ontario residents and engaged in the business of advising Clients as to the investing in or the buying or selling of securities during the Material Time through the discretionary authority granted to him by the POAs and did so for a business purpose.

[217] I find that during the Material Time, Doulis held POAs over the accounts of 12 individuals and corporations at Desjardin Securities. Doulis bought and sold securities at his discretion, of “whatever he felt was appropriate,” in the Client Accounts. Doulis did not discuss any purchase or sale of securities with any of the Clients before he instructed Milewski and/or Baker to execute each trade, but relied on the discretionary authority that the POA Form provided to him. Instead each of the Clients found out about the purchase and/or sale of securities in their respective Client Account from their statements, of which Doulis had copies.

[218] Each of the Investor Witness testified that Doulis provided advice on their respective Client Accounts at Desjardins Securities, instructed Desjardins Securities to make trades acting as their adviser, and Milewski and Baker executed those trades. By signing the POA Form, each of the Investor Witnesses ratified in advance, all decisions taken by Doulis in respect of the activities in their respective Client Accounts at Desjardins Securities. As a result, each of the Investor Witnesses did not need to provide instructions to Doulis with respect to the type of investment they wanted.

[219] I also find that Doulis advised the Clients with discretionary authority as a portfolio manager. I find that the POAs gave Doulis discretionary authority and permitted Doulis “without any restriction whatsoever” to, among other things, (i) deliver or receive securities in relation with the management of the Client Accounts at Desjardins Securities including make all trading decisions, and (ii) issue all trading instructions to Desjardin Securities in respect of the Client Accounts held by each of the Clients, including the Investor Witnesses. The POAs authorized Doulis to make deposits, withdrawal and transfer funds to and for the Client’s exclusive benefit in each Client Account, and also to deliver or receive securities in the exclusive name of the Client, all of the above in relation with the management of the respective Client Accounts.

[220] I find that the Clients relied on Doulis to make and execute their investment decisions and took little or no advice from Milewski or Baker. Doulis did not discuss trades with the Clients in advance, seek instructions from the Clients including the Investor Witnesses, and did not inform the Clients after making trades because he had the discretionary authority to do so through the POA Form signed by each Client. The Clients including the Investor Witnesses learned of trades after the fact when they each received trade confirmations or their respective monthly statements.

[221] Each of the Investor Witness testified that it was Doulis who recommended that they each establish a trading account with Desjardins Securities and requested that they each obtain and sign a POA Form authorizing Doulis to give instructions to Desjardins Securities. Each of the Investor Witnesses, with the exception of Investor One, also authorized Doulis to withdraw funds from their respective Client Accounts.

[222] Doulis also promoted his portfolio management services to buy and sell securities on behalf of the Clients. In the February 21, 2008 Email, Doulis promoted that "I will have trading discretion over the account, which means that I can only buy or sell securities in the account." (Transcript of the Merits Hearing, April 5, 2013, p. 99, lines 16-18) Doulis refers to himself, to Desjardins Securities, as managing accounts of clients pursuant to the POAs, and admitted to buying and selling securities for people which he refers to as, "my clients." Doulis stated in the September 15, 2008 Letter that he was "managing a few million dollars of investor securities". He also wrote in the November 2, 2008 Letter that he was "managing accounts" and in the November 20, 2008 Letter he stated: "[w]ould your firm be better served if I stopped directing anymore accounts to Desjardins? … Should I move the million dollar accounts or the smaller ones? Which course do you advise? What would be best for Desjardins?"

[223] Doulis established the business of Liberty which he used to promote securities and to buy and sell securities on behalf of the Clients. Doulis also recommended that each of the Investor Witness pay Liberty to provide a portfolio review. None of the Investor Witnesses knew about Liberty other than it was the entity that (i) sent the invoices for portfolio management services and (ii) they paid for services performed by Doulis.

[224] With respect to his association with Liberty, Doulis admitted in the Phone Interview that Liberty "pays me a retainer to advise them on the state of Canadian capital markets". (Transcript, July 15, 2009, Phone Interview, p.7, lines 20-22)

2. Being, or expecting to be remunerated or compensated

[225] I also find that Doulis and Liberty advised Clients with respect to the buying and selling of securities for a business purpose for which the Respondents expected to be compensated and were remunerated.

[226] Doulis stated in the Phone Interview that the Clients pay Liberty for a review of their portfolios. Doulis also stated that there is an annual review of the portfolio carried about by Liberty.

[227] During the Merits Hearing, Doulis testified that Liberty was compensated for the completion of an annual portfolio review and that he performed the portfolio review analysis. However, he was not compensated directly or indirectly for that work.

[228] The February, 21, 2008 Email, Doulis introduced his services to include "trading discretion over the account" for which Doulis charged "0.5% per annum (one half of one percent) of the value of the portfolio at year end or $500, whichever is greater."

[229] Doulis also sent an email on January 21, 2005 (the "**January 21, 2005 Email**") to Investor Two stating:

> Liberty, your portfolio manager, charges its fee on the basis of .5 % of total assets under administration at year end. As you know I negotiated to have your fee reduced to half of what would be payable for the year 2004 which is CAD $1,093.77.

[230] The January 21, 2005 Email requested that the payment be wired to the Liberty USD Bank Account. Investor Two also received an Invoice on Liberty letterhead dated January 19, 2010 (the "**January 19, 2010 Invoice**") for a service fee of $3,217 at 0.05% for portfolio services. The January 19, 2010 Invoice requested that the payment be wired to the Liberty USD Bank Account.

[231] Investor Two received the 2008 Invoice and 2009 Invoice for "investment management services" for the years 2007 and year 2008 respectively. The 2008 Invoice directed Investor Two to forward payment to Doulis, in an account number at the Standard Bank in the Isle of Man. The 2008 Invoice stated that "we prefer to be paid in US dollars" and was signed "Regards, Alex Doulis." The 2009 Invoice requested that Investor Two mail, to the Liberty Office, a "bank cheque payable to Liberty" for Investor Two's portfolio oversight for the year."

[232] Each of the Investor Witnesses testified that they received an invoice from Liberty for services in their respective Client Accounts. Investor Two testified that the nature of the services, as she understood at the time, was "financial advice on the kinds of investments that would suit [my] portfolio" located with Desjardins Securities.

[233] Each of the Investor Witnesses testified that they paid a half of one percent of the value of their respective portfolios at the end of the year to Liberty. Investor One testified she did not pay for the services Doulis provided in the first few years, "but then there began to be payment to Liberty Consulting". Investor One also testified that she did not pay Doulis directly, she paid Liberty for the "portfolio review," and the payments amounted to $4000 - $5000 annually. (Transcript, February 4, 2013, Testimony of Investor One, Volume 1, p.58, lines 17-18) There were no other names on the invoices other than Liberty. She compared the fees charged in her portfolio from year-to-year to the commissions charged by investment funds and explained the variation as dependent on the increase in value that "Doulis managed to get" for her.

[234] Each of the Investor Witnesses testified that it was their understanding that they were dealing with Doulis. Investor One testified that it was her understanding that Doulis had a connection with Liberty. Investor Two testified that her understanding was that she was dealing with Doulis and that she did not know who Liberty was. Investor Two also testified that when

she received an invoice and paid it, she did so on the faith that it was emanating from Doulis. Investor Two identified Liberty as "a company that pays [Doulis] a fee and it's a structure that has been set up. I don't know how it was set up or who runs it." (Transcript, February 4, 2013, Testimony of Investor Two, p.118 lines 23-25) Investor Two also testified that all she knew about Liberty was that it was where she sent her money.

[235] Investor Four testified that Liberty is a company that Doulis represented and that she made a cheque payable to Liberty for services Doulis performed for her. Investor Four also testified that she did not know who owned Liberty, but that she paid Liberty for the services Doulis performed.

[236] Investor Four testified that she received the January 20, 2010 Invoice from Liberty in the amount of $26,913.00 which she paid by cheque for annual services for 2009. Investor Four testified that she did not pay Doulis, but she made a cheque to Liberty for services Doulis performed for her.

[237] Doulis testified that Liberty had a number of clients and that he could not have known the people that he introduced to Liberty for their offshore business through the Turks and Caicos Island where the company had an office as well as in the Isle of Man. Doulis stated that he did not know whether or not invoices were sent, by whom and to whom, because he was not in those offices. He testified that he "never received directly or indirectly remuneration from Liberty except as mentioned in compelled testimony [the Compelled Examination of Doulis] that [he] received a $12,000 annual retainer to represent Liberty in Canada". On cross examination by Staff, Doulis stated that "Liberty offered bills. Whether or not there was a requirement to pay, I do not know".

[238] Doulis also, upon questioning by me, explained the relationship between the Investor Witnesses, Liberty and Doulis:

> CHAIR: …then let me understand the relationship here. So, clients retain you for power of attorney. Clients retain Liberty and they pay Liberty, and you act on behalf of Liberty and you handle their business affairs in Canada; is that a fair summary?
>
> DOULIS: Exactly. Exactly. But you should be aware, sir, that the clients do not retain Liberty. The clients have no contractual arrangement with Liberty whatsoever. There is a contractual arrangement to some extent with me as a result of the fact that I have a power of attorney. That is the only contractual relationship with me.
>
> CHAIR: And they have no contractual relationship with Liberty?
>
> DOULIS: None whatsoever.
>
> CHAIR: But they pay Liberty; am I right?
>
> DOULIS: They pay Liberty, exactly. They are willing to have that service.

> CHAIR: But they pay Liberty without a contractual relationship is what you're…
>
> DOULIS: Exactly.

[239] In the Merits Hearing, Doulis denied the fact that the invoices were from him, but instead testified that the invoices were from Liberty:

> When somebody receives a letter and it has a letterhead, the letter is usually assumed to have come from the person who has the letterhead, not from the person signing the letter or bringing the letter forth or delivering the letter. The letter, in my understanding, correct me if I'm wrong, sir, comes from the person on the letterhead in the same way when [Investor Two] received documentation from the Ontario Securities Commission signed by Mr. Feasby or Mr. Horgan or whomever, Ms. Chambers, it did not come from Ms. Chambers or Mr. Horgan or Mr. Feasby. It actually came from the Ontario Securities Commission. My friend here keeps saying, did you receive this invoice from Alex Doulis. I would read that, sir, I may be mistaken, but I would have assumed that seeing as the letterhead is Liberty Consulting, the return addresses are all Liberty Consulting, that that document came from not Alex Doulis, sir, but Liberty Consulting.
>
> […]
>
> … my friend here has been saying an invoice from Alex Doulis. I think my friend would be more correct in saying, you received an invoice from Liberty Consulting sent by Alex Doulis.

[240] I do not accept this explanation from Doulis. When an institution or an organization or a corporation sends a letter on its letterhead, that letter or the invoice stems from that institution. Since it is an inanimate object, that is, it is not a natural person, that letter must be sent by some natural person. It has been established that, as I see it, many of the invoices and communications were signed by Doulis, who is a natural person and is signing on behalf of Liberty.

[241] I also find that Doulis was compensated, through Liberty, as an adviser for the discretionary account management services he provided to each of the Clients including the Investor Witnesses, and that Doulis established this arrangement in order to be compensated.

[242] Based on the evidence at the Merits Hearing, the business purpose requirement for advising is met with respect to Doulis and Liberty. Each of the Respondents expected some type of remuneration from the Clients and each of the Investor Witnesses as a result of managing the Client Accounts.

3. Directly or indirectly soliciting clients on the basis of providing advice

[243] I also find that Doulis and Liberty directly solicited the Investor Witnesses for the sole purpose of providing discretionary account management services and advice as to the buying and selling of securities. Soliciting anyone for the purposes of buying or selling securities or offering advice for these purposes is advising for the purposes of the Act. Doulis solicited Clients through

the February 21, 2008 Email to Investor Three. Doulis also solicited investors for and on behalf of Liberty through the following Invoices that he prepared and sent to Clients on the Liberty Letterhead, including:

- the 2007 Invoice to Investor Two stating "I am currently seeking new clients and any referrals would be appreciated";
- the 2006 Invoice to Investor Two which included a statement stating, "I would recommend that you transfer some securities into your RRSP to take advantage of the tax break that you will incur"; and
- on the invoice from Liberty to Investor Three for services provided in the year 2010 stating that "Liberty is accepting accounts at $500,000 or more and would be pleased should you be willing to send referrals."

[244] I also find that, based on the evidence presented at the Merits Hearing, the actions of each of the Respondents prior to September 2009 are contrary to the predecessor provision of section 25 of the Act. I also find that the behaviour and activities of each of the Respondents were the same throughout the Material Time and that the same behaviour exhibited by each of Doulis and Liberty during the Material Time after September 28, 2009, is also a violation of the broader wording of section 25 the Act.

Exemptions

[245] Once Staff has shown that the Respondents have advised without registration, the onus shifts to the Respondents to establish that one or more exemptions were available to them. (*Limelight*, supra at para. 142 and *Re Ochnik* (2006), 29 O.S.C.B. 3929 at para. 67) Doulis did not make any submissions as to whether he was able to rely on one or more exemptions. Liberty did not participate in the Merits Hearing. Anderson testified that:

> …there is no record that … [Doulis] had filed a Form 31-103 F2 with the …[Commission] providing notification that he was relying upon the international dealer exemption or international advisor exemption in the national instrument at any time between and including January 2004 and September 2010.
>
> (Exhibit S58 -- Volume 2, Tab 1, Page 1 & Tab 2, p. 2)

[246] The Respondents did not establish that they qualified for any exemption under part 8 of National Instrument 31-103 or any provisions under securities law prior to September 28, 2009.

Fiduciary Relationship

[247] Doulis structured his affairs and the business of Liberty in a deliberate attempt to circumvent securities legislation, specifically the registration regime and established a fiduciary relationship with the Clients. In so doing Doulis acted contrary to the public interest. The Supreme Court of Canada has held that:

> [w]here the elements of trust and confidence and reliance on skill and knowledge and advice are present, the relationship is fiduciary and the obligations that attach are fiduciary.
>
> (*Hodgkinson v Simms*, (1994) 3 SCR 377 at para. 44)

[248] The Investor Witnesses testified that they trusted Doulis and relied on his advice with respect to his discretionary management of their respective Client Accounts. The Clients, through the POAs, relied on the skills and knowledge and advice of Doulis in managing the Client Accounts which I find amounts to a fiduciary relationship and triggers the obligations attaching to a fiduciary.

[249] I am troubled by the fact that Doulis knowingly established a fiduciary relationship with vulnerable Clients, through the discretionary authority granted to him by the POAs, and recklessly participated in the capital markets of Ontario, as an adviser, without registration or relying on an exemption from registration. During the Material Time, the Clients did not have the benefits and protections of the registration regime which holds advisers accountable to their fiduciary obligation to act in the best interest of clients.

B. Misleading Staff

[250] I find that Doulis made numerous false and misleading statements to Staff in the Doulis Correspondence, the Phone Interview, under oath in the Compelled Examination of Doulis and at the Merits Hearing that, in material respect and at the time and in light of the circumstances under which these statements were made, was misleading and, in certain circumstances, untrue.

[251] I find that Doulis made statements that:

(i) falsely minimized his role with Liberty;

(ii) he did not send, nor was he aware that anyone had sent, invoices to the Clients;

(iii) he did not know what remuneration Liberty received; and

(iv) he was not being paid directly or indirectly by any of the Clients.

[252] Doulis also omitted facts that were required to be stated or that were necessary to make his statements not misleading and omitted information within his knowledge that minimized his knowledge of the activity that he conducted on behalf of Liberty.

[253] During the Phone Interview, Doulis misled staff when he stated that:

(i) he provided "no services whatsoever" to Clients but that people of his acquaintance approach him and asked him if he would act as power of attorney on their accounts;

(ii) "they do not pay me a dime";

(iii) he has received "no remuneration whatsoever" on any account over which he has power of attorney;

(iv) he has "never solicited anybody to manage, look after, look into, review or in any way interfere with their investment account"; and

(v) he does not advertise, solicit or seek clients.

[254] Doulis also misrepresented his involvement with Liberty by describing himself as an agent or employee who completed mailings and distributed reports. In the Compelled Examination of Doulis, Doulis minimized his role in Liberty by stating that he:

(i) had no role or business with Liberty except referring clients to them, sending bulk mail for them, collecting fees due to them and writing comments for them with respect to tax law and offshore investing;

(ii) did not send, and to his knowledge, no one sent the Clients invoices charging them for his services;

(v) had received only one cheque from one client on one occasion;

(vi) did not know what remuneration Liberty received for the portfolio services he provided to the Clients; and

(vii) did not receive remuneration, either directly or indirectly, from any of the Clients.

[255] Staff provided evidence in a series of emails between Doulis and Wilkinson that showed that Doulis directed:

- the establishment of the Liberty Accounts with Capital International; (November 21, 2002 Email, Exhibit S77 -- Volume 1B, Tab O, p. 205)
- funds of Liberty to be deposited at Barclay's Bank in New York City, pending opening of accounts in the Isle of Man; (March 2, 2003 Email, Exhibit S77 -- Volume 1B, Tab O, p. 208)
- the transfer of CAD $24,000 from Liberty to Minotaur Capital; (July 18, 2005 Email, Exhibit S77 -- Volume 1B, Tab O, p. 213)
- the transfer of USD $10,000 belonging to Liberty; (December 11, 2006 Email, Exhibit S77 -- Volume 1B, Tab O, p. 210)
- the transfer of funds to the credit of Liberty; (August 10, 2007 Email, Exhibit S77 -- Volume 1B, Tab O, p. 215)
- the transfer of CAD $9,800 from, the account of Liberty to the credit of A. Christodoulidis; (November 9, 2007 Email, Exhibit S77 -- Volume 1B, Tab O, p. 216)
- the opening of an account for Liberty and the transfer of securities into that account; (October 28, 2007 Email, Exhibit S77 -- Volume 1B, Tab O, p. 219)

- the transfer of USD $10,000 belonging to Liberty; and (February 21, 2008 Email, Exhibit S77 -- Volume 1B, Tab O, p. 218)
- the transfer of CAD $7,000 out of the Liberty Accounts. (June 16, 2008 Email, Exhibit S77 -- Volume 1B, Tab O, p. 220)

[256] Doulis also mislead Staff when he denied he was not remunerated for advising the Clients and that he did not know whether the Clients were even invoiced, despite having drafted and sent the invoices himself.

[257] I find that Doulis omitted and did not state facts necessary to make his statements not misleading information in the Compelled Examination of Doulis by failing to inform Staff that he was at various times the sole shareholder, the sole director and the president of Liberty, established the Liberty Accounts, was paying rent and all obligations of Liberty in Canada, was transferring funds from bank accounts to brokerage accounts belonging to Liberty, and that he had arranged to sell Liberty to the Paladin Trust.

[258] Doulis falsely testified that he did not require compensation for his services and stated to the Panel "[t]here was no requirement to pay me. There was no requirement to pay Liberty…There was no requirement for anyone to pay me"; and that he was not compensated for acting for the Clients for any services with regards to Liberty except for an annual retainer.

[259] I find that Doulis was the directing mind of Liberty and the signing and trading authority on several Liberty Accounts until 2005. Doulis remained the directing mind of Liberty during the Material Time, notwithstanding that on or about June 2005, Doulis transferred his formal ownership of Liberty to the Paladin Trust.

[260] As the directing mind of Liberty, Doulis caused the Liberty Accounts and a brokerage account for Liberty at Capital International, Isle of Man (the "**Liberty Brokerage Account**") to be open. The Liberty Brokerage Account reference was "Calibcon" and the account executive was Wilkinson. Doulis had full discretionary trading authority over the Liberty Brokerage Account.

[261] Doulis also had signing authority and control over the two bank accounts of Liberty at FirstCaribbean International Bank, Providenciales, Turks and Caicos, the Liberty USD Bank Account and the Liberty CAD Bank Account. Doulis directed the Investor Witnesses to forward payment to Liberty to each of the Liberty USD Bank Account and the Liberty CAD Bank Account.

[262] During the Merits Hearing, I heard conflicting testimony from Doulis regarding whether he provided investment advice to Clients, was remunerated for providing that advice, or had trading authority for the Client Accounts, including the accounts of the Investor Witnesses.

[263] In assessing the credibility of Doulis' evidence, I have considered whether his evidence was "in harmony …with the preponderance of probabilities disclosed by the facts and circumstances…" of this case. (*Re Springer, supra* at para. 14)

[264] I also considered his accuracy in his statements to:

(1) the extent of the capacity of Doulis to perceive, to recollect, or to communicate any matter about which he testified;

(2) statements previously made by Doulis that is consistent with his statement at the Merits Hearing; and

(3) statements made by Doulis that is inconsistent with any part of his testimony at the Merits Hearing.

[265] I did not consider the demeanour of Doulis in my assessment.

Inconsistent Statements Regarding Providing Investment Advice

[266] Doulis maintained that he had never provided investment advice to anyone in Canada contrary to a previous testimony at Temporary Order Hearing where he testified that he had provided investment advice to both Investor One and Investor Two and they each paid Liberty. (Exhibit S28 -- Transcript of the Temporary Order Hearing, March 10, 2011, p. 63, lines 16-23; Transcript, April 4, 2013, p. 124-125) Then during the Merits Hearing Doulis explained that "[t]hey were paying not for investment advice, but for, as it says, Liberty's services". (Transcript, April 4, 2013, p. 125, lines 19-20) Then, Doulis subsequently testified that Investor One and Investor Two were paying Liberty for his services that he performed for them. (Transcript, April 4, 2013, p. 126, lines 4-8)

Inconsistent Statements about Doulis' Relationship with Liberty

[267] Throughout the Merits Hearing, Doulis maintained that he did not know about Liberty but that he provided clerical and administrative services for the company. However, Doulis subsequently acknowledged upon cross examination by Staff, that he had sole control of the Liberty's Accounts at the time.

[268] When asked by Staff whether Liberty was receiving payment for his investment advice, he stated that Staff had asked a difficult question and later on denied that Liberty had received payment for his investment advice. Doulis argued that the invoice described "portfolio performance" and that nowhere in the invoice did it say "a charge for portfolio administration". (Transcript of the Merits Hearing, April 4, 2013, Testimony of Doulis, p. 129-130, lines 4-7)

[269] However, Doulis had previously confirmed to Staff that he requested that Investor Two transfer her payment to the Liberty USD Bank Account. (Transcript of the Merits Hearing, April 4, 2013, Testimony of Doulis, p. 130-131, lines 11-17) Additionally, at the Temporary Order Hearing, Doulis confirmed that he was the sole director and president of Liberty. When asked by Staff "and nobody else had control at that point in time over the back accounts of Liberty Consulting", Doulis indicated in his response that "This is correct".

Inconsistent Statements about Doulis' Relationship with Certain Investor Witnesses

[270] Doulis testified that he knew all of the Clients personally including Investor Three who he knew when she worked with a deceased friend named Mr. Gordon Davenport ("**Davenport**") in 1992. (Transcript, April 5, 2013, p. 20, lines 8-12) Doulis testified on cross-examination that he met Investor Three prior to the death of Davenport in 1992 at a garden party that Davenport

had arranged. The statement as to how long Doulis had known Investor Three is inconsistent with Investor Three's testimony. Investor Three testified that Doulis had acted as her attorney since she met him in 2008. She was aware of Doulis "anecdotally" prior to that, but met with him on the recommendation of a friend who had some investments with him. However, at the Merits Hearing, upon cross examination by Staff, Doulis was asked about this inconsistency, Doulis testified that he did not recall Investor Three's testimony. Doulis testified: "I wasn't here for the testimony – for that testimony, but if – yes, we have known of each other and, on occasion, been in each other's company." (Transcript of the Merits Hearing, April 5, 2013, p.17, lines 20-22) When Staff provided Doulis with a copy of the transcripts from Investor Three's testimony at the Merits Hearing as a reference, and showed Doulis that the transcripts in fact showed that he was present for Investor Three's testimony, Doulis did not directly address the inconsistency between his testimony and that of Investor Three as to when she met him. Doulis focused on the fact that Investor Three used the term "anecdotally" and went into a discussion as to what the term "anecdotally" means. At the Temporary Order Hearing, Doulis stated that he met Investor Three in 2008 which would mean that he had only known her for a brief period of time. (Transcript of the Merits Hearing, April 4, 2013, p. 149, lines 17-23)

Inconsistent Statements about Doulis' CFA designation

[271] Doulis continues to hold himself out as a CFA to clients, to the Commission and to Desjardins Securities, despite not having paid his dues to the CFA Institute since 1990 and being advise by the CFA Institute to stop using the designation. When asked about his CFA dues, the following exchange occurred between Staff and Doulis:

Q. And you have not paid your CFA dues since 1990, correct?

Doulis: Ah, a very interesting point, Mr. Feasby. Very interesting point. My charter was granted by the International Chartered Federation of Analysts Association. It was not granted by the CFA Institute. The CFA Institute did not exist until 1990. My charter was not granted by the CFA Institute, therefore, I have no obligation to them and they have no resource to my charter. I have a designation, sir. They hand out the use of a copyright.

Q. Nonetheless, you acknowledged that you haven't paid your dues for…

Doulis: I can't pay my dues…

Q. May I finish my question. You haven't paid your dues for 23 years.

Doulis: To whom? To whom, Mr. Feasby?

Q. The dues payable on your CFA charter.

Doulis: There are no dues payable on my CFA charter, Mr. Feasby, because the organization that granted it no longer exists.

Q. Do you acknowledge that you were instructed by the international governing body of CFAs to stop using the CFA designation?

Doulis: And do you realize that I wrote them back and said, I will continue to do so and there is nothing you can do to stop me.

Q. The question, Mr. Doulis, was whether or not you have been instructed to stop using the designation?

Doulis: I have been asked to stop using their copyright and I have refused to do so because I am not using their copyright, I am using a designation that I was granted, like my BSc. – Nobody has said that because I have not been back to university for thirty -- fifty years, then I have lost my BSc. It is a designation, like your LLB, sir.

(Transcript of the Merits Hearing, April 5, 2013, pp. 77-79, lines 21-26)

[272] I find that Doulis' evidence was inconsistent, with respect to the testimony of the Investor Witnesses, his own statements and testimony at that Merits Hearing, and in evidence in the Compelled Examination of Doulis and in the Transcript of the Temporary Order Hearing. In this case where there is conflicting testimony, the Panel must decide whether the allegations occurred on a balance of probabilities, notwithstanding, whether I find a lack of harmony in Doulis' testimony. In those situations, I attached greater weight to evidence that was corroborated by other evidence, including documentary evidence and evidence provided from the testimony of the Investor Witnesses.

[273] Accordingly, I find that it is more likely than not that the allegations of Staff occurred for the reasons above.

X. CONCLUSION

[274] For the reasons stated above I find that during the Material Time:

1. between January 1, 2004 and September, 2010, Doulis and Liberty engaged in the business of advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law in any category of adviser, contrary to subsection 25(3) the Act, previously subsection 25(1)(c) of the Act; and

2. between July 2009 and September 2010, Doulis made statements to Staff that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements not misleading, contrary to s. 122(1)(a) of the Act.

[275] Doulis and Liberty acted contrary to the public interest.

[276] An order will be issued as follows:

1. Staff shall serve and file written submissions on sanctions and costs by 4:00 p.m. on September 24, 2014;

2. the Respondents shall serve and file responding written submissions on sanctions and costs by 4:00 p.m. on September 29, 2014;

3. Staff shall serve and file reply written submissions on sanctions and costs (if any) by 4:00 p.m. on October 2, 2014;

4. the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on October 7, 2014, at 3:00 p.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary;

5. the hearing to determine sanctions and costs shall commence on October 7, 2014 at 3:00 p.m. and be conducted by way of an electronic hearing where only the Panel will participate via teleconference, as defined in section 1.1 of the Rules and subsection 1(1) of the SPPA, unless a party objects as provided under subsection 5.2(2) of the SPPA;

6. a party who objects to the hearing on sanctions and costs being conducted by way of an electronic hearing where only the Panel will participate via teleconference, shall file and serve a notice of objection setting out the reasons for the objection within 5 days after receiving notice of the electronic hearing;

7. a notice of objection shall set out the reasons for the objection and be accompanied by any evidence and any law relied on in support of the objection satisfying the Panel that holding an electronic hearing by teleconference rather than an oral hearing is likely to cause the party significant prejudice; and

8. upon failure of any party to attend at the time and place aforesaid, or upon failure by any party to file and serve a notice of objection that holding the hearing on sanctions and costs by way of an electronic hearing by teleconference is likely to cause the party significant prejudice, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 18th day of September, 2014.

"*Vern Krishna*"

Vern Krishna, CM, QC, LSM