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

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

- and -

IN THE MATTER OF INTERNATIONAL STRATEGIC INVESTMENTS, INTERNATIONAL STRATEGIC INVESTMENTS INC., SOMIN HOLDINGS INC., AND NAZIM GILLANI AND RYAN J. DRISCOLL

REASONS AND DECISION
(Sections 127 & 127.1)

Hearing:	February 2, 3 & 6, 2015		
Decision:	March 6, 2015		
Panel:	Alan J. Lenczner	-	Commissioner
Appearances:	Nazim Gillani	-	For himself
	David Sischy	-	For Ryan J. Driscoll
	Cameron Watson	-	For the Ontario Securities Commission

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REASONS AND DECISION

I. BACKGROUND

A. Introduction

[1] This was a hearing before the Ontario Securities Commission (the "Commission") arising from a Notice of Hearing issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), in connection with a Statement of Allegations filed by Enforcement Staff ("**Staff**") on March 5, 2012, regarding International Strategic Investments, International Strategic Investments Inc., (together "**ISI**"), Somin Holdings Inc. ("**Somin**") (collectively, the "**Corporate Respondents**"), Nazim Gillani ("**Gillani**") and Ryan J. Driscoll ("**Driscoll**") (collectively, the "**Respondents**"), alleging that the Respondents engaged in conduct in breach of the Act and contrary to the public interest.

[2] This matter proceeded by way of a written hybrid hearing. On December 12, 2013, the Commission ordered it to proceed by written record with the parties making themselves and witnesses available for cross-examination. Cross-examinations occurred over the course of three hearing days (the "**Merits Hearing**").

B. Facts

[3] From February 2009 to December 2009 (the "**Material Time**"), Gillani engaged in a course of conduct in which he held himself out to HD Retail Solutions Inc. ("**HDRS**") and its management ("**HDRS Management**") as a successful venture capitalist and ISI as a boutique investment company with the ability to access millions of dollars in financing. Relying on these representations, ISI and HDRS entered into an agreement pursuant to which, among other things, ISI would raise capital for the benefit of HDRS. Gillani made representations to HDRS Management that he could obtain the German Public Listing (defined below) for HDRS. Gillani continually assured HDRS Management that he was anticipating the receipt of millions of dollars of venture capital funds in "bridge financing" for the benefit of HDRS when he knew, in fact, that no such funds were forthcoming.

[4] On March 7, 2009 ISI entered into a Memorandum of Understanding (the "**MOU**") with HDRS, the main objective of which was to achieve a public listing of HDRS on the Frankfurt and Xetra markets in Germany (the "**German Public Listing**"). Under the MOU, ISI agreed to a number of deliverables and services including, an obligation to credit HDRS with at least $400,000 Euros in cash or liquid securities within ninety days of the listing date and to provide broker dealer and retail distribution services.

[5] Gillani also encouraged a group associated with HDRS, referred to as the G9, to invest in their own company to demonstrate to other investors their confidence HDRS. Gillani delivered stock subscription agreements (the "**Subscription Agreements**") for the purchase of HDRS securities (the "**HDRS Securities**") to the G9 and to other prospective investors. The Subscription Agreements contained instructions to deliver the funds in trust to ISI's in house lawyer, Michael Taylor ("**Taylor**")(now deceased). Pursuant to the Subscription Agreements, the

G9 bought approximately $300,000 worth of HDRS Securities. Another approximately $1.17 million dollars was raised by Gillani and the Corporate Respondents through the sale of HDRS Securities to other investors. Together this totalled approximately $1.47 million dollars between 14 individuals (the "**HDRS Investors**").

[6] By May 2009 the financing promised by Gillani failed to materialize. The G9 demanded the return of their investment in the HDRS Securities. Gillani had withdrawn the funds from Taylor's trust account for purposes other than those permitted, without the knowledge or consent of the G9. In order to conceal what Gillani admitted was fraudulent conduct, Gillani wrote a cheque on a closed bank account and purported to make the payee Taylor's trust account. Then, using a screenshot of the trust account, he falsely demonstrated to the G9 that their investment was still intact. Having convinced to the G9 that their investment was safe, Gillani convinced them to allow ISI to continue to hold their funds. Gillani admitted that this course of conduct was fraudulent.

[7] In May 2009, Gillani informed HDRS that the German Public Listing was not proceeding and that HDRS should instead pursue a reverse takeover (the "**RTO**") of a Nevada based company, Greenwind Power Corp. ("**Greenwind USA**"). Gillani advised HDRS that Greenwind USA would trade on the OTC Pink Tier of the Pink OTC Markets Inc. (the "**Pinksheets**") and that, through the RTO, HDRS would become a publicly listed company.

[8] As Gillani and the Corporate Respondents had already spent the funds raised through the sale of the HDRS Securities, Gillani recruited Driscoll to raise the necessary funds for the RTO. Gillani contracted with Driscoll to promote the RTO as an investment opportunity, in return for which Driscoll earned a commission of approximately 15% on the investment made by each investor. Driscoll was informed that the sale of the Greenwind USA securities (the "**RTO Securities**") would occur through Somin, which Gillani represented to Driscoll was a registrant and the legal owner of the RTO Securities.

[9] During the Material Time, Driscoll recruited 19 individuals (the "**RTO Investors**") to invest in HDRS through the RTO. He brought his clients to the ISI premises where, after a presentation, they were given share purchase agreements (the "**Share Purchase Agreements**") to execute. The RTO Investors invested approximately $500,000.

[10] The Share Purchase Agreements indicated that Somin was selling the RTO Securities to the RTO Investors. Somin was never the legal owner of these securities. While Gillani generally had his nominee director, David Munro, sign for Somin, on at least one occasion, Gillani executed one of the Share Purchase Agreements for the RTO Securities on behalf of Somin. Gillani did not inform HDRS Management of any of the investments made by the RTO Investors.

[11] During the Material Time, Gillani represented ISI as a corporation and himself as its Chief Executive Officer. In fact, ISI was never incorporated, nor did it ever have a bank account. Instead Gillani used Somin and another corporation, 1021050 Ontario Inc. ("**102**"), to transact the ISI business and banking related to the HDRS Securities and RTO Securities. Gillani was not a director of 102 or Somin, but instead relied on nominee directors to act in those roles while he in fact controlled those corporations and their banking. In his compelled testimony, Gillani

admitted that ISI, 102 and Somin functioned as a single business enterprise, stating "you can't draw a line and say is this ISI business, is this Somin business, is this 102 business… there's literally no difference to me".

[12] Gillani never had his own bank account. He utilized Taylor's trust account, Driscoll's credit card and Somin's debit card to fund his personal expenses and some business expenses of ISI.

[13] During the Material Time, HDRS Investors paid approximately $1.47 million and the RTO Investors paid approximately $500,000 for the purchase of HDRS Securities and RTO Securities respectively, for a total of approximately $1.97 million. Of this total, approximately $1.2 million was deposited into bank accounts controlled by or paid by way of cash to Gillani, of which only approximately $508,000 was disbursed to the benefit of HDRS.

II. THE ISSUES

[14] Did the Respondents:

(a) engage in unregistered trading; and

(b) engage in unregistered advising.

[15] Did Gillani and the Corporate Respondents:

(a) engage in a course of conduct that they knew or reasonably ought to have known perpetrated a fraud on persons or companies;

(b) make misleading oral and written representations contrary to section 38(3) of the Act; and

[16] Did Gillani:

(a) authorize, permit or acquiesce in the non-compliance with the Act by the Corporate Respondents and Driscoll.

III. ANALYSIS AND DECISION

1. The Commission's Public Interest Jurisdiction

[17] The Commission's mandate in upholding the purposes of the Act is set out in section 1.1 of the Act as follows:

> (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.

[18] The Commission is guided by certain fundamental principles in upholding and achieving the purposes of the Act. These principles include:

> (a) requirements for timely, accurate and efficient disclosure of information;
>
> (b) restrictions on fraudulent and unfair market practices and procedures; and
>
> (c) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[19] The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets.

[20] The scope of the Commission's discretion in defining the public interest is limited only by the animating principles of the Act, principally to protect investors and enhance the integrity of the public markets.

2. Standard of Proof

[21] The civil standard of proof and the nature of the evidence which is required to meet that standard are integral to the duty of administrative tribunals to provide a fair hearing. It is well established that the standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities" *F. (H.) v. McDougall*, [2008] S.C.J. No. 54 ("***McDougall***"),

[22] The Supreme Court of Canada went on to state that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall, supra*, at para. 46). However, this requirement of clear, convincing and cogent evidence does not elevate the standard of proof beyond the balance of probabilities.

C. Registration

1. Importance of Registration in the Regulatory Context

[23] Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating in the Ontario capital markets, individuals and companies must comply with Ontario securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets.

[24] The registration requirement found in section 25 of the Act is one of the cornerstones of the regulatory framework of the Act. Registration serves an important gate-keeping function by ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public:

> 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 person who therein carry on such business.
>
> *Gregory & Co. Inc. v. Quebec Securities Commission et al.*, [1961] SCR 584 at para. 11.

[25] Through the registration process, the Commission ensures that those who engage in marketplace activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards. During the Material Time none of the Respondents were registered with the Commission in any form.

D. Unregistered Trading

2. Section 25: Prior to September 28, 2009

[26] Prior to September 28, 2009, subsection 25(1)(a) read:

> No person or company shall,
>
> a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

3. Section 25: On and After September 28, 2009

[27] On September 28, 2009 the Commission adopted the current version of subsection 25(1) (the "**Trading Registration Amendments**"). The current subsection reads as follows:

> Unless a person or company is exempt under Ontario securities law from the requirements to comply with this subsection, the person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company,
>
> a) is registered in accordance with Ontario securities law as a dealer; or
>
> b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[28] The Commission has held that the language contained the Trading Registration Amendments is broader than the previous language (*Re Empire Consulting Inc.* (2012) 35 O.S.C.B. 7775 ("***Re Empire Consulting***"). A breach of section 25 prior to the amendments will qualify as a breach after the amendments were enacted. In this case, Staff have alleged that trading in the HDRS Securities and in the RTO Securities occurred before the Trading Registration Amendments. As I find that Staff met its burden of proof under the old language, it is therefore unnecessary to conduct an analysis under the new language as well.

4. The "business trigger" for registration requirement for trading

[29] The requirement for registration is determined by a "business trigger". In determining whether a person or company is trading in securities for a business purpose, section 1.3 of Companion Policy 31-103 sets out a number of relevant factors that are derived from case law and regulatory decisions that have interpreted the "business purpose test" for securities matters. The relevant factors are as follows:

- engaging in activities similar to a registrant, including promoting securities or stating that an individual or company will buy or sell securities;
- directly or indirectly carrying on the activity with repetition, regularity or continuity, especially trading in any way that produces, or is intended to produce, profits;
- being, or expecting to be, remunerated or compensated for trading and it is irrelevant if the individual or company actually received compensation or in what form; and
- directly or indirectly soliciting, including contacting anyone by any means to solicit securities transactions.

[30] There is no question that the Respondents engaged in the sale of the HDRS Securities and RTO Securities for a business purpose and therefore contravened the registration requirements of the Act.

5. Definition of "Trade"

[31] To establish a breach of the previous and current versions of section 25 of the Act, it is necessary for the Respondents to "trade in a security" within the meaning of the Act. The definition of "trade" under subsection 1(1) describes a very broad concept that encompasses not only any sale or disposition of securities for valuable consideration, but also includes any act, advertisement, solicitation, conduct, or negotiation directly or indirectly in furtherance of such a sale or disposition.

[32] The inclusion of the word "indirectly" in the definition of "trade" under the Act reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration and prospectus requirement by doing indirectly that which is prohibited directly.

[33] Cases considering the issue of acts in furtherance of trading reflect a contextual approach that examines the totality of the conduct and the setting in which it occurs. In this analysis, the primary emphasis is on the intended effect of the acts on those at whom they are directed, and on the proximity of the acts to an actual or potential trade in securities (*Re First Federal Capital (Canada) Corp*. (2004), 27 O.S.C.B. 1603)("***Re First Federal***"). Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade.

[34] The Commission has found a variety of activities that constitute acts in furtherance of trading, including:

(a) accepting money from investors and depositing investor cheques for the purchase of shares in a bank account;

(b) providing potential investors with subscription agreements to execute;

(c) distributing promotional materials concerning potential investments;

(d) issuing and signing share certificates;

(e) preparing and disseminating forms of agreements for signature by investors;

(f) conducting information sessions with groups of investors; and

(g) meeting with individual investors;

(See *Re Hrappstead*, [1999] 15 B.C.S.C.W.S. 13; *R. v Sussman* cited above, *R. v Guard* cited above; *Re First Federal*, *supra*; *Re Dodsley* (2003), 26 O.S.C.B. 1799; *Del Bianco v. Alberta (Securities Commission*), [2004] A.J. No. 1222 (Alta C.A.)).

[35] An act in furtherance of a trade does not require that an actual trade occur. Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness and negate the purpose of the Act, which is to regulate those who trade, or who purport to trade, in securities.

[36] Gillani and ISI traded in securities with regards to the sale of the HDRS Securities. Gillani delivered the Subscription Agreements to investors and Gillani and ISI received money from investors pursuant to the sale and purchase of HDRS Securities.

[37] By recruiting Driscoll to sell the RTO Securities and by executing the sale of securities pursuant to a Share Purchase Agreement, Gillani also engaged in "trading" and "acts in furtherance of trading" as defined by the Act. While Somin didn't actually own the securities that it purported to sell, a sale of securities is not required to find that a "trade" occurred.

[38] Driscoll recruited potential investors and brought them to the ISI premises for presentations on the benefits of purchasing RTO securities. By meeting with individual investors, by bringing them to the ISI premises for the purpose of investing, and by expecting to be

remunerated on the basis of any investment an individual made, Driscoll engaged in "acts in furtherance of a trade" as defined by the Act.

[39] The evidence establishes, to a balance of probabilities, that Gillani, ISI, Somin and Driscoll traded in securities with regards to the sale of the RTO securities.

6. Accredited Investor Exemption

[40] Gillani submits that if he and any of the Corporate Respondents did engage in trading, that they did so pursuant an accredited investor exemption and are therefore exempt from the registration requirement under the Act. During the Material Time, National Instrument 45-106 ("**NI 45-106**") provided certain exemptions from the registration requirements for trading in securities. One of the categories of exemptions contained in NI 45-106 included the sale of securities to "accredited investors". The accredited investor exemption permits an issuer to sell its securities to a class of sophisticated investors with fewer regulatory demands, including the requirement that an issuer be registered.

[41] Section 2.3 of NI 45-106 provided that sections 25 and 53 of the Act did not apply to trades in securities if the purchaser is an accredited investor and purchases as principal. However, section 2.43(b) provided that the accredited investor exemption was not available for market intermediaries.

[42] The definition of market intermediary was set out at section 204(1) of the Regulation:

> "market intermediary" means a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent, other than trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution, and, without limiting the generality of the foregoing, includes a person or company that engages or holds himself, herself or itself out as engaging in the business of,
>
> a) entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities;
>
> b) participating in distributions of securities as a selling group member,
>
> c) making a market in securities, or
>
> d) trading in securities with accounts fully managed by the person or company as agent or trustee, whether or not the person or company engages in trading in securities purchased for investment only.

[43] I find that the evidence shows that Gillani and the Corporate Respondents acted as market intermediaries and not as principals. Therefore the accredited investor exemption was not available to them.

7. Trade By Person Acting Solely through a Registered Dealer

[44] Driscoll submits that if he is found to have traded contrary to section 25 of the Act, that he be allowed to take advantage of the exemption that existed at the time at part 3.1 of NI 45-106. Part 3.1 provided that "the dealer registration requirement does not apply in respect of a trade by a person acting solely through an agent who is a registered dealer."

[45] Driscoll submits that he be allowed to take advantage of the exemption even though Somin was not a registered dealer because Gillani had represented to him that Somin was registered. Furthermore, Driscoll submits that it would be unreasonable to expect him to have conducted any due diligence regarding Somin's registration status as this would be akin to looking "behind the representation that ScotiaMcLeod is registered."

[46] The registration requirement of the Act is a cornerstone of the gatekeeping function to ensure that only licensed registrants can trade in securities. It would undermine this important principle if an individual could escape the requirements by relying on a simple representation. Not only is a contravention of section 25 a strict liability offence but, in this case, Driscoll conducted no due diligence to determine whether Somin was a registered dealer. A simple search on the Commission's website would have indicated to him that neither Somin nor Gillani were ever registered with the Commission. Driscoll cannot rely on the purported exemption.

E. Unregistered Advising

1. Section 25: Prior to September 28, 2009

[47] Prior to September 28, 2009, subsection 25(1) of the Act stated that:

> No person or company shall,
>
> (c) act as an adviser unless the person or company is registered as an adviser or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser
>
> ... and the registration has been made in accordance with Ontario securities law. ...

2. Section 25: On and After September 28, 2009

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

> 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; ...

[49] The Commission has held that the language contained the Advising Registration Amendments is broader than the previous language (*Empire Consulting*, *supra*). A breach of section 25 prior to the Advising Registration Amendments will qualify as a breach after they came into force. In this case, Staff allege that the advising with respect to the HDRS Securities and in the RTO Securities began before the Trading Registration Amendments. As I find that Staff meets its burden of proof under the old legislation regarding Gillani and the Corporate Respondents, an analysis under the current language is unneeded. I find that Driscoll's actions do not meet the definition of advising, and given that this definition did not change throughout the Material Time, a further analysis is not required in his case.

3. The "business trigger" for registration as an adviser

[50] The requirement for registration is determined by a "business trigger". In determining whether a person or company is advising for a business purpose, section 1.3 of Companion Policy 31-103 sets out a number of relevant factors that are derived from case and law and regulatory decisions that have interpreted the "business purpose test" for securities matters. The relevant factors are as follows:

- engaging in activities similar to a registrant;
- directly or indirectly carrying on the activity with repetition, regularity or continuity, especially advising in any way that produces, or is intended to produce, profits;
- being, or expecting to be, remunerated or compensated for advising and it is irrelevant if the individual or company actually received compensation or in what form; and
- offering advice for the purpose of directly or indirectly soliciting securities.

[51] The Commission has held that a business purpose exists where the adviser expects to be remunerated. Remuneration or expected remuneration, whether direct or indirect, reflects a business purpose *Re Costello* (2003), 26 O.S.C.B. 1617 at paras 34-35; *Re Maguire*, (1995), 18 O.S.C.B. 4623 at pp. 2-3 ("***Re Maguire***"); *Re First Federal*, *supra* at para 29).

[52] The evidence demonstrates that Gillani and the Corporate Respondents engaged in activities similar to a registrant and were remunerated for their efforts. There is no question that Gillani and the Corporate Respondents engaged in advising regarding the HDRS Securities and RTO Securities for a business purpose and therefore contravened the registration requirements of the Act.

4. Definition of Advising

[53] "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.

[54] 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 L.N.B.C.S.C. 18 ("***Re Donas***") at p 6; *Re Maguire* (1995), 18 O.S.C.B. 4623 at pp 2-3; *Re First Federal, supra* at paras 28-29)

[55] 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).

[56] The evidence demonstrated that Gillani and ISI advised HDRS to pursue the German Public Listing. Gillani further advised the G9 to invest in their own company in order to show that they had confidence in their own business the German Public Listing.

[57] When the German Public Listing failed, Gillani and the Corporate Respondents advised HDRS to pursue the RTO as a means to have the company publicly listed.

[58] Under cross examination, Gillani admitted that he was present during the presentations given to prospective RTO Investors. He admitted that he would provide his opinion on the RTO plan to prospective investors and admitted to, at least on one occasion, giving the presentation himself.

[59] I find that the conduct engaged in by Gillani and the Corporate Respondents meets the definition of advising under the Act.

[60] Staff submits that the Panel can and should infer from the fact that Driscoll brought prospective investors to ISI for the purpose of investing and that some did invest in the RTO Securities, that Driscoll "advised" those investors as defined by the Act regarding the RTO Securities.

[61] Driscoll denies this allegation and submits that he did not go beyond stating factual information about the investment. Furthermore, he submits the affidavits of two RTO Investors who agree with Driscoll's submission regarding this allegation.

[62] Staff did not ask Driscoll to submit to cross-examination at the Merits Hearing. I am therefore left to make a decision based upon the affidavits of Staff and of Driscoll and the compelled testimony submitted as part of the hearing brief. Without having *viva voce* evidence tested under cross-examination, I am not prepared to weigh the evidence from affidavits

provided by witnesses and to make credibility findings against Driscoll. Staff has failed to meet its burden of proof that Driscoll engaged in unlawful advising under the Act.

F. Fraud

[63] Staff allege that Gillani and the Corporate Respondents breached Section 126.1(1)(b) of the Act, which prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud:

> (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> a) …
>
> b) …perpetrates a fraud on any person or company.

[64] Fraud is one of the most egregious securities regulatory violations and is both an affront to the individual investors directly targeted and decreases confidence in the fairness and efficiency of the entire capital market system generally.

[65] With respect to a corporate respondent, to prove a breach of subsection 126.1(1)(b) of the Act, it is sufficient to show that its directing mind knew that the acts of the corporation perpetrated a fraud.

[66] Under cross examination Gillani repudiated his position in his affidavit and admitted to committing fraud contrary to 126.1(1)(b). In May 2009, with the financing promised to HDRS having failed to materialize, the G9 demanded the return of their investment in the HDRS Securities from ISI. Gillani, however, had disbursed these funds from Taylor's trust account, without the knowledge or consent of the G9. Gillani admitted that in order to conceal his fraudulent conduct, he wrote a cheque on a closed bank account and purported to make the payee Taylor's trust account. He then used a screenshot of the trust account to convince the G9 that their investment was still intact and that they should continue to allow Gillani and ISI to hold it in trust. Gillani admitted that this course of conduct was fraudulent.

G. Misleading Representations

[67] The basis for an allegation of a misleading representation is found under section 38(3) of the Act:

> (3) Listing – Subject to the regulations, no person or company, with the intention of effecting a trade in a security or derivative, shall, except with the written permission of the Director, make any written or oral representation that the security or derivative will be listed on an exchange or quoted on a quotation and trade reporting system, or that application has been or will be made to list the security or derivative on an exchange or quote the security or derivative on a quotation and trade reporting system, unless,

a) in the case of securities, application has been made to list or quote the securities and other securities issued by the same issuer are already listed on an exchange or quoted on a quotation or trade reporting system; or

b) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities or derivatives, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[68] Under cross examination, Gillani recanted from his position in his affidavit and admitted to breaching section 38(3) in connection with the representations he made to the HDRS Management that HDRS would be listed on a German public market when the Director had not provided written permission to Gillani or ISI to make these representations.

H. Authorizing, Permitting, or Acquiescing in Non-Compliance

[69] Pursuant section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by the a company or person where the director or officer authorized, permitted or acquiesced in the company or person's non-compliance with the Act. Given my conclusions that Gillani has breached sections 25 and 38, I do not find it necessary to address Staff's allegations under section 129.2.

IV. CONCLUSION

[70] I find that:

(a) during the Material Time, the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(1) of the Act for the period on and after September 28, 2009;

(b) during the Material Time, Gillani and the Corporate Respondents advised and engaged in or held themselves out as engaging in the business of advising members of the public with respect to investing in, buying or selling securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(c) of the Act for the period before September 28, 2009 and contrary to subsection 25(3) of the Act for the period on and after September 28, 2009;

(c) during the Material Time, Gillani and the Corporate Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(1)(b) of the Act;

(d) during the Material Time, Gillani made misleading oral and written representations to when the Director had not provided written permission to Gillani to make these representations, contrary to section 38(3) of the Act; and

(e) during the Material Time, the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[71] An order will issue as follows:

(a) Staff shall serve and file its written submissions on sanctions and costs by March 31, 2015;

(b) the Respondents shall serve and file their written submissions on sanctions and costs by April 24, 2015;

(c) Staff shall serve and file reply submissions on sanctions and costs, if any, by May 4, 2015;

(d) the hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on May 13, 2015, at 10:00 a.m. or such further or other dates as agreed by the parties and set by the Office of the Secretary; and

(e) upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceedings.

Dated at Toronto this 6th day of March, 2015.

"*Alan J. Lenczner*"
Alan J. Lenczner