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Citation: Black Panther et al, 2017 ONSEC 8
Date : 2017-04-11

IN THE MATTER OF THE
***SECURITIES ACT*, RSO 1990, c S.5**

- AND -

IN THE MATTER OF
BLACK PANTHER TRADING CORPORATION
and CHARLES ROBERT GODDARD

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

Hearing: In writing

Decision: April 11, 2017

Panel:	Timothy Moseley	Commissioner and Chair of the Panel
	Garnet Fenn	Commissioner
	Judith Robertson	Commissioner
Appearances:	Keir D. Wilmut	For Staff of the Commission
	Charles Robert Goddard	For Black Panther Trading Corporation and himself

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REASONS AND DECISION

I. OVERVIEW

[1] The respondents, Black Panther Trading Corporation ("**Black Panther**") and Charles Robert Goddard, solicited and received more than $425,000 from 16 individuals (the "**Note Holders**"), and issued to those Note Holders documents entitled Letters of Understanding that promised repayment of the investment plus an annual return. The respondents improperly used most of the funds to repay other investors or for the personal benefit of Mr. Goddard and his family members.

[2] In a merits decision dated January 30, 2017 (the "**Merits Decision**"),[1] the Ontario Securities Commission (the "**Commission**") found that the respondents contravened various provisions of the *Securities Act* (the "**Act**").[2] Among other things, the respondents perpetrated fraud, engaged in impermissible trading and advising, and conducted an illegal distribution of securities. Mr. Goddard also misled Staff during its investigation.

[3] Staff of the Commission ("**Staff**") submits that the respondents should be removed permanently from Ontario's capital markets, as more particularly described below. Staff also requests that they be required to:

a. disgorge the sum of $313,847;

b. pay an administrative penalty of $300,000; and

c. pay costs of the investigation and hearing in the amount of $362,289.82.

[4] We must determine whether it is in the public interest to impose sanctions against the respondents, and whether they should be required to reimburse the Commission for some or all of the costs associated with the investigation of this matter and with this proceeding. For the reasons that follow, we order the sanctions requested by Staff, and order that the respondents pay costs of the investigation and hearing in the amount of $100,000.

II. SANCTIONS AND COSTS HEARING

[5] At the joint request of the parties, the sanctions and costs hearing proceeded in writing. Staff delivered its written submissions, following which the respondents delivered two documents. One, titled *Response by Charles Goddard to Sanctions Brief prepared by OSC staff*, consists primarily of factual assertions that challenge findings in the Merits Decision. The rest of the document either suggests possible mitigating factors, which we address beginning at paragraph [26] below, or describes the respondents' position regarding sanctions and costs, which we discuss in our analysis beginning at paragraph [58].

[6] The other document, titled *Response to: Reasons and Decision in the Matter of Black Panther Trading and Charles Robert Goddard*, also attempts to re-litigate matters that were the subject of the Merits Decision. The document contains extensive factual assertions and disputes many of the factual findings and legal conclusions in the Merits Decision. We reviewed the document carefully, trying to

[1] *Re Black Panther Trading Corporation* (2017), 40 OSCB 1115.
[2] RSO 1990, c S.5.

identify anything that might properly be considered a submission on sanctions and costs. Nothing in the document qualifies that is not also contained in the written submissions referred to in paragraph [5] above.

III. LEGAL FRAMEWORK

[7] Subsection 127(1) of the Act lists the sanctions that the Commission may impose where it is in the public interest to do so. The Commission must exercise this jurisdiction in a manner consistent with the two purposes of the Act; namely, the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets and confidence in the capital markets.[3]

[8] The Supreme Court of Canada held in 2001 that the public interest jurisdiction and the sanctions listed in section 127 of the Act are protective and preventive and are intended to be exercised to prevent future harm to Ontario's capital markets.[4]

[9] The Commission has identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the misconduct, any mitigating or aggravating factors, and the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence"). Sanctions must be appropriate and proportionate to the respondent's conduct in the circumstances of the case.[5]

IV. ANALYSIS – SANCTIONS

A. Introduction

[10] We begin our analysis of the appropriate sanctions by reviewing potential aggravating and mitigating factors suggested by Staff and the respondents. We then consider each contravention found in the Merits Decision, followed by a review of the parties' submissions and a determination of the appropriate sanctions.

B. Aggravating factors

1. Mr. Goddard's knowledge and registration history

[11] Before engaging in the misconduct referred to in the Merits Decision, Mr. Goddard had been registered with the Commission for almost 24 years, including as a Branch Manager. He was, for a short time, authorized to carry on discretionary management of client assets.

[12] As a former long-time registrant, Mr. Goddard's awareness of the requirements of Ontario securities law was significantly higher than average, and he knew or ought to have known the importance of those requirements.[6] The fact that he was no longer a registrant at the time of the misconduct cannot assist him. It would be a perverse result and contrary to the Commission's investor protection

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[3] Subsection 1(1) of the Act.
[4] *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43.
[5] *Re Bradon Technologies Ltd.* (2016), 39 OSCB 4907 at para 28; and at para 47, citing *Re Cartaway Resources Corp.*, [2004] 1 SCR 672 at para 60.
[6] *Re Doulis* (2014), 37 OSCB 11511 at para 13.

mandate if registrants, who are held to a higher standard than non-registrants, had an incentive to relinquish their registration and then engage in misconduct that would draw a less serious response because they were no longer registered.

[13] Mr. Goddard's experience is therefore an aggravating factor with respect to sanctions.

2. Seriousness of misconduct

[14] The misconduct is further aggravated because the respondents' actions were not isolated events; rather, they recurred over an extended period. The respondents used many modes of communication to solicit members of the public, and they were indiscriminate as to who they would allow to put funds at risk. In addition, as found in the Merits Decision, the respondents continued to accept funds well after they had been consistently using the funds for purposes other than those promised to the investors.

[15] As noted above and in the Merits Decision,[7] the misconduct caused some investors to suffer significant losses. The respondents recommended that Note Holders and others "melt down" their Registered Savings Plan, even while the respondents knew that at least some of the investors would be turning over to the respondents funds that the investors could ill afford to lose. This disregard for the financial well-being of vulnerable investors makes the respondents' misconduct particularly egregious.

3. Alleged further misconduct

(a) Introduction

[16] Staff submits, and it filed affidavit evidence to suggest, that the respondents continued to engage in "problematic conduct" after this proceeding was commenced. Staff's allegations fall into three categories.

(b) United Kingdom corporation

[17] First, Staff notes the Commission's finding in the Merits Decision[8] that in September 2014, Mr. Goddard incorporated Charles Goddard Investments Ltd. in the United Kingdom. Staff submits based on this fact alone that "Goddard may also be operating internationally."

[18] That contention is speculative and is unsupported by any evidence. Incorporation alone does not, on a balance of probabilities, imply operation. In their written submissions, the respondents refer to a Black Panther "stock advice" website that existed in the United Kingdom but which Mr. Goddard says he took down following discussions with Staff. We have no evidence of a connection between that website and Charles Goddard Investments Ltd., and we have no basis upon which to conclude that the website contravened Ontario securities law or should otherwise be an aggravating factor. We decline to adopt Staff's submission.

(c) "Compelling Charts" website

[19] Second, in March of 2016, seven months before the merits hearing, Staff became aware that Mr. Goddard was operating a website by the name of "Compelling Charts". On that website, Mr. Goddard described himself as a

[7] At paras 46, 61.
[8] At para 157.

"Markets Wizard", and offered, in return for a fee of $30 per month, a weekly newsletter and periodic advice regarding "the symbol you should buy, where your stop loss should go and at what point you are to take half the investment off the table and move the stop loss." Staff wrote to Mr. Goddard to express concern. Mr. Goddard replied but denied that his conduct was improper.

[20] In July of 2016 the website still existed. Mr. Goddard had changed the advertised fee to $99 per year and had added a disclaimer that the advice provided in return for the fee (*i.e.*, regarding which stocks to buy, whether to take a long or short position, and at what price a stop loss should be placed) was "not to be construed as investment advice". Staff again expressed its concern to Mr. Goddard, who once again denied that he was engaging in any improper activity.

[21] We heard no evidence at the merits hearing regarding this website. We have no evidence as to whether any potential investors viewed that website, whether anyone paid Mr. Goddard any fees, or whether the website continued to exist at the time of the merits hearing or afterward.

[22] While the Compelling Charts website may have been in breach of the prohibition against holding oneself out as engaging in the business of advising with respect to securities, we are not prepared to reach that conclusion at this stage of the proceeding, based on the limited evidence before us.

(d) "Laughing Stock Trading" website

[23] Third, after the Merits Decision was released, Staff noted that Mr. Goddard had created a new website by the name of "Laughing Stock Trading", which offered to provide people with "instruction" and "support" with respect to their investments, in return for a fee of $2,000 per year. Again, we have no evidence that anyone viewed the website or paid any fees for the service offered, and we have no basis to find that the website contravened Ontario securities law or was otherwise an aggravating factor.

[24] We decline to reach Staff's suggested conclusion, for reasons similar to those cited above regarding the Compelling Charts website.

(e) Conclusion

[25] Staff is justifiably concerned that Mr. Goddard has continued to contravene the Act, given the facts referred to in Staff's affidavit and given that, as found in the Merits Decision and confirmed in the respondents' submissions, Black Panther previously offered "trading seminars", which helped attract investors. However, when determining appropriate sanctions against the respondents in this proceeding, we are not prepared to attach any weight to these facts or submissions, for the reasons set out above.

C. Mitigating factors

[26] Erring to the benefit of the respondents, we identify in their written submissions six points that might be interpreted as mitigating factors. Staff submits that there are no mitigating factors.

(a) Advice

[27] First, Mr. Goddard asserts that before starting "a Canadian version of Black Panther" he spoke with a member of Staff who was a lawyer. Mr. Goddard states that he "was given no direction." We have no specific evidence about that

conversation, if it did in fact take place, although in his compelled examination during the investigation of this matter, Mr. Goddard testified that when he called an unidentified member of Staff and asked whether his planned activities would be "in violation of anything", the Staff member said that he/she could not give advice. That response from Staff was wise.

[28] Staff's response to Mr. Goddard's inquiry cannot act as a mitigating factor. Every person or company that participates in the capital markets must ensure that its activities comply with Ontario securities law. Where someone obtains advice from an appropriate source (not Staff), and while relying in good faith on that advice unknowingly contravenes Ontario securities law, the reliance on the advice can be a mitigating factor. Mr. Goddard received no such advice.

(b) Intervention by Staff

[29] Second, the respondents submit that if "the OSC had not become involved in such a ham-handed manner, Black Panther would have completed its business plan to the benefit of all involved." There was no evidence whatsoever in this proceeding to support a conclusion that Staff acted improperly or mishandled the situation at any time.

[30] We also categorically reject the suggestion that it would have been preferable for Staff to delay its intervention in order to allow the respondents to continue their activity. As is clear from the Merits Decision, the harm to investors only increased over time.

(c) Respondents' acknowledgment of insufficient disclosure

[31] Third, with respect to the respondents' marketing materials and the various misrepresentations they contained,[9] Mr. Goddard states:

> I agree now, as I did at my examination, that the marketing materials were worded carelessly. I should have done a more precise job of what I meant by CDIC, CIPF coverage. I should have made sure that the materials that were distributed to the public contained only workshop/seminar information. The materials were offside. As I review them I am more and more aghast that I sent them out. I apologize for the horrible lapse in judgement.

[32] That is the only subject about which the respondents have purported to acknowledge wrongdoing or to express remorse, at any time during this proceeding. Their position has not been consistent, however. In written closing submissions in the merits hearing, the respondents stated:

> Monies deposited into a bank account are covered by CDIC. Not sure what is untrue.
>
> Monies in an investment account are covered by CIPF. Not sure what is untrue.

[33] We are therefore not persuaded that the respondents truly understand the problem with that disclosure. Even if we were to accept the most recent statement at face value, it misses the main point, in that it utterly fails to go to

[9] See paras 63 to 79 of the Merits Decision.

the heart of the respondents' wrongdoing. Clearer disclosure regarding CDIC and CIPF coverage would have been an improvement, but those who invested would still have been defrauded.

(d) Commitment to pay Note Holders

[34] Fourth, in their written submissions, the respondents promise that "[a]ll Note Holders will be made whole. This would occur whether ordered or not."

[35] In the right circumstances, that commitment might well count in a respondent's favour. However, given that Mr. Goddard deliberately misled both Note Holders and Staff, we must be highly skeptical of this promise, which would have been far more persuasive had the respondents made any payment to any Note Holder at any time during this proceeding. We have no evidence of any payment. We are therefore unable to give the respondents' statement any weight.

(e) Alleged harm to Mr. Goddard's reputation

[36] Fifth, Mr. Goddard asserts without evidence that there has been "a great deal of damage done to his reputation as a result of this process", and that he has been unable to obtain an insurance licence "as a result of this investigation." Any such reputational damage or regulatory scrutiny flow naturally and inevitably from the respondents' misconduct, and it would be contrary to the public interest for us to give credit for those consequences.[10]

(f) Impact on Mr. Goddard's earning power

[37] Sixth and finally, we recognize that removing from the capital markets someone who spent most of his/her professional life earning income as a registrant, including as a trader and adviser, would often have a significant impact on him/her. In this case, however, Mr. Goddard has provided only his bald assertion that he needs the ability to manage his own accounts for his "personal survival". We find this to be an insufficient basis on which to draw a proper conclusion in his favour, especially given his claimed existence of other accounts, about which he refuses to disclose any information.[11]

(g) Conclusion

[38] For all of those reasons, we conclude that none of the above assertions is a mitigating factor. The respondents offered no other potentially mitigating factors, and we observed none throughout the proceeding, including any expression of remorse. In fact, Mr. Goddard's concern for his own reputation and livelihood contrasts with his lack of concern for the harm he has caused to the Note Holders. There is no obligation on a respondent to express remorse, and a failure to express remorse is not an aggravating factor,[12] but we note its absence in this case and the consequence that we cannot give the respondents credit for any such acknowledgment.

D. Contraventions of the Act

[39] We turn now to an analysis of each of the contraventions referred to in the Merits Decision.

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[10] *Re Reaney* (2015), 38 OSCB 6413 at para 151.
[11] Merits Decision, para 125.
[12] *Bart v McMaster University*, 2016 ONSC 5747 (Div.Ct.) at para 198.

1. Unregistered trading in securities

[40] The respondents, while not registered, engaged in the business of trading in the Letters of Understanding, which are securities, and the respondents held themselves out as being in that business, contrary to subsection 25(1) of the Act.

[41] Registration is a cornerstone of Ontario securities law. It protects investors and promotes confidence in the capital markets by seeking to ensure that those who sell or promote securities are proficient and solvent and that they act with integrity. When an unregistered individual or firm engages in activity that requires registration, the individual or firm defeats some of the necessary legal protections, shields the activity somewhat from regulatory monitoring, puts investors at risk, and undermines the integrity of the capital markets. These harmful effects are serious and should be met with serious sanctions.

2. Business of advising

[42] The respondents engaged in the business of advising one client in securities, and they held themselves out as engaging in that business generally, contrary to subsection 25(3) of the Act.

[43] As with unregistered trading, engaging in the business of advising without being registered leads to the consequences described in paragraph [41] above and should attract serious sanctions.

3. Illegal distribution of securities

[44] Without filing a prospectus, the respondents traded in the Letters of Understanding where such trades were distributions, contrary to subsection 53(1) of the Act.

[45] The requirement to provide sufficient disclosure to those who are investing in securities is another cornerstone of Ontario securities law. The delivery of a proper prospectus that reviews the risks associated with an investment equips investors to make an informed investment decision about that investment.[13]

[46] The respondents' failure to comply with this requirement denied the Note Holders necessary information and the opportunity to make informed decisions. This failure was exacerbated by the fraudulent representations referred to below.

4. Fraud

[47] The respondents perpetrated a fraud contrary to clause 126.1(1)(b) of the Act, by each of:

a. making false representations about returns generated in Black Panther's portfolio;

b. using Note Holders' funds in a manner not consistent with promises made to them; and

c. making false representations about the risk associated with investment in Black Panther.

[13] *Re M P Global Financial Ltd.* (2011), 34 OSCB 8897 at para 117.

[48] The circumstances of this case amply demonstrate why the Commission has consistently held that fraud is "one of the most egregious securities regulatory violations". Typically, as here, fraudulent activity causes direct and immediate harm to its victims, many of whom entrust a substantial portion of their savings to those who abuse that trust. Fraud significantly undermines confidence in the capital markets and therefore has wide-ranging negative effects on investor interests and on capital formation.[14]

[49] The respondents' frauds showed callous disregard for the financial security of Note Holders and potential investors.

5. False or misleading statements

[50] Contrary to subsection 44(2) of the Act, the respondents made untrue statements that reasonable investors would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, with respect to:

a. the use of Note Holders' funds; and

b. the risk associated with investment in Black Panther.

[51] A breach of this section of the Act is serious, since it undermines the protection normally afforded to investors. In the circumstances of this case, however, the statements referred to were also part of the respondent's fraudulent conduct and are therefore already incorporated into our findings regarding fraud. While that same fraudulent conduct also contravened subsection 44(2) of the Act, and a breach of subsection 44(2) would warrant a serious sanction if it stood alone, for the purpose of determining sanctions in this case we do not regard that breach as additive to the others.

6. Misleading Staff

[52] Contrary to clause 122(1)(a) of the Act, Mr. Goddard misled Staff in its investigation, with respect to:

a. the amount of money raised from Note Holders;

b. funds held by the respondents;

c. the nature of his business relationship with a Note Holder;

d. whether his son and daughter had invested in or received money from Black Panther;

e. whether anyone had responded to a Black Panther advertisement; and

f. whether he held any other positions as director or officer.

[53] Staff submits that in misleading Staff, Mr. Goddard showed disregard for the Commission. As the Court of Appeal for Ontario has held:

> 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

[14] *Re Al-Tar Energy Corp.* (2010), 33 OSCB 5535 at para 214, quoting D. Johnston & K.D. Rockwell, *Canadian Securities Regulation*, (4th ed., Markham: LexisNexis, 2007) at 420.

> maintained. It is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisers, provide full and accurate information to the [Commission].[15]

[54] We agree with Staff's submission. While Mr. Goddard might be forgiven for minor errors or for a failure to recall certain details, some of the errors in this case were significant in magnitude (*e.g.*, the amount of money received from investors), deceitful in nature (*e.g.*, whether Mr. Goddard's son and daughter had received money from Black Panther), or both. They also made Staff's investigation lengthier and more difficult than it would have been without the misleading statements.

7. Disclosing information regarding Staff's investigation

[55] Mr. Goddard breached subsection 16(1) of the Act by disclosing information regarding the investigation being conducted by Staff. Staff submits that in doing so, Mr. Goddard showed disregard for the Commission.

[56] The confidentiality obligation imposed by section 16 of the Act does play an important role in preserving the integrity of investigations by Staff, and breaches of this provision must be taken seriously. An individual who improperly communicates with potential respondents or witnesses may undermine Staff's investigation, particularly if there is an effort to influence testimony in any way.

[57] In this case, however, there is no evidence that Mr. Goddard had that intention, or that these actions compromised Staff's investigation or this proceeding. As we noted in the Merits Decision,[16] Mr. Goddard's unchallenged assertion is that his disclosure of the summons to a third party was solely for the purpose of retaining a lawyer regarding this matter. That does not excuse his conduct, but it means that this breach does not demonstrate disregard for the Commission.

E. Sanctions sought by Staff

1. Introduction

[58] Staff seeks a market ban, disgorgement and an administrative penalty.

[59] We begin by noting the profit made by the respondents through their misconduct. Of the $425,607 they raised from Note Holders, the respondents have returned $112,710 as principal and interest, leaving a deficit of at least $312,897.[17] In addition, the respondents received management fees of $950 from one investor.[18] The respondents' profit from their misconduct was therefore at least $313,847, and is no doubt greater, since that amount does not include promised interest that has not been paid.

[60] In their written submissions, the respondents do not specifically address Staff's requested disgorgement order or administrative penalty. Instead, they deal with monetary sanctions and costs in the aggregate and state that they:

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[15] *Wilder v Ontario (Securities Commission)*, [2001] OJ No 1017 (CA) at para 22.
[16] At para 162.
[17] Merits Decision, para 130.
[18] Merits Decision, para 53.

> …have trouble with the monetary punishment requested by staff. This process could have been stopped in December of 2014 or at worst early 2015. The costs and penalties should not total more than $50,000.

[61] The respondents offer no basis for the submission that the "process could have been stopped", and we decline to speculate. We see no reason to use those dates to adjust any monetary sanctions we might otherwise impose.

2. Market bans

[62] Staff asks that the Commission:

a. permanently prohibit the respondents from acquiring or trading in securities or derivatives;

b. order that the exemptions contained in Ontario securities law shall not apply to the respondents permanently;

c. require Mr. Goddard to resign any position he holds as a director or officer of an issuer, registrant or investment fund manager, and prohibit him from ever holding any such position; and

d. permanently prohibit Mr. Goddard from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[63] In their written submissions, the respondents explicitly accept the propriety of "a ban on registration with any regulator as an individual or as the officer of a company." The respondents implicitly anticipate an order prohibiting the trading or acquiring of securities, as is evidenced by Mr. Goddard's request that he be granted "a carve out for managing [his] own accounts", which he needs for "personal survival".

[64] Participation in the capital markets is a privilege, not a right.[19] The order requested by Staff would essentially deny that privilege to the respondents.

[65] The Commission's role is to deny that privilege where it concludes, based on respondents' past conduct, that their continued participation in the capital markets "may well be detrimental to the integrity of [the] capital markets."[20]

[66] The respondents' egregious, manipulative and fraudulent conduct, their disregard for the financial well-being of trusting and vulnerable strangers, their repeatedly misleading Staff, and their refusal to accept full responsibility for their actions combine with Mr. Goddard's long experience in the capital markets to lead us to the conclusion that the respondents cannot be trusted to participate in those markets.

[67] That conclusion is reinforced by the respondents' consistent conduct throughout this matter, from the time that they first engaged in the improper activities, through to their delivery of written submissions for this hearing. The respondents repeatedly demonstrate, at best, an inability to understand the boundaries of permissible participation in the capital markets, as well as reckless disregard for the consequences to themselves and others of breaching the rules. We have no

[19] *Erikson v Ontario (Securities Commission)*, [2003] OJ No 593 (Div Ct) at paras 55-56.
[20] *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-11.

reason to believe that these respondents could or would respect the limitations of a carve-out for personal trading.

[68] As the Commission has found in similar circumstances,[21] only a permanent removal from the capital markets, without an exception such as a carve-out, would be proportionate to the respondents' misconduct, would be sufficient to protect investors from the respondents, and would deliver the necessary deterrent message to others who might contemplate similar misconduct.

[69] For the reasons set out in paragraph [37] above, this conclusion is not overcome in Mr. Goddard's case by his assertion that he needs to be able to manage his own accounts for his "personal survival".

3. Disgorgement

[70] Paragraph 10 of subsection 127(1) of the Act provides that if "a person or company has not complied with Ontario securities law", the Commission may, if it determines it to be in the public interest to do so, issue "an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance."

[71] The purpose of a disgorgement order is not to provide restitution; rather, it is an equitable remedy that seeks to prevent a wrongdoer from retaining amounts obtained through the wrongdoing.[22] When contemplating a disgorgement order, the Commission should consider all the factors relevant to sanctions generally, as well as the following:

a. whether an amount was obtained by a respondent through non-compliance with the Act;

b. the seriousness of the misconduct and whether investors were seriously harmed;

c. whether the amount that a respondent obtained through non-compliance with the Act is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain compensation; and

e. the deterrent effect (both general and specific) of a disgorgement order.[23]

[72] Staff asks that the Commission order the respondents to disgorge the sum of $313,847 referred to in paragraph [59] above. The respondents do not address disgorgement specifically in their written submissions.

[73] Staff's requested amount is easily ascertainable and those funds were obtained by the respondents through their serious misconduct. At least some of the investors were seriously harmed, and it appears from their testimony at the merits hearing that they are unlikely to be compensated. Finally, it is essential that the Commission deter the respondents and other market participants by ensuring, at a minimum, that they do not retain improperly obtained funds.

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[21] See, *e.g.*, *Re 2196768 Ontario Ltd.* (2015), 38 OSCB 2374, at para 51; *Re Lyndz Pharmaceuticals Inc.* (2012), 35 OSCB 7357 at para 80.
[22] *Re Phillips* (2015), 38 OSCB 9311 at paras 25-26.
[23] *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 at para 52.

[74] We will therefore order that the respondents be jointly and severally liable to disgorge to the Commission the sum of $313,847.

4. Administrative penalty

[75] The Commission may impose an administrative penalty of up to $1 million for each contravention of the Act.[24] In this case, Staff seeks an administrative penalty in the aggregate amount of $300,000 payable jointly and severally by the respondents.

[76] As the Commission has previously held, the purpose of an administrative penalty "is to deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated…".[25]

[77] We reviewed prior decisions of the Commission where administrative penalties were imposed in similar circumstances:

a. In *Re Lyndz Pharmaceuticals Inc.*, the respondents illegally distributed securities, raising funds of more than $400,000 from Ontario investors, and an additional $1.7 million from investors in the United Kingdom. The securities were of a corporation that had no legitimate business. The Commission found that the two individual respondents perpetrated a fraud, ordering one respondent to pay an administrative penalty of $600,000, and the other to pay $500,000.[26]

b. In *Re Richvale Resource Corporation*, the Commission found that the corporate respondent and one of the individual respondents conducted an illegal distribution, traded in securities without being registered, and perpetrated a fraud, all in support of raising approximately $750,000 from investors. In addition, the individual respondent made prohibited representations regarding listing of securities. The Commission ordered the individual respondent to pay an administrative penalty of $300,000.[27]

c. In *Re Moncasa Capital Corp.*, the Commission found that the respondents conducted an illegal distribution, traded without being registered, and perpetrated a fraud, through which they raised approximately $1.2 million. The individual respondent, a former registrant, also made false or misleading statements to the Commission. The respondents did not appear at the sanctions hearing, at which the Commission imposed an administrative penalty of $400,000, for which the corporate and individual respondents were jointly and severally liable.[28]

d. The Commission found that the individual respondent in *Re Doulis*, who had previously been a registrant for ten years, had contravened Ontario securities law in two ways: (i) by engaging in the business of advising without being registered; and (ii) by repeatedly misleading Staff during the investigation. Although this case did not involve fraud, the Commission imposed an administrative penalty of $200,000 against the

[24] Paragraph 9 of subsection 127(1) of the Act.
[25] *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 at para 67.
[26] (2012), 35 OSCB 7357.
[27] (2012), 35 OSCB 10699.
[28] (2013), 37 OSCB 229.

individual respondent and an additional penalty of $100,000 against the corporate respondent, of which the individual respondent was the directing mind. The Commission noted that the individual respondent's numerous attempts to mislead Staff constituted serious misconduct.[29]

e. In *Re 2196768 Ontario Ltd.*, the respondents raised approximately $1.2 million from the public for the purpose of engaging in trading of foreign currencies, and issued promissory notes to the investors. The funds were used other than as promised, and the Commission held the scheme to be fraudulent. The Commission imposed separate administrative penalties of $250,000 against the individual respondent, who had previously been registered as a scholarship plan dealer, and $150,000 against the other individual respondent, who had never been registered.[30]

[78] As Staff correctly notes, the amount raised by the respondents in this case is lower than the amounts raised in the above cases, suggesting that a lower administrative penalty may be warranted. However, Mr. Goddard is a former long-time registrant who repeatedly misled Staff during his examination under oath. The seriousness of that conduct has been affirmed by the Court of Appeal, as noted above in para 51. It is also reflected in the Commission's decisions in *Re Doulis* (see above), and in *Re Agueci*,[31] in which the Commission found that the act of misleading Staff warranted an additional administrative penalty of $100,000.

[79] Considering all the circumstances of this case, and the previous decisions reviewed above, we conclude that the total administrative penalty of $300,000 sought by Staff is a proportionate and appropriate amount.

F. Conclusion as to sanctions

[80] We find that it is in the public interest to order the sanctions requested by Staff. We now turn to Staff's request for costs.

V. ANALYSIS – COSTS

A. Introduction

[81] Given the Commission's finding that the respondents did not comply with Ontario securities law, section 127.1 of the Act empowers the Commission to order the respondents to pay the costs of the investigation and/or hearings in this matter. Such an order is not a sanction; instead it allows the Commission to recover some of the costs expended in connection with the investigation and hearings.

B. Relevant factors

[82] Rule 18.2 of the *Ontario Securities Commission Rules of Procedure*[32] sets out a non-exhaustive list of factors that the Commission may consider when exercising its discretion to order that a person or company pay costs. The following are most relevant in this case:

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[29] (2014), 37 OSCB 11511 at paras 42, 43, 51.
[30] (2015), 38 OSCB 2374.
[31] (2015), 38 OSCB 5995 at para 30.
[32] (2014), 37 OSCB 4168.

a. the importance of the issues;

b. the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;

c. whether the respondents contributed to a shorter, more efficient hearing, or whether the conduct of the respondents unnecessarily lengthened the duration of the proceeding; and

d. whether the respondent co-operated with Staff and disclosed all relevant information.

[83] We discuss each of these in turn.

[84] The issues at stake in this proceeding are important. While there is little about the respondents' conduct that was novel or precedent-setting, the misconduct that occurred was serious and had a significant effect on numerous investors. It was important that there be an appropriate regulatory response.

[85] There was nothing about Staff's conduct that unduly lengthened the proceeding. The Commission found that the respondents contravened the Act in all of the ways alleged by Staff. None of the principal allegations was unfounded. Further, all the witnesses called by Staff at the merits hearing were necessary to prove Staff's case.

[86] Similarly, Mr. Goddard did nothing that unduly lengthened the hearings in this matter. At the merits hearing, the respondents called no evidence, and Mr. Goddard's cross-examination of Staff's witnesses was brief. The respondents contributed to the efficiency of the proceeding by agreeing that closing submissions at the merits hearing, and submissions at the sanctions and costs hearing, would be in writing.

[87] In contrast, Mr. Goddard's misleading of Staff on his examination under oath during the investigation, and his refusal to provide information about accounts he mentioned, necessarily prolonged the examination and the investigation. Mr. Goddard had a legal obligation to answer Staff's questions completely and truthfully, and his failure to do so contributed to greater costs.

[88] We recall Mr. Goddard's assertion in written submissions, referred to above, that the "process could have been stopped" in December 2014 or early 2015. If that were true, it might reduce the amount of a costs order, depending on the reason for that conclusion. However, as noted above, the respondents offered no basis for the suggestion that any missed opportunity should inure to their benefit. We reject that submission.

C. Staff's request

[89] In support of its claim for costs, Staff submitted detailed evidence that identifies each member of Staff who was involved in the investigation and hearings, with the corresponding number of hours spent by, and hourly rate for, each person. In addition, Staff documented approximately $6,000 in disbursements.

[90] In formulating its claim, Staff began by excluding time spent:

a. by Staff in the Enforcement Branch's Case Assessment unit, who do preliminary work leading to an investigation;

b. on matters that were not included in the Statement of Allegations;

c. by law clerks, students-at-law and assistants;

d. by any member of Staff who spent 35 or fewer hours on this matter; and

e. preparing for and attending the hearing relating to sanctions and costs.

[91] Staff then further reduced the amount of time to be included in its claim, by excluding time spent by an Investigator who recorded a total of more than 1000 hours, including with respect to her role as one of the witnesses during the merits hearing.

[92] With these reductions applied, Staff's claim for time spent is limited to that of Mr. Wilmut, Litigation Counsel, and Ms. Brown, the Senior Forensic Accountant who prepared the source and use of funds analysis referred to in the Merits Decision, and who testified at the merits hearing. Their time taken together accounts for approximately 54% of the total Staff time spent with respect to this matter.

[93] Staff's claim reflects hourly rates that the Commission has previously found to be reasonable, which conclusion we adopt: $205 per hour for Mr. Wilmut and $185 per hour for Ms. Brown.[33] Using those rates, Staff seeks costs in the amount of $362,289.82, which when compared to the time spent by the three members of Staff who were principally involved, plus the disbursements incurred, represents a discount of approximately 36%. The true discount is greater, given the exclusions referred to in paragraphs [90] and [91] above.

D. Conclusion as to costs

[94] We acknowledge the significant discount that Staff has applied, and we have no reason to doubt that the time recorded was indeed spent in good faith, and in pursuit of the investigation and this proceeding.

[95] In all the circumstances of this case, however, it is our view that a costs order in the amount requested by Staff would be excessive. Our conclusion is based on the following factors:

a. this was not a particularly complex case;

b. there was essentially only one respondent;

c. there were only sixteen investors;

d. the amount at issue, while significant for some of the investors, was not large in the aggregate, compared to the decisions we reviewed;

e. this was not a document-intensive case;

f. the funds were not moved through corporate vehicles and/or multiple accounts in an attempt to disguise their flow;

g. as noted above, the respondents availed themselves of their right to defend this proceeding, and they conducted themselves expeditiously at the hearings; and

[33] *Re Ochnik* (2006), 29 OSCB 5917 at paras 27, 32.

h. the costs requested exceed both the disgorgement amount and the amount of the administrative penalty. While this factor is not determinative by itself, and while it does not necessarily apply in all cases, we find that in this case it provides useful context.

[96] Taking those considerations into account, we find it appropriate to order that the respondents, jointly and severally, pay costs of $100,000 to the Commission.

VI. CONCLUSION

[97] For the reasons set out above, we will issue an order providing that:

a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Mr. Goddard or Black Panther cease permanently;

b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Mr. Goddard or Black Panther cease permanently;

c. pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario securities law shall not apply to Mr. Goddard or Black Panther permanently;

d. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Mr. Goddard shall immediately resign any position that he holds as a director or officer of an issuer, a registrant or an investment fund manager;

e. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mr. Goddard is prohibited permanently from becoming or acting as a director or officer of any issuer, a registrant or an investment fund manager;

f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Goddard is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

g. pursuant to paragraph 9 of subsection 127(1) of the Act, the respondents shall pay to the Commission an administrative penalty of $300,000, for which they shall be jointly and severally liable, and which shall be designated for allocation or use by the Commission in accordance with paragraphs b(i) or (ii) of subsection 3.4(2) of the Act;

h. pursuant to paragraph 10 of subsection 127(1) of the Act, the respondents shall disgorge to the Commission $313,847, for which they shall be jointly and severally liable, and which shall be designated for allocation or use by the Commission in accordance with paragraphs b(i) or (ii) of subsection 3.4(2) of the Act; and

i. pursuant to section 127.1 of the Act, the respondents shall pay $100,000 to the Commission to reimburse the costs of the investigation and hearing, for which they shall be jointly and severally liable.

Dated at Toronto this 11th day of April, 2017.

"Timothy Moseley"

Timothy Moseley

"Garnet Fenn"

Garnet Fenn

"Judith Robertson"

Judith Robertson