

**In the matter  
of the *Securities Act***

- and -

**In the matter of  
JONATHAN CARLEY**

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**STATEMENT OF ALLEGATIONS  
of Staff of the Ontario Securities Commission**

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**I. The Respondent**

1. On June 21, 1999, Jonathan Carley became the Manager of Corporate Development for Finline Technologies Ltd. Carley had recently graduated from university. He had no prior experience working for a public company. Carley's responsibilities included to raise equity financing and to act as a liaison between Finline and its capital markets.
2. As an employee of Finline, Carley was a "person in a special relationship" as defined by ss. 76(5) of the *Securities Act*. Carley was not an officer or director of Finline.

**II. Background**

3. Finline was incorporated under the *Business Corporations Act* on February

24, 1989 and is located in Waterloo, Ontario. At the material time, Finline traded on the Canadian Venture Exchange (the Vancouver Stock Exchange) under the symbol FIN. As such, Finline is a “reporting issuer” as defined by ss.1 (1) of the *Securities Act*.

4. Finline designs and manufactures broadband wireless systems focusing on MMDS “wireless cable” solutions for the broadcast of video, voice and high speed internet systems. It is a small company with about 11 employees.
5. In 1999, Finline’s business strategy was twofold: to capitalize on emerging digital technology by manufacturing digital systems and to raise equity through a second public offering. As part of that strategy, Finline wanted to merge with or purchase Impress Image Compression Inc. (“IIC”), the company that developed and patented Wavelet image compression technology.
6. After Carley joined Finline in June 1999, he was involved in discussions with Finline and IIC about the “synergy and potential merging of technologies.”
7. At the same time, Finline approached several groups of investors to obtain equity financing to build its business. Carley was involved in some of the presentations Finline made to potential investors.
8. On July 5, 1999, Finline discussed a possible merger with or acquisition of IIC. On July 20, 1999, Finline signed a letter of intent to purchase IIC. That deal was abandoned because Finline was unable to obtain the financing.

9. On Friday, January 28, 2000, Finline signed a second letter of intent to purchase IIC. Although the letter gave Finline sixty days to conduct due diligence, the deal was contingent only on securing \$1.5 million from investors for working capital and development of the technology.
10. On Friday, January 28, 2000, Carley was aware of the letter of intent.
11. On Tuesday, February 1, 2000, Finline advised IIC that it was exercising its right to acquire IIC. On February 1, 2000, Carley was aware that Finline was going to exercise its option to purchase IIC. On February 1, 2000, Carley worked on the press release announcing the pending acquisition.
12. On February 2, 2000, Carley, with knowledge of the pending acquisition of IIC, purchased 30,500 shares of Finline at a price of \$1.76 per share in his personal trading account held by Yorkton Securities in Calgary, Alberta.
13. On the morning of Thursday, February 3, 2000, Carley faxed the press release regarding the pending acquisition of IIC to the Canadian Venture Exchange. Trading was suspended until Finline made a public announcement about the acquisition and then resumed at 10.00 a.m. the same day.
14. On February 3, 2000, Carley sold 5,000 shares of Finline at a price of \$2.95 per share and sold an additional 5,000 shares of Finline at a price of \$2.90 per share. On February 4, 2000, Carley sold 5,000 shares of Finline at a price of \$4.20 per share and sold an additional 15,500 shares of Finline at a price of \$4.11 per share.

15. By purchasing these shares prior to the public announcement and subsequently selling them, Carley made \$59,600.

### **III. The Allegations**

16. Accordingly, Staff allege that on February 2, 2000, Jonathan Carley being a person in a special relationship with Finline, a reporting issuer in Ontario purchased 30,500 securities of Finline at a price of \$1.76 per share with knowledge of a material fact or change with respect to Finline that had not been generally disclosed, contrary to ss.76(1) of the *Securities Act*.
17. Carley's conduct, as described above, is contrary to the public interest.

DATE: November 14, 2003