

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

**-AND-**

**IN THE MATTER OF  
RESEARCH IN MOTION LIMITED, JAMES BALSILLIE,  
MIKE LAZARIDIS, DENNIS KAVELMAN,  
ANGELO LOBERTO, KENDALL CORK, DOUGLAS WRIGHT,  
JAMES ESTILL and DOUGLAS FREGIN**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the “Commission”) make the following allegations.

**The Parties**

1. Research In Motion (“RIM”) is a reporting issuer in Ontario and its shares are listed on both the Toronto Stock Exchange (the “TSX”) and the Nasdaq Stock Market (“NASDAQ”). RIM carries on business with its head office located in Waterloo, Ontario.
2. James Balsillie (“Balsillie”) is a chartered accountant. He has a Bachelor of Commerce degree from the University of Toronto, a Masters of Business Administration from the Harvard Business School and is a Fellow of the Institute of Chartered Accountants of Ontario. At all material times, he was co-Chief Executive Officer (“co-CEO”) and Chairman of the Board of Directors of RIM. He was a member of the Compensation Committee of RIM from 1997 to 2000. He is no longer Chairman, but he remains co-CEO and a director of RIM.
3. Mike Lazaridis (“Lazaridis”) is a founder of RIM. At all material times, he was co-CEO, President and a director of RIM, and he continues to hold all these positions. Lazaridis focused on research, product development, engineering and manufacturing of RIM's products.

4. Dennis Kavelman (“Kavelman”) is a chartered accountant. He was Vice-President, Finance from February 1995 through 1997 and then Chief Financial Officer (“CFO”) of RIM from 1997 to March 2007. He is now Chief Operating Officer, Administration and Operations.
5. Angelo Loberto (“Loberto”) was Director of Finance at RIM from August 1997 and was Vice-President, Finance from September 2001 into 2007. He is now Vice-President, Corporate Operations.
6. Kendall Cork (“Cork”) was a director of RIM from 1999 to 2007 and has been a Director Emeritus of RIM since 2007. He was a member of the Audit Committee from 1999 to 2007 and a member of the Compensation Committee from 2000 to 2007.
7. Douglas Wright (“Wright”) was a director of RIM from 1995 to 2007 and has been a Director Emeritus of RIM since 2007. He was a member of the Audit Committee from 1996 to 2007 and its Chair from 1998 and a member of the Compensation Committee from 1998 to 2007 and its Chair from at least 2003.
8. James Estill (“Estill”) has been a director of RIM since 1997 and was a member of the Audit Committee from 1998 until 2007.
9. Douglas Fregin (“Fregin”) is a founder of RIM and was a director of RIM from 1985 to 2007. He was the Vice-President, Hardware Design and subsequently Vice-President, Operations at RIM, but is no longer connected with RIM.

## **Overview**

10. The conduct at issue relates to stock options granting practices at RIM which, over a ten year period from December 1996 to July 2006 (the “Material Time”), were inconsistent with the terms of RIM’s stock option plan and with RIM’s public disclosure.

## **The Stock Option Plan**

11. In advance of RIM becoming a reporting issuer in December, 1996, RIM's Board of Directors (the "Board") approved a new stock option plan (the "Plan") to govern the granting of stock options ("Options") for the RIM both before and after it became a reporting issuer. The Plan was subsequently amended by the Board but contained substantially the same requirements during the Material Time.
12. The Respondents should have taken reasonable steps to be and remain aware during the Material Time of the terms of the Plan. In respect of pricing, Options were to be priced "at the money", where the exercise price per share is equal to the closing market price of the shares on the last trading day immediately preceding the date of the grant. The Plan was to be administered by the Board or a Compensation Committee by delegation.

## **Incorrect Options Dating Practices**

13. As described below, Balsillie, Lazaridis, Kavelman and Loberto engaged in the grant of Options, in which option backdating or option repricing occurred. The grant dates selected resulted in more favourable pricing for the Options or "in the money" grants. In many instances, the lowest share price in a period was chosen using hindsight in order to set the grant date and, therefore, the exercise price. These practices are collectively referred to as "Incorrect Dating Practices".
14. Approximately 1,400 of 3,200 Option grants made by RIM during the Material Time were made using Incorrect Dating Practices, many of which gave the recipient an undisclosed benefit that was not authorized or permitted by the Plan or the applicable rules of the TSX (the "TSX Rules").
15. The individual respondents (all the respondents apart from RIM, the "Individual Respondents") personally received an undisclosed benefit from grants of Options that were "in the money" at the time they were made, in breach of the Plan and the TSX Rules. They have, however, all since repaid any "in the money" benefits received, with interest, or have repriced unexercised Options.

16. The total “in the money” benefit resulting from the Incorrect Dating Practices for all employees was approximately \$66 million, of which approximately \$33 million has not been reimbursed or repaid to RIM or otherwise forfeited or cancelled.
17. The Incorrect Dating Practices at RIM and the Individual Respondents’ participation in them were contrary to the public interest.

### **Misleading Disclosure**

18. As a reporting issuer, RIM was obliged to make certain annual and periodic disclosure in accordance with the requirements of Part XVIII of the *Securities Act* (the “*Act*”), particularly sections 77 and 78. From July 1998 to August 2006, RIM repeatedly made statements in many of its filings, including prospectuses, financial statements, annual reports, and management information circulars, that contained the misleading or untrue statement that Options were priced at the fair market value of RIM’s common shares at the date of the grant and were granted in accordance with the terms of the Plan. These statements were contrary to Ontario securities law and to the public interest.
19. Balsillie as Chairman of the Board and co-CEO, Lazaridis as President and co-CEO, Kavelman as CFO, and Estill, Cork, Wright and Fregin as directors failed to ensure the statements were accurate.
20. RIM made the above misleading disclosures, and the Individual Respondents authorized, acquiesced in, or permitted those statements to be made contrary to the *Act* and/or the public interest.

### **CEO and CFO Certificates**

21. On March 30, 2004, RIM became subject to the requirement to file CEO and CFO certificates, pursuant to NI 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (“NI 52-109”).
22. Balsillie, Lazaridis and Kavelman, in their capacity as the certifying officers for RIM, failed to ensure the underlying Annual Information Forms, financial

statements, and Management's Discussion & Analysis concerning RIM's Options granting practices were accurate.

### **Lack of Diligence by Directors and Senior Officers**

23. The directors and officers of RIM owed a duty to RIM to provide proper oversight to ensure that its policies and procedures, and its disclosure obligations under the *Act* were complied with fully, accurately, and in a timely way.
24. The Individual Respondents did not take reasonable steps to provide proper oversight in relation to RIM's Options granting practices or to ensure that RIM's public disclosure reflected those practices during the Material Time, contrary to the *Act* and the public interest.

### **RIM's Costs**

25. RIM has paid about \$45 million to investigate and deal with Incorrect Dating Practices at RIM. Balsillie and Lazaridis have paid a total of \$15 million (\$7.5 million each) towards those costs, leaving \$30 million outstanding.

### **Conduct Contrary to Ontario Securities Law and/or the Public Interest**

26. By engaging in the conduct described above, the Respondents have breached Ontario securities law by contravening s. 122 of the *Act* and, additionally in respect of the Individual Respondents, pursuant to s. 129.2 of the *Act*, or have acted contrary to the public interest.

**DATED** at Toronto this 3<sup>rd</sup> day of February 2009.