Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e 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

GARTH H. DRABINSKY

MYRON I. GOTTLIEB

GORDON ECKSTEIN

AMENDED STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I Convictions of Garth Drabinsky, Myron Gottlieb and Gordon Eckstein

1. On February 26, 2007, Gordon Eckstein pled guilty in the Ontario Superior Court of Justice to one count of criminal fraud over $5000 in connection with misrepresentations made in the financial statements of Livent Inc. ("Livent") and its predecessor companies while he was an officer of these companies.

2. On March 25, 2009, Garth H. Drabinsky and Myron I. Gottlieb were found guilty in the Ontario Superior Court of Justice of two counts of criminal fraud over $5000 and one count of forgery in connection with misrepresentations made in the financial statements of Livent and its predecessor companies while they were directors and officers of these companies.

3. The convictions against Eckstein, Drabinsky and Gottlieb (together, the "Respondents") involved financial statements used to promote the initial public offering of Livent on the Toronto Stock Exchange (the "IPO"). The financial statements, which were included in the prospectus for the IPO, materially overstated the amount of company assets and concealed a kickback scheme.

4. The convictions against the Respondents also involved material misrepresentations made in financial statements that Livent issued after it became a public company. These financial statements were manipulated by the Respondents to reduce Livent's reported expenses and to increase its reported net income, so that the company would appear to potential investors and lenders to be meeting its financial projections.

5. Pursuant to his conviction, Eckstein received a conditional sentence of 2 years less a day, including one year of house arrest. Drabinsky received a sentence of 4 years of incarceration for misrepresentations related to the IPO and 7 years for misrepresentations related to post-IPO period, to be served concurrently. Gottlieb received a sentence of 4 years for misrepresentations related to the IPO and 6 years for misrepresentations related to post-IPO period, also to be served concurrently.

6. Drabinsky and Gottlieb appealed their convictions and their sentences. On September 13, 2011, the Ontario Court of Appeal upheld the convictions, but reduced Drabinsky's sentences to a total of 4 years and 6 years and reduced Gottlieb's sentences to a total of 3 years and 4 years, with each defendant's sentences to be served concurrently.

7. Drabinsky and Gottlieb sought leave from the Supreme Court of Canada to appeal the ruling of the Ontario Court of Appeal, but their application was dismissed without reasons on March 29, 2012.

II The Respondents

Garth H. Drabinsky

8. Drabinsky held various director and officer positions with Livent. From May 17, 1993 until June 12, 1998, Drabinsky was Chairman of the Board of Directors and Chief Executive Officer of Livent. On June 12, 1998, Drabinsky transitioned from these positions to become Vice-Chairman of the Board of Directors and Chief Creative Director, holding both of these titles until November 18, 1998.

9. Prior to the IPO, Drabinsky held various positions in Livent's privately-held predecessor entities, including positions as General Partner of MyGar Partnership, an Ontario general partnership, as Director of MyGar Realty Inc., an Ontario corporation, and as Chairman and Chief Executive Officer of Live Entertainment of Canada Inc. ("LECI"), an Ontario corporation.

Myron I. Gottlieb

10. Gottlieb held the position of President of Livent from May 17, 1993 until June 12, 1998, at which time he became Executive Vice-President, Canadian Administration until November 18, 1998. Throughout his tenure at Livent, Gottlieb was a director of the company.

11. Prior to the IPO, Gottlieb held various positions in Livent's privately-held predecessor entities, including positions as General Partner of MyGar Partnership, as Director of MyGar Realty Inc., and as Director, President and Chief Operating Officer of LECI.

Gordon Eckstein

12. Eckstein held the position of Vice-President, Finance and Administration at Livent from May 17, 1993 through November 13, 1996, at which time he assumed the position of Senior Vice-President, Finance and Administration until July 29, 1998.

13. Prior to the IPO, Eckstein held the position of Vice-President, Finance and Administration of MyGar Partnership and LECI.

III Background

Livent's Predecessor Entities and IPO

14. Prior to May 1993, Drabinsky and Gottlieb operated and controlled several entities involved in the live entertainment business, including LECI, MyGar Partnership, and MyGar Realty Inc. Eckstein supervised the accounting staff and helped prepare the companies' financial statements.

15. On or about May 7, 1993, Livent conducted its IPO (under the name of LECI, its immediate corporate predecessor) and acquired all the assets of MyGar Partnership and all the outstanding shares of MyGar Realty Inc. in the course of the offering. Livent's shares were subsequently listed for trading on the Toronto Stock Exchange and the company became a reporting issuer in Ontario.

Fraud Allegations, Bankruptcy and Cease-Trading

16. In the summer of 1998, new management took control of Livent pursuant to an investment agreement, and learned of allegations that the company's prior financial statements contained misrepresentations.

17. On August 10, 1998, Livent issued a news release and filed a material change report pursuant to the Securities Act, R.S.O. 1990, c.S.5, as amended (the "Act"), publicly

announcing that an internal investigation had revealed serious irregularities in the company's financial records. The announcement stated that it was virtually certain that Livent's financial results for 1996 and 1997 and the first quarter of 1998 would need to be restated.

18. On November 18, 1998, Livent announced that it had filed a voluntary petition for bankruptcy in New York. The stated purpose of the petition was to pursue a comprehensive financial restructuring which had become necessary as a result of serious accounting irregularities uncovered at the company. Livent subsequently filed for protection under the *Companies' Creditors Arrangement Act* in Canada, and courts in Toronto and New York approved the sale of substantially all of Livent's assets, property, and undertakings to a third party.

19. On September 29, 1999, the Superior Court of Justice approved Livent's request to appoint Ernst & Young Inc. as receiver and manager of all of the remaining property, assets and undertakings of Livent.

20. On February 6, 2001, shares of Livent were cease traded by the Ontario Securities Commission (the "Commission") in response to the company's failure to file the financial statements required by the Act.

Commission Proceedings, Adjournment and Criminal Proceedings

21. On July 3, 2001, Staff issued a Notice of Hearing and Statement of Allegations against the Respondents, as well as former Livent Chief Operating Officer Robert Topol, in relation to their conduct as directors and officers of Livent.

22. Subsequently, the Respondents each gave undertakings to the Director of Enforcement of the Commission that, pending the conclusion of the proceedings, they would not apply to become a registrant, an employee of a registrant, or act in certain officer or director positions of a reporting issuer without the express written consent of the Director or an Order of the Commission.

23. On October 22, 2002, the Royal Canadian Mounted Police charged the Respondents and Topol with multiple counts of criminal fraud, and Commission proceedings against the Respondents were adjourned *sine die* on November 15, 2002 pending resolution of the criminal charges.

24. On June 22, 2007, the Ontario Superior Court of Justice dismissed the criminal charges against Topol after it concluded that there had been an unreasonable delay in bringing the case against him to trial.

25. On May 5, 2008, the criminal trial against Drabinsky and Gottlieb commenced in Superior Court before Madam Justice Benotto sitting alone. The trial was held over 65

days and, on March 25, 2009, Drabinsky and Gottlieb were found guilty of violating Sections 380(1)(a) and Section 368 (1)(b) of the *Criminal Code of Canada.*

IV Findings of the Superior Court Against Drabinsky and Gottlieb

26. As set forth in the decision of the Superior Court, Drabinsky and Gottlieb raised over $500 million from the capital markets between 1993 and 1998, signing and presenting company financial statements to investors during this period. However, as detailed in the decision, the financial statements included two types of fraudulent misrepresentations, each created pursuant to Drabinsky's and Gottlieb's direction.

Financial Statements in Prospectus Concealed Kickback Scheme and Overstated Assets

27. The first type of misrepresentation involved the financial statements of Livent's predecessor entities (the "MyGar Entities"), which were included in the Prospectus when Livent held its IPO. These financial statements overstated the amount of company assets by concealing a kickback scheme.

28. Under the kickback scheme, Drabinsky and Gottlieb used funds from the MyGar Entities to pay two contractors for fictitious services. The contractors then funneled the diverted funds back to Drabinsky and Gottlieb.

29. The funds transferred under this arrangement should have been recorded in company records as advances to Drabinsky and Gottlieb. Instead, however, Drabinsky and Gottlieb directed that most of the payments be booked as either fixed assets or preproduction costs.

30. By recording the payments in this way, the MyGar Entities' balance sheets indicated that the companies held more assets than they actually did.

31. Before the IPO, Drabinsky and Gottlieb were advised that the MyGar Entities needed to write down $4 million to $6 million to remove overstated asset amounts from company balance sheets, but neither of them authorized a write-down. Instead, they decided to leave the overstated entries in the companies' financial statements, indicating that a write-down would "look terrible" and would interfere with the marketing of the IPO.

32. As a result, the overstated asset amounts remained in the MyGar Entities' financial statements, and were subsequently incorporated into the financial statements contained in the Prospectus.

Financial Statements Filed by Livent After the IPO Concealed Improper Financial Manipulations

33. The second fraudulent scheme involved the manipulation of financial statements that Livent filed as a public company. Under the scheme, Drabinsky and Gottlieb directed Eckstein to manipulate the company's financial statements to reduce reported expenses and increase reported income so that Livent would appear to potential investors and lenders to be meeting its financial expectations.

34. During regular reporting cycles, Eckstein and his accounting staff prepared detailed statements summarizing Livent's actual financial results. Drabinsky and Gottlieb would then direct Eckstein to alter the statements so that they would match Livent's financial projections. These directions were often communicated explicitly, with Drabinsky and Gottlieb discussing specific areas of the statements that needed to be manipulated to improve the company's reported results.

35. Following Drabinsky's and Gottlieb's direction, Eckstein instructed members of his accounting staff to adjust the financial statements. Changes were made through various improper means, including deferring operating costs from current reporting periods to future reporting periods, transferring expenses associated with one project to another project, and transferring operating and preproduction costs to fixed asset accounts relating to theatre construction.

36. New financial statements were then created to incorporate the adjusted results, and executive meetings were held to discuss the revised statements.

37. Once the executive meetings took place and the final financial statements were signed by Drabinsky and Gottlieb, they were distributed to the Audit Committee and subsequently to the Board of Directors.

38. In this manner, false financial statements which overstated company income were prepared on numerous occasions and publicly filed.

39. Livent raised funds from capital markets repeatedly during the post-IPO period, including the following offerings itemized in the Superior Court's decision:

Date of Offering	Offering	Approximate Funds Raised ($ million)
September 20, 1993	Special Warrants Private Placement	$20
February 3, 1995	Subordinated Convertible Notes Offering	$15
February 3, 1995	Personal Shares of Mr. Drabinsky and Mr. Gottlieb	$17
April 2, 1996	U.S. Public Offering	$43
July 29, 1996	Subordinated Convertible Debentures	$12
December 4,1996	CIBC Credit Facility (loan agreement)	$50
December 10, 1996	Senior Secured Debentures	$73
May 8,1997	Secondary Public Offering	$28
October 16, 1997	Senior Notes Offering	$173
June 12,1998	Private Placement: Lynx Ventures	$29
June 12,1998	Private Placement: Roy Furman	$3
June 23,1998	Private Placement : Southam	$18
June 23,1998	Private Placement: Great Pacific	$1
June 23,1998	Private Placement: Allen & Co.	$1

V Admissions in the Guilty Plea of Gordon Eckstein

40. In connection with his February 26, 2007 plea, Eckstein consented to the filing of an Agreed Statement of Facts, including facts substantially similar to those established by the findings of the Superior Court.

41. Specifically, Eckstein acknowledged that he participated in certain improper manipulations relating to the financial statements of the MyGar Entities. The manipulations involved the concealment of a kickback scheme and the artificial inflation of company assets, as outlined above.

42. In addition, Eckstein acknowledged that he accepted direction from Drabinsky and Gottlieb to falsify various figures in Livent's post-IPO financial statements in order to meet financial projections. To execute these falsifications, Eckstein acted as the conduit between Livent's senior management team and its accounting staff, directing members of the staff to make specific manipulations and then reviewing the adjusted financial results in executive meetings, as outlined above.

43. The results of these manipulations made Livent's financial statements false and deceptive, and Eckstein knew that members of the public relied upon these financial statements.

44. Eckstein also supervised the creation of false supporting accounting records. Some of these records were created by modifying the computer software used to run the company's general ledger and helped to conceal the improper manipulations that had been made.

45. On the basis of the Agreed Statement of Facts and his plea, the Superior Court of Justice found Eckstein guilty of violating Section 380(1)(a) of the *Criminal Code of Canada*.

VI Conduct Contrary to the Public Interest

46. Staff plead and rely upon the guilty plea of Eckstein entered February 26, 2007 and the decision of the Superior Court regarding Drabinsky and Gottlieb entered March 25, 2009, as outlined above.

47. The conviction of each Respondent for fraud involving financial statements distributed pursuant to the Act constitutes a basis pursuant to s. 127(10) of the Act for an order in the public interest under s.127(1) of the Act.

48. In addition, by engaging in the conduct described above, the Respondents acted in a manner contrary to the public interest, and an order is warranted pursuant to section 127(1) of the Act.

49. Staff reserves the right to make such other allegations as it may advise and the Commission may permit.

DATED at Toronto this 20th day of February, 2013.