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

HEARING HELD PURSUANT TO SECTIONS 127 and 127.1 OF THE ACT

SETTLEMENT HEARING

HEARING:	February 05, 2009		
PANEL:	James E.A. Turner	–	Vice Chair and Chair of the Panel
	David L. Knight, FCA	–	Commissioner
	Paulette L. Kennedy	–	Commissioner
APPEARANCES:	James (Sasha) Angus Cullen Price	–	For Staff of the Ontario Securities Commission
	Robert Staley Alan Gardner Jeffrey Leon	–	For Research in Motion Limited and James Estill
	James Douglas Kara Beitel	–	For James Balsillie
	Steve Tenai	–	For Mike Lazaridis
	David Hausman	–	For Dennis Kavelman
	James Hodgson	–	For Angelo Loberto
	Danielle Royal	–	For Kendall Cork and Douglas Wright
	Larry Lowenstein	–	For Douglas Fregin

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts from the transcript of the settlement hearing. The excerpts reflect the oral reasons of the Chair for the decision in this matter. Those oral reasons have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

This Proceeding

[1] This matter arises from a hearing under sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") to consider whether it is in the public interest for the Ontario Securities Commission (the "Commission") to approve the proposed settlement agreement (the "Settlement Agreement") dated January 27, 2009 entered into between Staff of the Commission ("Staff") and Research in Motion Limited ("RIM"), James Balsillie ("Balsillie"), Mike Lazaridis ("Lazaridis"), Dennis Kavelman ("Kavelman"), Angelo Loberto ("Loberto"), Kendall Cork ("Cork"), Douglas Wright ("Wright"), James Estill ("Estill") and Douglas Fregin ("Fregin") (collectively, the "Respondents" and, excluding RIM, the "Individual Respondents").

[2] This matter relates to RIM's improper backdating and repricing of stock options ("Options") issued under RIM's stock option plan (the "Option Plan").

The Parties

[3] RIM is a reporting issuer in Ontario whose shares are listed on both the Toronto Stock Exchange (the "TSX") and the Nasdaq Stock Market ("NASDAQ").

[4] Balsillie was at all material times co-Chief Executive Officer and Chairman of the Board of Directors of RIM (the "Board"). He is no longer Chairman, but he remains co-Chief Executive Officer and a director of RIM.

[5] Lazaridis was at all material times co-Chief Executive Officer, President and a director of RIM, and he continues to hold all of these positions.

[6] Kavelman was Vice President, Finance of RIM 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.

[7] Loberto was Director of Finance of RIM from August 1997 and was Vice-President, Finance from September 2001 to 2007. He is now Vice-President, Corporate Operations.

[8] 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.

[9] 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.

[10] Estill has been a director of RIM since 1997 and was a member of the Audit Committee from 1998 through 2007.

[11] Fregin was a director of RIM from 1985 to 2007. He was Vice-President, Hardware Design and subsequently Vice-President, Operations, but is no longer connected with RIM.

[12] We have reviewed the evidence and considered the submissions, and we have concluded that the Settlement Agreement should be approved. In our view, the Settlement Agreement is in the public interest and we will issue an order giving effect to its terms.

[13] The facts and circumstances agreed to by Staff and the Respondents are set out in the Settlement Agreement. These facts are not findings of fact by this Panel, rather they are facts agreed to by Staff and the Respondents for purposes of the Settlement Agreement. In approving the Settlement Agreement, we relied solely on the facts set out in the agreement and those facts represented to us at the hearing (this approach is consistent with the Commission's decision in *Re Rankin* (2008), 31 O.S.C.B. 3303 at para. 5).

[14] I would like to briefly set out some of the background circumstances of this matter and identify a number of the issues that were important to the Panel in approving the Settlement Agreement.

[15] The misconduct at issue here took place from December, 1996 to July, 2006, and it involved the following:

(1) The backdating or repricing of Options, first by Balsillie, and then by his delegate, Kavelman. Both Lazaridis and Loberto were also directly involved in such actions, but not to the same extent as Balsillie and Kavelman.

(2) Misleading or untrue public disclosure by RIM with respect to Option grants that continued for approximately 10 years. In almost every disclosure document issued over that period, RIM indicated that it was following the terms of the Option Plan, when in fact it was not. It was drawn to our attention that there were 53 disclosure documents containing misleading or untrue disclosure issued over the ten-year period.

[16] The backdating or repricing of Options led to a potential shortfall to RIM's treasury of approximately $66 million. It also meant that the investing public had misleading or untrue disclosure regarding the financial consequences of the granting of Options and with respect to the Options pricing practices for a 10-year period. This is a unique set of facts before this Commission.

[17] Let me state for the record the Commission's concerns with RIM's backdating and repricing of Options. We consider it shocking that this misconduct occurred over a ten-year period. It meant that there were undisclosed benefits being given to directors, officers and employees and misleading or untrue disclosure being made over that period. In addition to the direct involvement

of Balsillie, Kavelman, Lazaridis and Loberto in these practices, there was a fundamental failure of governance, a failure by the Board of Directors of RIM to carry out appropriately its oversight responsibilities, both in terms of compliance with the Option Plan and the rules contained in the TSX Company Manual (the "TSX Rules"), but more fundamentally in failing to provide appropriate oversight with respect to the issue of securities and compliance with securities laws. The Board has direct responsibility as a corporate law matter for issuing securities. It should not delegate that authority to others, except in limited circumstances with appropriate safeguards.

[18] A fundamental problem here was a public company issuing Options and shares in circumstances where the Board did not understand the provisions of the Option Plan, the TSX Rules or the practices that were being followed. We also note that timely and accurate reporting of material information is one of the primary means by which securities regulators ensure fair and efficient capital markets for all investors. Senior management has direct responsibility for disclosure matters but the board has oversight responsibility.

[19] I would now like to comment on a number of aspects of the terms of the Settlement Agreement and the sanctions imposed under it.

[20] While this Panel did not establish the sanctions agreed to in the Settlement Agreement, there were aspects of them that assisted us to conclude that they were within an appropriate range in the circumstances.

[21] In this case, one of the objectives of the proposed sanctions is to ensure that RIM has put in place, and will develop and maintain, the necessary internal controls to ensure compliance with the terms of the Option Plan and TSX Rules and to meet its continuing disclosure obligations.

[22] As part of the sanctions, Staff will select, and RIM will pay for, a consultant to conduct a comprehensive review of RIM's governance policies and procedures including a review to determine whether RIM has fixed its options granting practices, but more importantly, to ensure RIM has policies and procedures in place to comply with applicable legal and regulatory requirements and its obligations under such requirements.

[23] Balsillie, Lazaridis and Kavelman have undertaken to contribute $38.3 million (which includes interest of $5.3 million) to RIM in respect of the outstanding benefit arising from incorrectly priced Options granted to all employees from 1996 to 2006. Balsillie, Lazaridis and Kavelman have also undertaken to contribute $44.8 million to RIM to defray costs incurred by RIM (which will be reduced by $15 million for amounts already paid by Balsillie and Lazaridis) in connection with the improper Option granting practices.

[24] The allegations set forth in the Settlement Agreement are that the backdating or repricing of Options was carried out without an intent to deprive RIM of the full price for shares issued; rather, the individuals pricing the Options did not take reasonable steps to ensure that Option pricing practices were not contrary to the Option Plan and the TSX Rules. Staff is not alleging that senior management acted fraudulently in issuing Options or in making public disclosure that failed to accurately describe the Option-granting practices and how the Options were actually being priced. The allegation is that there was negligence and a lack of due care over an extended period of time.

[25] The Respondents, both RIM and the Individual Respondents, have admitted in the Settlement Agreement that:

(1) they backdated or repriced Options with a total “in-the-money” benefit of approximately $66 million; and

(2) RIM's public disclosure of Option granting practices for which the Individual Respondents were responsible, in various ways, was understated, inaccurate and misleading, and there were no proper procedures in place to identify and address these problems.

[26] Under the provisions of the Option Plan and TSX Rules, when Options are granted they are required to be granted at an exercise price not less than the closing price of RIM's common shares on the TSX on the last trading day preceding the date on which the Options are approved for grant. If Options are issued at an amount less than the market price, there is a benefit to the person receiving the Option. That is, the exercise price is less than the current market price for the shares, which means the Options granted are “in-the-money” at the date of grant. That represents a financial benefit to the person to whom the Options are granted.

[27] The TSX Rules are an important element of our regulatory framework and we treat the breach of TSX Rules as a serious matter. It has been stated in other Commission decisions that the TSX Rules form part of the fabric of securities law and are fundamental to our securities regulatory regime.

[28] The Respondents should have taken reasonable steps to ensure Option granting practices were in accordance with the terms of the Option Plan and TSX Rules. The Option Plan granted authority to the Board to issue Options. The Board had oversight responsibility for ensuring that RIM's Option granting practices were in compliance with the Option Plan and the TSX Rules. Our understanding is that the members of the Board, or of the responsible Board committee, were not aware of the requirements of the Option Plan or the Option granting practices being carried out.

[29] Balsillie, Lazaridis, Kavelman and Loberto engaged in the granting of Options in which Option backdating or repricing occurred. The grant dates selected resulted in more favourable pricing for the Options than permitted under the Option Plan and TSX Rules; that is, the Options were granted "in-the-money".

[30] In many instances of the grant of Options, the lowest share price over a period was chosen using hindsight in order to set the exercise price below the market price of the shares. The Individual Respondents personally received undisclosed benefits -- and when we say "undisclosed" benefits, we mean not publicly disclosed -- from grants of Options that were in-the-money at the time they were made.

[31] Grants of Options were seldom approved by the Board or by the Compensation Committee as required by the Option Plan. Balsillie, Kavelman and Loberto participated in the selection of favourable grant dates used in many of the Options granted to directors, officers and employees. Lazaridis participated in selecting grant dates to be used in some cases. During the material time, Balsillie, Lazaridis, Cork, Wright, Estill and Fregin, in their capacities as directors -- and I want to emphasize again that an important element of the concern of Staff is with the governance practices

of the Board -- should have taken reasonable steps to be aware of the requirements of the Option Plan and the TSX Rules and to ensure RIM was adhering to them.

[32] The failure of the Individual Respondents who were non-management directors to appropriately supervise management and their lack of due diligence materially contributed to RIM's failure to ensure that its Option granting practices were in accordance with the Option Plan and TSX Rules.

[33] The Individual Respondents have all repaid the benefits that they received, with interest, or have repriced unexercised options to accomplish the same purpose. The total in-the-money benefit resulting from the backdating or repricing practices for all employees was $66 million, of which $33 million has not yet been reimbursed or repaid to RIM or otherwise forfeited, but will be as part of this settlement.

[34] The failure to appropriately account for Option grants resulted in a restatement of RIM's U.S. financial statements. RIM took a cumulative charge of U.S. $248.2 million, including U.S. $227 million in non-cash stock-based compensation expense, for fiscal 1999 through fiscal 2006.

[35] As a reporting issuer, RIM is obligated to make periodic disclosures of material information. RIM repeatedly made statements in its disclosure documents including its financial statements, that it was complying with the terms of the Option Plan. Those statements were misleading or untrue and contrary to Ontario securities laws and the public interest. Balsillie, as Chairman of the Board and co-Chief Executive Officer, Lazaridis, as President and co-Chief Executive Officer, Kavelman as CFO and Estill, Cork, Wright and Fregin as directors, failed to exercise reasonable diligence to ensure that RIM prepared disclosure documents containing disclosure that was not misleading or untrue or contrary to the Act. The Individual Respondents did not exercise reasonable diligence or care to ensure that the public statements made by RIM were not misleading or untrue or contrary to the Act.

[36] RIM also has an obligation to maintain appropriate internal controls. It failed to maintain adequate internal and accounting controls with respect to the granting of Options. The Option granting practices were characterized by informality and lack of definitive documentation and lacked safeguards to ensure compliance with applicable accounting, regulatory and disclosure rules. RIM's failure to maintain adequate internal and accounting controls with respect to issuing Options (and its failure to disclose that it had not put such internal controls in place) was also contrary to the public interest. Balsillie, Lazaridis and Kavelman all certified various filings containing misleading or untrue disclosure.

[37] RIM has taken a number of actions to address these problems and we emphasize that RIM and the Individual Respondents have co-operated with Staff in this matter.

[38] In August 2006, RIM conducted a voluntary internal review by the Audit Committee of RIM’s Option granting practices and related accounting. The results of that review were publicly disclosed. We understand that RIM has taken steps to ensure that its current practices are now fully in accordance with applicable requirements.

[39] By entering into the Settlement Agreement the Respondents have recognized the very serious nature of their misconduct and have admitted that they engaged in conduct that was contrary to the public interest.

[40] Before I turn to the form of the order we will issue, I will briefly refer to the law as it applies to the approval of a settlement agreement entered into by Staff of the Commission with a respondent.

[41] The Commission's mandate as set out in section 1.1 of the Act is:

> (1) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (2) to foster fair and efficient capital markets and confidence in the capital markets.

[42] One of the primary means by which the Commission fulfils these statutory objectives is by enforcing requirements for timely and accurate disclosure of material information. Disclosure serves to level the playing field so that all investors have access to the same information upon which to make investment decisions. Disclosure is the cornerstone principle of securities regulation. All investors should have equal access to information that may affect their investment decisions. (See, for instance, *Re Philip Services Corp.* (2006), 29 O.S.C.B. 3941 at para. 7.)

[43] Much of the responsibility for compliance with an issuer's disclosure obligations rests with the Chief Executive Officer and CFO. A reporting issuer's directors also bear responsibility for appropriate oversight of compliance by a company with its disclosure obligations.

[44] The Commission's role in imposing sanctions is not to penalize; our objective is to identify and prevent inappropriate and illegal conduct and ensure that market participants understand that misconduct will not be tolerated (*Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 at 1610-1611). Deterrence is, however, an important objective of the Commission. The types of factors the Commission should consider in imposing sanctions are identified in *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc*. (1998), 21 O.S.C.B. 7743. The factors that we considered most relevant in this case are:

> (1) the seriousness of the allegations and their effect on shareholders and investors;
>
> (2) the failure of appropriate board oversight;
>
> (3) the fact that a restatement of financial statements was required;
>
> (4) the period over which the misconduct occurred;
>
> (5) the recognition on the part of the Respondents of the seriousness of their misconduct;
>
> (6) the seniority and high public regard for the individuals involved;
>
> (7) the amount of the financial benefits obtained; and
>
> (8) the mitigating factors identified below.

[45] In every case, the appropriateness of sanctions is to be determined based on all of the circumstances. It is important to understand that it is not this Panel's role to substitute its view of what the appropriate sanctions should be. We were advised that the Settlement Agreement was very heavily negotiated between Staff and the Respondents. In considering the terms of settlement, we must give significant weight to the agreement reached between adversarial parties, as a balancing of factors and interests will have already taken place in reaching the agreement. The Commission, in its reasons for approving the settlement agreement in *Re Melnyk* (2007), 30 O.S.C.B. 5253, commented on its role as follows:

> [w]e note that our role is not to renegotiate the terms of the Settlement Agreement or to suggest changes to the facts, statements or sanctions set forth in the Settlement Agreement. Our role is to decide whether to approve the Settlement Agreement, as a whole, on the terms presented to us.
>
> (*Re Melnyk, supra*, at para. 15)

[46] Accordingly, the sanctions that we must address are the sanctions set forth in the Settlement Agreement to which the parties have agreed. Our job is to determine whether or not we believe, in all of the circumstances, that the sanctions are within a reasonable range and represent an appropriate balancing of the relevant considerations before us. (*Re Sohan Singh Koonar et al*. (2002), 25 O.S.C.B. 2691)

[47] In this case there are a number of mitigating factors that we have taken into consideration in approving the Settlement Agreement. The mitigating factors include the following:

(1) RIM and the Individual Respondents co-operated with Staff's investigation;

(2) an internal review was voluntarily initiated by RIM and RIM has taken a number of remediation steps to prevent a recurrence, to improve RIM's corporate culture, and to ensure sound financial reporting. Steps taken by RIM included the immediate suspension of Option grants upon the commencement of the internal review;

(3) all directors and so-called "C level officers" have returned the improper financial benefits they received from the options that were incorrectly priced;

(4) there has been restitution to RIM in the aggregate amount of approximately $8.5 million, including interest to the date of payment, from directors, C level officers and vice-presidents. Approximately $15 million has been recovered by RIM through repricing of options;

(5) Balsillie voluntarily stepped down as chairman of RIM's Board on March 2, 2007, and John Richardson became lead director;

(6) an oversight committee comprised exclusively of independent directors was established on March 2, 2007;

(7) Cork and Wright voluntarily resigned from all committees of the Board and determined not to stand for re-election as directors of RIM; and

(8) in March 2007, Kavelman agreed to step down as RIM's CFO and from any financial reporting function. At the same time, Loberto agreed to step down as Vice-President, Finance and he no longer has a financial reporting function.

[48] In addition, the Board has adopted a new formal policy for granting equity awards. In July 2007, the Board determined that non-management Board members would not be granted Options. We considered this a relevant factor in considering the terms of this settlement.

[49] RIM has incurred costs of approximately $45 million to investigate and deal with incorrect Options granting practices. Balsillie and Lazaridis have paid a total of $15 million towards those costs.

[50] The sanctions that have been negotiated reflect the different roles and responsibilities of the individuals involved in the misconduct that took place including those who, as non-management directors, had oversight responsibility with respect to it. Balsillie and Kavelman, by virtue of their management roles, have particular responsibility in the circumstances.

[51] One of the guiding principles that we consider important in considering sanctions is that no individual should benefit as a result of his or her misconduct or the breach of regulatory requirements. The other important principle in this case is that RIM will be made whole for all of the costs and expenses incurred as a result of the misconduct that occurred here. In considering the sanctions, we were influenced by the fact that the terms of settlement do not cause further harm to RIM and its shareholders. Financial sanctions have been proposed only against certain of the Individual Respondents and RIM will recoup substantial amounts as a result of the settlement.

[52] We also note that consideration was also given in the terms of settlement to ensuring that RIM would not suffer as a result of losing the services of Balsillie or Lazaridis.

[53] There will be substantial financial sanctions imposed on Balsillie, Lazaridis and Kavelman. We note, in particular, that as part of the sanctions the Individual Respondents against whom financial sanctions are to be ordered have agreed not to be indemnified by RIM for the amounts that they have agreed to pay. Accordingly, corporate indemnification will not be available to Individual Respondents in respect of this settlement. That is appropriate and consistent with the objective of not causing further harm to RIM and its shareholders.

[54] In addition to the financial sanctions, certain of the Individual Respondents will pay a substantial portion of the Commission's costs in investigating this matter.

[55] We believe that the Settlement Agreement appropriately reflects credit for co-operation under the policies of this Commission. Respondents who co-operate with Staff should generally be entitled to more lenient treatment as a result.

[56] Let me then turn to the specific sanctions that will be imposed under the terms of the Settlement Agreement.

[57] Undertakings have been given by the Individual Respondents with respect to certain of the proposed sanctions. The legal distinction is that the Individual Respondents are agreeing in the Settlement Agreement to comply with their undertakings under the Settlement Agreement which

may relate to matters that cannot be directly ordered by the Commission. The other sanctions will be imposed pursuant to a formal order of the Commission.

[58] The Individual Respondents have undertaken as follows:

(1) Balsillie undertakes not to act as a director of any reporting issuer until the later of (a) twelve months from the date of the Commission order, and (b) RIM's compliance with paragraphs 17 and 18 of the Governance Assessment document attached as Schedule "C" to the Settlement Agreement;

(2) Balsillie, Lazaridis and Kavelman undertake to contribute $38.3 million (which includes interest of $5.3 million) to RIM in respect of the outstanding benefit arising from incorrectly priced Options granted to all employees from 1996 to 2006;

(3) Balsillie, Lazaridis and Kavelman undertake to contribute $44.8 million to RIM to defray costs incurred by RIM in the investigation and remediation of Options granting practices and related governance practices at RIM, which will be reduced by $15 million as credit for amounts already paid by Balsillie and Lazaridis in respect of costs incurred;

(4) as determined by the Board of Directors of RIM to be in the best interests of RIM (with the Individual Respondents abstaining), the amounts described in clauses (2) and (3) above, may be settled by Balsillie, Lazaridis and Kavelman agreeing not to exercise certain vested Options that collectively have a fair value equal to the amounts described in clauses (2) and (3) above. The fair value of such Options is to be determined on a Black-Scholes calculation based on the last trading day prior to the issuance of a Notice of Hearing in this matter;

(5) Lazaridis undertakes to complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the Commission order; and

(6) each of Loberto, Cork, Wright, Estill and Fregin undertakes that he has repaid to RIM any increased benefit he received from the allocation to him of incorrectly priced Options.

[59] In addition to the undertakings of the Individual Respondents, we will issue an order that provides as follows:

(1) the settlement is approved;

(2) RIM shall submit to a review of its practices and procedures pursuant to section 127(1)(4) of the Act by an independent person agreed to by Staff of the Commission and RIM and paid for by RIM, as set out in Schedule "C" to the Settlement Agreement;

(3) Balsillie:

(i) shall pay an administrative penalty of $5 million to be allocated for the benefit of third parties by the Commission pursuant to section 3.4(2) of the Act;

(ii) shall pay $700,000 to the Commission towards the costs of its investigation; and

(iii) shall be reprimanded by the Commission;

(4) Lazaridis:

(i) shall pay an administrative penalty of $1.5 million to be allocated for the benefit of third parties by the Commission pursuant to section 3.4(2) of the Act;

(ii) shall pay $150,000 to the Commission towards the costs of its investigation; and

(iii) shall be reprimanded by the Commission;

(5) Kavelman:

(i) is prohibited from becoming or acting as a director or officer of any reporting issuer until the later of (a) five years from the date of the order, and (b) the date he completes a course acceptable to Staff of the Commission regarding the duties of directors and officers of public companies;

(ii) shall pay an administrative penalty of $1.5 million to be allocated for the benefit of third parties by the Commission pursuant to section 3.4(2) of the Act;

(iii) shall pay $150,000 to the Commission towards the costs of its investigation; and

(iv) shall be reprimanded by the Commission;

(6) Loberto:

(i) is prohibited from becoming or acting as a director or officer of any reporting issuer until he has completed a course acceptable to Staff regarding the duties of directors and officers of public companies;

(ii) shall pay $50,000 to the Commission towards the costs of its investigation; and

(iii) shall be reprimanded by the Commission;

(7) Cork:

(i) shall complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the order, failing which he will be prohibited from acting as a director pending completion of such course; and

(ii) shall be reprimanded by the Commission;

(8) Wright:

(i) shall complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the order, failing which he will be prohibited from acting as a director pending completion of such course; and

(ii) shall be reprimanded by the Commission;

(9) Estill:

(i) shall complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the order, failing which he will be prohibited from acting as a director pending completion of such course; and

(ii) shall be reprimanded by the Commission;

(10) Fregin shall complete a course acceptable to Staff regarding the duties of directors and officers within twelve months from the date of the order, failing which he will be prohibited from acting as a director of a reporting issuer pending completion of such a course; and

(11) the Individual Respondents will not seek, accept, or be offered indemnification from or through RIM for any of the payments associated with or paid by the Individual Respondents as a result of this settlement and the order.

[60] Although the regulatory sanctions agreed to in the Settlement Agreement may not be what we would have imposed after a hearing on the merits, this was not a hearing on the merits and there can be no certainty as to what the outcome of any such hearing would have been. One of the significant benefits of entering into a settlement agreement is in establishing certainty as to the regulatory outcome of a matter. In this case, that benefits both the Commission and the Respondents. As we have noted above, we believe that the Respondents have been given substantial credit for their co-operation with Staff. We also believe that the sanctions imposed under the Settlement Agreement are consistent with the principles we have referred to above applicable to the imposition of sanctions.

[61] In conclusion, we consider the misconduct here to have been extremely serious and we believe the sanctions imposed are very substantial and reflect that view. At the same time, the sanctions imposed on each Individual Respondent are commensurate with his conduct, role or

responsibility in the improper backdating or repricing of Options. We find that, when considered together, the sanctions imposed with respect to each Respondent are within a reasonable range and represent an appropriate balancing of the relevant considerations. We believe that such sanctions will deter others from similar misconduct.

[62] Accordingly, we approve the Settlement Agreement as being in the public interest and we issue a Commission order giving effect to it.

Approved by the Chair of the Panel on May 21st, 2009.

"James E.A. Turner"

James E.A. Turner