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Securities
Commission

Commission des
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de l'Ontario

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

AND

**IN THE MATTER OF
GOLDBRIDGE FINANCIAL INC., WESLEY WAYNE WEBER and
SHAWN C. LESPERANCE**

REASONS AND DECISION

Hearing: February 8, 9 and 12, 2010

Decision: January 21, 2011

Panel: David L Knight, FCA - Commissioner and Chair of the Panel
Margot C. Howard, CFA - Commissioner

Appearances: Christie Johnson - For the Ontario Securities Commission
Wesley Wayne Weber - For himself
No one appeared for Goldbridge
Financial Inc.

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REASONS AND DECISION

A. OVERVIEW

1. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the “Commission”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether Goldbridge Financial Inc. (“Goldbridge”) and Wesley Wayne Weber (“Mr. Weber”) (together, the “Respondents”) breached subsections 25(1)(a), 25(1)(c) and 122(1)(a) of the Act and engaged in conduct contrary to the public interest.

[2] This proceeding was commenced by a Statement of Allegations and a Notice of Hearing dated August 31, 2009. The Statement of Allegations and Notice of Hearing list the following respondents: Goldbridge, Mr. Weber and Shawn C. Lesperance (“Mr. Lesperance”). Prior to the hearing on the merits, Mr. Lesperance settled with the Commission (*Re Goldbridge et al.* (2009), 32 O.S.C.B. 7387 (oral reasons)).

[3] This case involves allegations by Staff of the Commission (“Staff”) that during 2007 and through July of 2008, the Respondents engaged in unregistered trading and advising in violation of subsections 25(1)(a) and 25(1)(c) of the Act. In addition, Staff alleges that Mr. Weber made false and misleading statements to the Commission in violation of subsection 122(1)(a) of the Act and acted contrary to the public interest.

[4] At the hearing, Mr. Weber admitted to some of the misconduct alleged by Staff, the details of which are described later in these Reasons. No one appeared on behalf of Goldbridge; however, Mr. Weber explained that Goldbridge no longer exists and was dissolved in June of 2009. Mr. Weber takes the position that there were “no victims, no crimes, no public money lost [and] no one in the public hurt” (Hearing Transcript, February 12, 2010 at page 33 lines 5-7). Mr. Weber also emphasizes that there was no malicious intent on his part and no desire to harm anyone when he set up Goldbridge as a company to conduct trading to generate profits (Hearing Transcript, February 12, 2010 at page 33 lines 15-16).

[5] During the course of this proceeding, Mr. Weber represented himself and spoke to Goldbridge’s activities.

[6] We heard the evidence in this matter on February 8 and 9, 2010. Staff called two witnesses to provide evidence: Patrick Magee, a former summer student in the Commission’s Enforcement Branch and Allister Field, an investigator with the Commission. Mr. Weber testified on his own behalf. Closing submissions were heard on February 12, 2010.

[7] For the reasons set out below, we conclude that the Respondents breached subsections 25(1)(a), and 25(1)(c) of the Act, which is conduct contrary to the public interest, and Mr. Weber breached subsection 122(1)(a) of the Act, which is also conduct

contrary to the public interest. Moreover, the Respondents also breached a Commission order dated October 28, 2008 and this is also conduct contrary to the public interest.

2. The Respondents

[8] Goldbridge was incorporated on May 5, 2008 pursuant to the laws of Ontario, with its head office in Toronto. According to Mr. Weber, he created Goldbridge to be used as a corporate vehicle to trade securities on the NYSE and NASDAQ.

[9] Goldbridge has never been registered to trade in securities or act as an advisor under subsection 25(1) of the Act. According to Mr. Weber, Goldbridge was dissolved in June 2009.

[10] Mr. Weber is a resident of Richmond Hill, Ontario, and at the material time he was the President, the Corporate Secretary, a Director and the directing mind of Goldbridge. He was directly responsible for Goldbridge's actions. Mr. Weber has never been registered to trade in securities or act as an advisor under subsection 25(1) of the Act.

3. The Allegations

[11] In this matter we are concerned with the allegations relating to the Respondents, Goldbridge and Mr. Weber.

[12] It is alleged that Respondents traded in securities in Ontario without having been registered in accordance with subsection 25(1)(a) of the Act, by offering investment and trading services through online advertisements.

[13] It is also alleged that Mr. Weber and Goldbridge breached subsection 25(1)(c) of the Act as they were unregistered and offered "free" day trading lessons to aspiring investors, on the condition that they deposit \$300,000 into "the corporate trading account".

[14] In addition, Staff alleges that Mr. Weber breached subsection 122(1)(a) of the Act by making false and misleading statements to the Commission during the course of (1) the Commission's case assessment stage of the investigation in June 2007; and (2) a temporary cease trade order hearing held on October 28, 2008.

[15] It is also alleged, by virtue of the conduct referred to in paragraphs 12 to 12, that the Respondents engaged in conduct contrary to the public interest.

[16] It is also alleged that Mr. Weber acted contrary to the public interest by using false names and assuming the identities of real persons to open online trading accounts at an online financial institution for the purpose of trading on behalf of Goldbridge. Further, it is alleged that the Respondents acted contrary to the public interest by breaching a temporary cease trade order of the Commission by continuing to accept funds for trading from the public after being ordered to stop. In addition, it is alleged that Mr. Weber acted contrary to the public interest by breaching a temporary cease trade order of the

Commission by opening a personal online trading account after being ordered to confine his future activities to a particular account in the name of Goldbridge.

B. ISSUES

[17] This case raises the following issues for our consideration:

1. Did Goldbridge and Mr. Weber engage in unregistered trading in breach of subsection 25(1)(a) of the Act, without any available exemptions?
2. Did Goldbridge and Mr. Weber engage in unregistered investment advisory activity in breach of subsection 25(1)(c) of the Act, without any available exemptions?
3. Did Mr. Weber make false and/or misleading statements to the Commission in breach of subsection 122(1)(a) of the Act?
4. Did Goldbridge and Mr. Weber act contrary to the public interest by:
 - a. engaging in the conduct referred to in issues 1 to 3 listed above?
 - b. intentionally communicating false information to financial institutions in names other than those of the Respondents in order to gain access to numerous trading charts?
 - c. breaching a temporary cease trade order of the Commission?

[18] We need to assess each of these issues by examining the evidence in this matter and determining whether on a balance of probabilities “...it is more likely than not that the event occurred” (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at para. 44). As stated by the Supreme Court of Canada, “...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test” (*F.H. v. McDougall*, *supra* at para. 46).

C. ANALYSIS

1. Did Goldbridge and Mr. Weber breach s. 25(1)(a) of the Act, without any Available Exemptions?

i. The Law

The Elements for a Breach of Subsection 25(1)(a) of the Act

[19] Subsection 25(1)(a) of the Act prohibits trading in securities without being registered:

No person or company shall,

- (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;

...

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[20] Accordingly, the elements of a breach of subsection 25(1)(a) of the Act are findings that:

1. a respondent traded, which includes any act in furtherance of a trade of a security as defined in the Act; and
2. the person or company was unregistered at the time of the trade.

Securities and Investment Contracts

[21] Subsection 1(1) of the Act defines “security”. The relevant parts of that subsection provide that a security includes:

- (a) any document, instrument or writing commonly known as a security,

...

- (e) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization or subscription ...,

...

- (n) any investment contract,

...

whether any of the foregoing relate to an issuer or proposed issuer.

[22] The definition of a “security” includes an investment contract. While the Act does not define an investment contract, an investment contract is defined by the Supreme Court of Canada as being an investment of money in a common enterprise with profits to come from the efforts of others (*Pacific Coast Coin Exchange v. Ontario Securities*

Commission, [1978] 2 S.C.R. 112). According to the Supreme Court, a “common enterprise” describes a situation where investors’ fortunes are interwoven with and dependent upon the efforts and success of those seeking the investment of third parties (*Pacific Coast Coin Exchange v. Ontario Securities Commission*, *supra* at 128).

[23] The elements of an investment contract that constitute a security are therefore:

- a. an investment of money;
- b. with an intention or expectation of profit;
- c. in a common enterprise, where the investors’ fortunes are interwoven and dependent upon the efforts of those seeking the investment; and
- d. where the efforts made by parties other than the investor are the significant ones with respect to the affect on the failure or success of the enterprise.

(*Pacific Coast Coin Exchange v. Ontario Securities Commission*, *supra* at 128 to 132).

Trading and Acts in Furtherance of Trades

[24] Under subsection 1(1) of the Act, a “trade” includes:

- (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
- (b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,
- (c) any receipt by a registrant of an order to buy or sell a security,
- (d) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in clause (c) of the definition of “distribution” for the purpose of giving collateral for a debt made in good faith, and
- (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[25] The Commission has interpreted the term “trade” in many previous decisions. The Commission has established that trading is a broad concept that includes any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition. This interpretation has also been confirmed by the Ontario courts in their acknowledgement that “[r]egarding “trade”, the legislature has chosen to define the term and they have chosen to define it broadly in order to encompass almost every conceivable transaction in securities” (*R v. Allan Sussman* (1993), 16 O.S.C.B. 1209 (Ont. Ct.) at 1230).

[26] The Commission has found that a variety of activities constitute acts in furtherance of trades. For example, the Commission has found that accepting money from investors and depositing investor cheques for the purchase of shares in a bank account constitute acts in furtherance of trades (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 (“*Limelight*”) at para. 133). Other examples of activities that have been considered acts in furtherance of trades by the Commission include, but are not limited to:

- (a) providing potential investors with subscription agreements to execute;
- (b) distributing promotional materials concerning potential investments;
- (c) issuing and signing share certificates;
- (d) preparing and disseminating [...] materials describing investment programs;
- (e) preparing and disseminating [...] forms of agreements for signature by investors;
- (f) conducting information sessions with groups of investors; and
- (g) meeting with individual investors.

(*Re Momentas Corporation* (2006), 29 O.S.C.B. 7408 (“*Momentas*”) at para. 80)

[27] The inclusion of the word “indirectly” in the definition of “acts in furtherance” (cited above in paragraph (e) of subsection 1(1) of the Act) reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration requirement by doing indirectly that which is prohibited directly.

[28] Any act in furtherance of a trade that occurs in Ontario constitutes trading in securities under the definition in the Act (*Re Lett* (2004), 27 O.S.C.B. 3215 at para. 64). Whether an act is in furtherance of a trade is a question of fact, to be determined in each

case, based on whether there is a sufficiently proximate connection to the trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47).

Registration

[29] Registration requirements play a key role in Ontario securities law. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Limelight, supra* at para. 135:

Registration serves as an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the Act.

[30] In order for there to be fairness and confidence in Ontario's capital markets it is critical that brokers, dealers and other market participants who are in the business of selling or promoting securities meet the minimum registration, qualification and conduct requirements of the Act.

[31] Therefore, the requirement that individuals and companies be registered to trade and advise in securities is an essential element of the regulatory framework put in place to achieve the purposes of the Act.

Availability of Exemptions

[32] As specified in subsection 25(1)(a) of the Act cited above, no person or company shall "trade in a security" unless the person or company "is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer".

[33] However, there are numerous exemptions from the registration requirement. Many of these exemptions for registration also have parallels in the exemptions from the prospectus requirement. Some exemptions are explicitly set out in securities legislation or rules, while other exemptions are granted on a discretionary basis by the Commission.

[34] Once Staff has shown that the Respondents have traded without registration, the onus shifts to the Respondents to establish that one or more exemptions from the registration requirements was available to them (*Limelight, supra* at para. 142 and *Re Ochnik* (2006), 29 O.S.C.B. 3929 at para. 67).

ii. Discussion

Overview of the Parties' Positions

[35] Staff takes the position that the Respondents were engaging in unregistered trading. Specifically at paragraph 10 of the Statement of Allegations, Staff alleges that:

In the months of May through July of 2008, Weber and Goldbridge posted advertisements on the website “gobignetwork” and the Toronto branch of the website known as “craigslist,” offering unregistered trading services in “NASDAQ and NYSE Equities.” The advertisements indicated that Weber and Goldbridge were “now accepting capital” and claimed that if investors provided their money, Weber could “put it to work for you safely” generating annual returns of 15% or 18%, depending on the amount invested.

[36] Staff also takes the position that Mr. Weber publicly held himself out as a professional trader. For example, Staff points out that in a May 2007 article in the Report on Business, there is a quote from Mr. Weber where he states “I’m still trading – I have about \$1.4 million in my account, mainly from investors”.

[37] At the hearing, Mr. Weber admitted in his testimony that Goldbridge was incorporated for the purpose of being used as a vehicle to trade equities. However, Mr. Weber took the position that he thought there was nothing wrong with proceeding in this way and that according to legal advice he received it was appropriate to proceed in this manner.

The Respondents were not Registered Under the Act

[38] Staff provided section 139 certificates which provide a statement as to “the registration or non-registration of any person or company” (subsection 139(a) of the Act). These section 139 certificates, which were prepared by the Assistant Manager of Registrant Regulation at the Commission, state that there is no record of the Respondents ever being registered under the Act. In addition, Mr. Weber testified during the hearing that he held no securities accreditations and that he was never registered under the Act.

The Respondents Engaged in Trading

[39] During the hearing, Mr. Weber admitted that he and his company Goldbridge engaged in trading:

Q. And in May of 2008, you opened an on-line E*Trade brokerage account in the name of Goldbridge Financial; is that correct?

A. Yes.

Q. And you opened that account for the purpose of trading in securities on behalf of Goldbridge Financial.

A. Yes.

Q. And that account was made active?

A. Yes.

Q. And you traded in that account.

A. Yes.

Q. You also, during May of 2008, opened a bank account or appears to be two bank accounts at TD Canada Trust in the name of Goldbridge Financial; is that correct?

A. Yes. One was Canadian and one was American.

(Hearing Transcript, February 9, 2010, at page 65 line 9 to page 66 line 1)

[40] Mr. Weber also testified at the hearing that he did not think there was anything wrong with setting up Goldbridge as a company to accept monies and then trade:

I just assumed you open up a company, people hold the -- three of us would hold it in thirds, you would deposit the monies and simply trade. It seemed like a very easy concept. That's what I had done up to that point. That's what I had taught other people to do up to that point when they asked me how I did what I did and I thought nothing of it.

(Hearing Transcript, February 9, 2010 at page 22 line 20 to page 23 line 2)

[41] Mr. Weber explained in his testimony that he planned to raise funds from friends and family in order to have more money to trade:

Shawn, [redacted] and I were only able to come up with about \$150,000, so we were under the impression we were going to bring other friends or family in to bring ourselves up to around the \$350,000 level of capitalization.

(Hearing Transcript, February 9, 2010 at page 24 lines 11 to 15)

[42] Mr. Weber also advertised via the internet the trading services offered by himself and Goldbridge. Specifically, the Respondents offered services whereby they required individuals to set up brokerage accounts, deposit a certain amount of funds and then the

Respondents would use the funds to trade in equities and generate a guaranteed profit. For example, an advertisement on the internet entitled “Learn to trade and become independent” was posted on the Greater Toronto Area Classified website on March 19, 2008. Mr. Weber is the contact person on this advertisement and it states:

I require you to have a brokerage account set up in your name with a minimum of \$300,000. You trust me to trade and not lose your money. I trust you to pay me. Unfortunately there is a minimum requirement for what I teach because it will be your new job in life. It must maintain your lifestyle. It is a full time position. You will be your own boss when I’m finished with you and the money you have built for you to this point will take care of you for the rest of your life. That is how it should be. When you reach that critical mass your money should work for you. But you need the tools as well as the materials for it to work.

I can set up the accounts for you. I can guarantee you a weekly profit of \$5,000 which is why I charge the fee of \$5,000 per week to train you. Our agreement will also be secured for loss against my own equity.

Yes, it’s almost 90% per year roughly. I expect payment at the end of the week if conditions are met; no five thousand profit-no fee, at which time you have the option to continue to another week until you feel you are ready to head out on your own. You will sit right beside me while I trade and earn profits right in front of you. Lunches will be provided.

I can train anyone. Unfortunately people with previous experience are the hardest. If you have little to none you are not predispositioned to the ‘old’ ways of the markets and/or bad habits.

We will only trade equities, no options, no futures. You will be in shock the first couple days. You will have to pinch yourself for what I will reveal but it does exist.

Only serious inquiries please. Phone 416-704-4527 if you need more information. Ask for Wes.

[43] In a craigslist advertisement entitled “Earn 18% Per Year on Invested Capital”, the Respondents claimed that they could safely invest funds and provide fix rates of return. Specifically, this advertisement stated:

We are currently accepting capital as low as \$10,000 U.S.D.

\$10,000 U.S.D. Interest paid quarterly at 15%. \$125 Per Month - \$375/Quarter

\$50,000 U.S.D. Interest paid quarterly at 18%. \$750 Per Month - \$2,250/Quarter

Larger capital levels can be negotiated.

Do not let your money sit idle. I can put it to work for you safely. It takes two business days to return monies. If you would like percentage return for a quarter, six months whatever the design.

If you are interested and would like further information

905-597-8878

Wes Weber

Goldbridge Financial Inc.

[44] During the hearing, Mr. Weber explained that he was responsible for the actual posting of these advertisements on the internet:

Q. ... Now, you stated in your testimony that you had posted ads on-line between May 5th, 2008, and July of 2008; is that correct?

A. Yeah. But I do remember posting things possibly before that as we were leading up to the incorporation.

Q. Okay.

A. I had taught people for some time, so I was under the impression that I could offer this service and so I posted that, I think, in March.

(Hearing Transcript, February 9, 2010, at page 66 line 18 to page 67 line 2)

[45] As established in the Commission's case law, distributing promotional materials concerning potential investment opportunities and preparing and disseminating materials describing investment programs are acts in furtherance of trades. In addition, receiving funds from investors is also an act in furtherance of a trade. Mr. Weber received funds through a loan agreement from an individual; these funds were then transferred to Goldbridge and used for trading equities. Profits made by trading equities were then used to make interest payments to this individual. We were provided with evidence, specifically cheque stubs which listed these payments.

[46] The advertisements posted on the internet were solicitations to enter into investment contracts with the Respondents because the funds provided to the Respondents would be used by Mr. Weber to trade in equities and generate guaranteed profits.

[47] In his defence, at one point Mr. Weber argued that he thought his actions with respect to Goldbridge were permitted based on legal advice that he received. During the hearing, Mr. Weber waived solicitor-client privilege and provided us with a letter from his lawyer dated August 11, 2008, which stated that the incorporation of Goldbridge had been completed based on Mr. Weber's instructions. However, we note that this letter addresses the incorporation of Goldbridge, and it does not provide any legal advice about soliciting funds for trading lessons from the public by posting advertisements on the internet.

[48] The Respondents posted the advertisements on the internet prior to ever consulting with a lawyer. In addition, when they did mention to their lawyer that they had posted advertisements to provide trading lessons on the internet, their lawyer informed them that they had to be registered. This was admitted to in Mr. Weber's testimony:

Q. And at that time -- you alluded earlier to advice provided by this lawyer regarding [a] posting that's on [c]raigslist. Did you --

A. No. I took it upon myself to post back in March obviously and I think through implication and his mentioning that it would be okay for us to have other people's money, I took it upon myself to assume that it was okay to make those postings based on the fact that if anybody ever responded, I would structure any type of monies between us in the way that he suggested. He didn't specifically say you can go post stuff on [c]raigslist and solicit monies.

Q. Okay. And that same lawyer, when he found out about the placement of on-line advertisements, specifically told you that you couldn't do that because you are not registered; is that correct?

A. You know, I read that somewhere but I don't remember him ever -- I saw him once. ...

Q. Perhaps I could refresh your memory. If you turn to tab 21 of staff's hearing brief, and if you turn to page 23 and at line 5 of page 23, Commissioner Kennedy asks you: Just to make sure I understand, you are not saying that you didn't place that ad we've been discussing where it refers to the -- and then Mr. Weber says: No, no. I did in fact place those and it wasn't until July, August we hired a lawyer when Shawn and I incorporated. He said you can't. You are not registered. You can't solicit -- you can't solicit public money.

A. Yes. Yeah. ...

...

Q. Sorry, again if you turn to page 35 of that same transcript, perhaps this will refresh your memory further. At line 5 of that page, it's you speaking which -- the start of the narratives begins on page 33 but at page 35, line 5, you state: In July, when the lawyer who incorporated us said you cannot do that. You can possibly do a loan between your friends and family into your business but you cannot offer trading advice investments. You have to be regulated. You have to have licences. Does that refresh your memory at all about the understanding of the legal advice that your lawyer gave you at that time?

A. Yeah, I had the -- yeah, that actually helps out a little bit. I know at that moment I ceased to post. I was in a fury from March until then because our company was going to open in May. So I was posting things and looking around, where would be the best place to put stuff like that, but, yeah, after that conversation, I ceased posting. However, I did not delete the other ones. I actually forgot all about them. No one ever responded until it was brought to light by the Securities Commission to take them off and then I promptly did. ...

(Hearing Transcript, February 9, 2010, at page 88 line 17 to page 91 line 23 [Emphasis Added])

[49] Therefore, we find that Mr. Weber did not receive legal advice about posting advertisements for trading lessons on the internet prior to posting them. We also find that Mr. Weber was informed by his lawyer that he could not post such advertisements on the internet without being registered. As a result, Mr. Weber cannot rely on legal advice as a defence for his conduct in this matter.

There were no Exemptions Available to the Respondents

[50] By letter dated February 19, 2010, Staff provided further submissions with respect to registration exemptions. Staff submits that:

The onus is on the respondent to establish that an exemption applies to registerable conduct. Staff submit that Mr. Weber has not met this onus.

Staff have reviewed the exemptions provided for in Ontario securities law and determined that none apply. The overwhelming majority of the dealer and adviser exemptions are dependent upon the restriction of the offering of the security or investment opportunity to particular circumstances or to a particular subset of investors. The Respondents applied no such restrictions. On the contrary, the advertisements offering trading and advisory services were indiscriminate in their target and were posted on

websites readily accessible by the broad investing public. Where there is no restriction applied to the services offered, no exemption can apply.

[51] We agree with Staff's submissions. As stated above at paragraph 34 of these Reasons, the onus falls on the Respondents to demonstrate that they qualified for registration exemptions. At the hearing no evidence was provided by Mr. Weber regarding any applicable registration exemptions nor did Mr. Weber in his reply to Staff's letter of February 19, 2010 demonstrate that any exemptions were available to the Respondents. Regardless, his conduct was not limited to a specific group of investors (dealt with by exemptions) such as accredited investors or a limited number of close family and friends. By advertising trading services on the internet (which qualifies as acts in furtherance of trades), the Respondents were soliciting potential investors from the public at large. Therefore, we find that there were no applicable registration exemptions available to the Respondents.

iii. Findings

[52] Based on the conduct described above, we find that the Respondents were not registered, engaged in trading and acts in furtherance of trades contrary to subsection 25(1)(a) of the Act and there were no registration exemptions available to them.

2. Did Goldbridge and Mr. Weber breach s. 25(1)(c) of the Act , without any Available Exemptions?

i. The Law

[53] Subsection 25(1)(c) of the Act prohibits acting as an advisor without being registered:

No person or company shall,

...

- (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser,

and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[54] An “advisor” is defined in subsection 1(1) of the Act as “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities.”

[55] In *Costello v. Ontario (Securities Commission)*, [2004] 242 D.L.R. (4th) 301 (Div. Ct.) at para. 62, the court applies a business purpose requirement for advising, but noted that it need not be the only business the person or company in question is engaged in.

[56] The British Columbia Securities Commission set a low threshold for the business purpose requirement in *Re Donas* 1995 LNBCSC 18. The requirement can be met even if the business purpose behind the advising is not the primary business of the person or company (*Jack Maguire and J.K. Maguire & Associates* (1995), 18 O.S.C.B. 4623), or in situations where there is no evidence that investors acted on the advice given (*Re Hrapstead (c.o.b. North American Group)* [1999] 15 B.C.S.C. Weekly Summary 13).

[57] As for the nature of the communication, providing factual information is not sufficient to constitute advising under the Act:

A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuer’s securities, or who distributes or offers an opinion on the investment merits of an issuer or an issuer’s securities, is advising in securities.

(*Re Donas* 1995 LNBCSC 18 at 5 (QL))

[58] Advising requires subjective commentary on the value of the investment.

ii. Discussion

Overview of the Parties’ Positions

[59] Staff takes the position that the Respondents were acting as unregistered investment advisors. Specifically at paragraph 11 of the Statement of Allegations, Staff alleges that:

A further “craigslist” advertisement, posted by Weber in July of 2008, offers “free day trading lessons”. To qualify for the “lessons”, the student must deposit \$300,000 in “the corporate trading account.” Weber’s advertisement states that “a rate can be negotiated” for students with less than \$300,000 to deposit, but that nobody with less than \$150,000 will be accepted as “[b]elow this level of capitalization it is simply not enough to sustain a standard of living. Which it is assumed you are trying to accomplish through these lessons.” As part of the “free” lessons, Weber offered to “trade in real time right beside you and will provide insight and information” into a particular market area.

[60] Mr. Weber took the position that he thought there was nothing wrong with posting trading lesson advertisements on the internet, as discussed earlier.

The Respondents were not Registered Under the Act

[61] As stated above at paragraph 38 of these Reasons, the Respondents were not registered under the Act.

The Respondents Engaged in Advising

[62] The evidence put forth in this matter establishes that that the Respondents engaged in advising. In particular, the Respondents solicited potential clients for trading lessons (through advertisements posted on numerous websites) whereby through these lessons the Respondents could advise individuals how to trade profitably.

[63] For example, in addition to the craigslist advertisement quoted in paragraph 43 of these Reasons, a second craigslist advertisement entitled “NYSE and NASDAQ Day Trading Lessons – Free”, was posted on the internet by Mr. Weber and Goldbridge. This advertisement stated as follows:

I am offering free intraday trading lessons at my office.

No experience is an asset. Not being predispositioned to old market principals [*sic*] and ideologies will assist you. If you do have experience an open mind is required. After our lessons you will eventually develop your own strategies and niches. While you are here, you are here to retain information and experience. Each person will develop differently depending on their personalities. Being able to be in control of your emotions is highly advised. My service offers you a free, safe environment to discover if you have the aptitude and discipline to succeed on World markets without losing a penny.

...

We will not be trading derivatives of any kind! We will be trading NYSE and Nasdaq equities. However the principals [*sic*] learned can be used on options, futures and commodities. I recommend against trading derivatives of any kind. It's hard enough to feel comfortable trading Google at 50x earnings. Meaning it's [*sic*] stock is worth a relative \$10 trading at \$500, let alone trying to find security from a \$516 trillion derivatives market when the value of all the cash and stock on the earth is around \$100 trillion!!

Anyway, two days prior to lessons you will deposit \$300,000 U.S.D. in the corporate trading account. If lessons are to begin on Monday, the funds will be deposited on Thursday prior. If you have less funds a rate

can be negotiated. I will not accept anything less than \$150,000 U.S.D. below this level of capitalization it is simply not enough to sustain a standard of living. Which it is assumed you are trying to accomplish through these lessons. When you set out on your own I will have you earning a conservative \$1,000 U.S.D. on your \$300,000 U.S.D. every day for the rest of your life!

...

I will trade in real time right beside you and will provide insight and information to a market area I am almost certain you had no idea existed.

...

These are personal lessons so spots are limited. I have just finished two weeks with a client and I am open again for a limited time.

...

Make no mistake. 90+ percent of people fail at 'day trading'. While you are under my supervision there will be no losses. I am serious, NO losses. Your capital is preserved even secured against other invested capital.

...

I am also certain I can make you profitable by way of my practical lessons.

[64] Through this advertisement, the Respondents gave advice on the type of securities which should be traded during the lessons (NYSE and NASDAQ equities, and not derivatives). The Respondents also made statements that by taking these lessons, individuals would not lose any money, "...there will be no losses. I am serious, NO losses." We find that such pronouncements provide a false sense of security to potential investors. Promising potential investors that they will not lose encourages misunderstanding of the risks involved with day trading and can mislead investors.

[65] Furthermore, the Respondents also posted an advertisement on the Go Big Network website advertising trading lessons. This advertisement stated:

I've traded NASDAQ and NYSE equities only, no derivatives, for five years now. I began in an Internet cafe [*sic*] in downtown Toronto and now have a pretty large trading desk I pride myself on. I finally incorporated this year and have started taking on others [*sic*] capital. Eg of some clients: \$50,000 at 18%, \$10,000 at 15%. I have the capacity to utilize approximately \$8 million U.S.D. but I am growing slowly. After the \$2

million dollar mark I will begin training others to do exactly what I do. Allowing me the capacity to extend upwards of \$50 million.

I read of thousands of traders who think they can do what I do but individuals like me are few and far between. I'd be willing to meet or have anyone interested to come and sit with me real time during market hours. I don't talk and waste time theorizing over markets. I make money period.

I'm looking for someone out there who is going to recognize what I have and take it to the next level.

Sincerely,

Wes

[66] Through all of these advertisements, the Respondents were actively seeking to find clients who they could teach and advise about trading securities. Mr. Weber was of the view that he could provide appropriate advice through trading lessons to get individuals to be comfortable and in control of their finances.

[67] Although the evidence shows that no one contacted the Respondents with respect to taking trading lessons, we find that through these advertisements, the Respondents held themselves out as being in the business of advising (see: *Costello v. Ontario (Securities Commission)*, *supra*). We also agree with the principle established in *Re Hrapstead (c.o.b. North American Group)*, *supra* that even in situations where there is no evidence that investors acted on the advice given, the Respondents can still be found to have been engaging in the business of advising in securities.

[68] Mr. Weber also argued that he had legal advice that he and Goldbridge were acting legally. For the reasons set out at paragraphs 47 to 49 of these Reasons, we found that Mr. Weber was given legal advice that he had to be registered and that there was a problem with posting trading lesson advertisements on the internet.

There were no Exemptions Available to the Respondents

[69] As stated above at paragraph 34 of these Reasons, the burden is on a respondent to demonstrate that they are eligible for an exemption from registering as an advisor. In the present case, as stated above at paragraph 51 of these Reasons, the Respondents failed to demonstrate the availability of any exemptions under the Act or securities Rules.

iii. Findings

[70] Based on the conduct described above, we find that the Respondents were not registered, they engaged in the business of advising contrary to subsection 25(1)(c) of the Act and there were no registration exemptions available to them.

3. Did Mr. Weber make false and misleading statements to the Commission in breach of s. 122(1)(a) of the Act?

i. The Law

[71] Subsection 122(1)(a) prohibits individuals and companies from making misleading, incorrect or false statements in connection with any material, evidence or information submitted to the Commission, Executive Director or agent of the Commission. Subsection 122(1)(a) states:

122(1) Offences, general – Every person or company that,

- (a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make that statement not misleading

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or both.

[72] The importance of providing full and accurate information to the Commission was emphasized by the Ontario Court of Appeal in *Wilder et al v. Ontario Securities Commission*, (2001) 53 O.R. (3d) 519 (C.A.) at paragraph 22:

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

ii. Discussion

Overview of the Parties' Positions

[73] Staff alleges that Mr. Weber misled the Commission during (1) the Commission's case assessment stage of the investigation in June 2007; and (2) a temporary cease trade order hearing held on October 28, 2008. Staff takes the position that Mr. Weber advised

Staff that he did not trade or hold securities and that no investors had invested funds with him. Staff submits that its investigation revealed that these statements were false.

[74] Staff submits that it is imperative that individuals do not mislead the Commission, and Staff takes the position at paragraph 46 of their Memorandum of Law that:

Evasion, obfuscation, and untruth in responding to Staff inquiries serves to hinder Staff's performance of their responsibilities to monitor and enforce compliance with Ontario securities law; such conduct is an obstacle to effective regulation of the capital markets.

[75] With respect to misleading the Commission in June 2007, Staff alleges at paragraph 15 of the Statement of Allegations that:

In a May 2007 article in the Report on Business, Weber claimed to be trading "\$1.4 million in my account, mainly from investors". In June 2007, Staff questioned Weber about his statements and Weber claimed that the statements were not true and that he had made the story up. A few days afterward, Weber wrote to Staff, stating, "I have no nature of activity with respect to trading", "there are no individuals who have invested money with me", and "I do not hold any interest in any products/securities".

[76] With respect to the misleading statements made during the October 28, 2008 hearing, Staff alleges at paragraph 14 of the Statement of Allegations that:

In making submissions to a panel of Commissioners during a hearing to determine whether to continue the Temporary Cease Trade Order, Weber made the following materially misleading statements:

- a. that the TD Ameritrade Applications Weber submitted were in the names of people he knew and that he had simply included false countries of residence in the applications, when in fact several of the names Weber used were his own fabrications and one was the name of his dog; and,
- b. that the TD Ameritrade Inc. account Weber had used from 2003 to June 2008 was in the name of Ping Long, whom Weber stated lived in China and was the brother of his then girlfriend, when in fact the name "Ping Long" was Weber's fabrication and there was no such person.

[77] Further at paragraph 16 of the Statement of Allegations, Staff alleges that:

On October 28, 2008, in making submissions during a hearing to determine whether to extend a Temporary Cease Trade Order, Weber admitted to the panel that he was in fact trading during the time of the publication of the Report on Business article and that he had been trading \$1.4 million on behalf of his then girlfriend and others during 2006.

[78] Mr. Weber takes the position that he never had the intention to deceive anyone (Hearing Transcript, February 12, 2010 at page 37 lines 12 to 14). However, during his testimony and submissions, Mr. Weber provided vague answers and interpretations as to why he made certain statements to Staff or the Commission during the October 28, 2009 temporary cease trade order hearing.

Mr. Weber Misled Commission Staff

[79] In a letter dated May 29, 2007, Staff requested information relating to Mr. Weber's purported trading activities described in an article entitled "Faking It", which was published in the *Report on Business* in May 2007. Specifically, Staff's letter stated:

Staff at the Ontario Securities Commission (the "Commission") was recently made aware of an article from the May 2007 issue of Report on Business magazine entitled "Faking It". Of particular interest to the Commission Staff is following quotation, taken from the article: "I'm still trading – I have about \$1.4 million in my account, mainly from investors." In light of this statement, Staff are concerned that you may be engaged in trading and advising activities involving securities, activities that normally require registration with the Commission. A search of our records does not find you registered with the Commission. We are now making inquiries regarding your actions in the market, and your business arrangements with your investors, in order to make a determination of whether there is, in fact, a need for registration.

...

In order for us to ensure that you are not conducting business in a manner that requires registration under the Act, we require that you respond to us with the following information:

- 1) The nature of your activities, with regards to trading and advising in securities;
- 2) The names and contact information of all individuals or corporations that have invested money with/through you, the amount of money invested by each, and the specific products/securities purchased or sold;

- 3) Indicate whether you personally hold any interest in the products/securities purchased or sold on behalf of your clients;
- 4) A description of the relationships (business or otherwise) between yourself and those listed in response to item 2) listed above;
- 5) A list of any regulatory bodies you may have been registered with in the past;
- 6) The brokerage(s) and account number(s) used to execute trades; and
- 7) An explanation of why you believe that you, and your activities, do not require to be registered with the Commission.

Please respond to this letter, with the requested information, as soon as possible, but not later than [sic] June 12, 2007.

[80] On June 1, 2007, Mr. Weber called the Commission to respond to Staff's letter. According to the "Record of Conversation" kept by Staff, Mr. Weber provided Staff with the following information:

Weber claims to have fabricated story that appeared in the article. Claims to not be involved in trading in any regard, and only told the story in order to raise his own publicity.

[81] In addition, Mr. Weber wrote a letter to Staff dated June 19, 2007, to respond to Staff's letter of May 29, 2007, which stated:

As per a letter received on May 29, 2007 from the Ontario Securities Commission.

- 1) I have no nature of activity with respect to trading.
- 2) There are no individuals that have invested money with me.
- 3) I do not hold any interest in any products/securities.
- 4) No relationships.
- 5) N/A
- 6) N/A
- 7) I do not hold the belief that a person exercising activities set out in your letter not be required to be registered with the Commission.

[82] Mr. Weber clearly made statements to Staff in June 2007 that he was not involved in any trading or advising activities.

[83] However, the evidence in this matter demonstrates that Mr. Weber was actually involved in trading and advising activities. At the hearing Mr. Weber admitted that he lied to Commission Staff about this:

I was most certainly trading approximately \$1.4 million in Ms. [redacted] account at the time and I did in fact admit -- I admit that I did mislead the Commission by saying I do not.

(Hearing Transcript, February 9, 2010, at page 18 lines 5 to 8)

[84] Mr. Weber explained that he told this lie out of fear, because he was trading his girlfriend's money and if he told the truth then his girlfriend would prevent him from trading in her account and allowing him to live with her:

I put off responding to the OSC hoping it would go away. It did not of course. I explained to her that I must respond and the position I was in was that I was given a choice: tell them that it was her account and her monies, and she will change the password and I will be jobless, or continue earning \$60,000 a month nice and quietly given the privilege she was affording to me. My choice was pretty clear. I sent a letter to OSC staff stating that I did not trade for fear I would -- I don't even know where I would even begin picking up the pieces at the time.

(Hearing Transcript, February 9, 2010, at page 19 line 25 to page 20 line 10)

[85] It is clear from the admissions in Mr. Weber's testimony that, during the case assessment stage of the investigation, Mr. Weber lied about his trading activities to Staff.

Mr. Weber Misled a Commission Panel

[86] At the temporary cease trade order hearing in this matter on October 28, 2008, Mr. Weber informed the Commission Panel that when he opened on-line brokerage accounts at TD Ameritrade he used the names of people that he knew and that he had simply included false countries of residence in the applications. Specifically he stated:

I said the only thing I've misrepresented are people's addresses. If I put Canada, it doesn't allow me the option of Canada, so I pick like Bahamas or Barbados or whatever. But all those people and the birthdays and the whole bit are people I actually know.

(Hearing Transcript, October 28, 2008, at page 32 lines 2 to 7)

They are people that I know and then I just filled in the information and I picked an address in Timbuktu. Actually, a couple of the accounts they shut off were actual real accounts.

(Hearing Transcript, October 28, 2008, at page 32 lines 17 to 20)

[87] However, during his compelled examination on March 4, 2009, Mr. Weber gave a different explanation. He told Staff that some of the names he used to open the TD Ameritrade accounts were his friends and family, but others were his own fabrication and one was the name of his dog.

[88] When asked about fabricating names to open accounts at the hearing, Mr. Weber gave the following answer in his testimony:

They were all fabrications, some of them -- the majority of -- 90 percent of them were people I knew, maybe a different spelling, [...]

(Hearing Transcript, February 9, 2010, at page 45 lines 1 to 3)

[89] Mr. Weber did not give consistent and truthful answers to Staff and the Commission during the compelled examination and temporary cease trade order hearing. As a result, we find that Mr. Weber misled the Commission.

iii. Findings

[90] Based on the conduct described above, we find that Mr. Weber misled:

- (i) Staff of the Commission during the case assessment stage of the investigation; and
- (ii) the Commission Panel during the October 28, 2008 temporary cease trade order hearing.

4. Did Goldbridge and Mr. Weber act contrary to the public interest?

i. The Law

[91] As set out in section 1.1 of the Act, it is the Commission's mandate to:

- (a) provide protection to investors from unfair, improper or fraudulent practices; and
- (b) foster fair and efficient capital markets and confidence in those capital markets.

[92] In pursuing the purposes of the Act, the Commission must consider fundamental principles as stated in section 2.1 of the Act. The relevant parts of section 2.1 of the Act are as follows:

- i. requirements for timely, accurate and efficient disclosure of information;
- ii. restrictions on fraudulent and unfair market practices and procedures; and
- iii. requirements for the maintenance of high standards of fairness and business conduct to ensure honest and responsible conduct by market participants.

[93] Staff alleges that the Respondents engaged in conduct contrary to the public interest by: (1) engaging in unregistered trading and advising contrary to sections 25(1)(a) and 25(1)(c) of the Act; (2) intentionally communicating false information to financial institutions; and (3) breaching the Commission order dated October 28, 2008.

ii. Discussion

a. Unregistered Trading and Advising

[94] As described above, Mr. Weber and Goldbridge engaged in unregistered trading and advising contrary to sections 25(1)(a) and 25(1)(c) of the Act without the availability of any exemptions.

[95] This is serious conduct that is contrary to the public interest. The registration requirements in the Act serve an important role to protect investors and ensure that the public deals with individuals who have met the necessary proficiency requirements, good character and ethical standards. The Respondents should have taken the necessary steps to ensure that they had the proper registration in place and that their activities were in compliance with securities law. For the reasons set out at paragraphs 47 to 49 of these Reasons, we found that Mr. Weber was aware that he had to be registered and that there was a problem with posting trading lesson advertisements on the internet. The Respondents should have ceased their illegal activities and sought registration. That they did not, compounds their misconduct, which was clearly contrary to the public interest.

b. Intentionally communicating false information to financial institutions for the purpose of obtaining trading accounts in names other than that of the Respondents

Overview of the Parties' Positions

[96] In paragraphs 12 and 13 of the Statement of Allegations, Staff alleges that:

In the period up to and including August, 2008, Weber attempted to open as many as 40 separate online trading accounts at TD Ameritrade Inc. using false names and the names of people other than himself (the "TD Ameritrade Applications"). When the names pertained to real people, with few exceptions, Weber used them without permission. The applications

used different email addresses and contact information, as well as mailing addresses including the Ukraine, the Bahamas, Michigan, Hong Kong and the Barbados.

Weber provided the false names and addresses to TD Ameritrade Inc. for the purpose of gaining access to the trading information resources of TD Ameritrade Inc. without the permission of TD Ameritrade Inc.

[97] During the hearing, Mr. Weber admitted in his testimony that he opened accounts at TD Ameritrade using names other than his own, and false names. The details of this are discussed further below. However, Mr. Weber took the position that he only did this in order to have access to more TD Ameritrade trading tools and screens and he also explained that he had "... no intention of funding [the accounts] or committing fraud of any sort or harm [to] anyone" (Hearing Transcript, February 9, 2010, at page 45, lines 10 to 11). Mr. Weber also submitted that it was very easy to open up an on-line brokerage trading account, anyone could do it and that at the time, he did not think there was anything wrong with opening multiple accounts in the names of other people and fictitious people. Specifically, Mr. Weber also argued that there was no law against opening multiple accounts under false names, however, he did admit it was an immoral practice:

I wanted to submit that there is no law to prevent someone from opening up an e-mail account or any type of account that's -- that is an open public portal on the Internet. ... I do agree it is somewhat immoral but at the time, there were no laws that TD Ameritrade could, in my opinion, go out on to penalize me.

(Hearing Transcript, February 9, 2010, at page 48, lines 13 to 21)

The Respondents Opened Accounts at a Financial Institution Using False Information

[98] We were provided in evidence with a letter dated February 12, 2009, from TD Ameritrade to the U.S. Securities and Exchange Commission. This letter provided details about trading accounts that Mr. Weber was attempting to open using names other than his own.

[99] During the hearing in this matter, Mr. Weber explained that:

bank accounts were opened, I think, on May 17th, 2008, and by the end of the month, the money had been transferred and in anticipation of the opening of our account, I opened up four or five other accounts, my mother's name, my name with two Bs, a few accounts such that I'd be able to be afforded the opportunity to receive these charts when we were ready.

(Hearing Transcript, February 9, 2010, at page 42 lines 1 to 7)

So up until that point, I opened up these accounts and we started trading. It was in July of 2008, I think just right after we had just opened, and I woke up one morning and I think it's been quoted in staff's hearing brief that I panicked, I logged into the account and it was closed and I logged into another one, and it was closed and I logged into another one -- all of a sudden, the market is going to open and I'm not sure if I had positions in at the time. Usually I did not but sometimes I held a position overnight. I just panicked. So I got on the computer. I started opening up, you know, eight accounts, Wes Weber, triple Bs. They are all listed. Sorry, I don't have to go so fast. They are actually all listed on tab 19, list of names and account numbers for TD Ameritrade accounts. And within those couple of days is where these accounts popped up. I would use names that I was familiar with because I had to remember them every single day to log in. So if I just made up complete fabrications, I wouldn't remember what the name was or acronyms or whatever, so I would just have an order list on my desk on a sticky note whereby I would log in number one, Steve Levesque; number two, Sherry Weber, my sister; number three, Wes Weber, and I could remember these names.

(Hearing Transcript, February 9, 2010, at page 43 line 12 to page 44 line 13)

They were all fabrications, some of them -- the majority of -- 90 percent of them were people I knew, maybe a different spelling, but in those few seconds before market open, I simply just did what I was used to doing that I did not think was illegal to open up these accounts. As for misleading the Commission, maybe an understanding or a different perception of what I said, I'm not sure, but the fact is that I did open these accounts, I had no intention of funding them or committing fraud of any sort or harm anyone. It was to receive these graphs and for five years, that had -- that had been what I was doing. That was what I was doing up to that point

(Hearing Transcript, February 9, 2010, at page 45 lines 1 to 14)

Q. [...]And when going through the account opening process, you would include false countries of residence when you would open these accounts; is that correct?

A. That's correct.

Q. And you stated in your previous testimony that you had conversations with TD Ameritrade representatives over the phone; is that correct?

A. Yes, that's correct.

Q. And during these conversations, you stated that you assumed the identity of Mr. James Cook.

A. To my recollection, he had called one time asking for Mr. Cook and I said, yes, this is Mr. Cook.

(Hearing Transcript, February 9, 2010, at page 71 line 23 to page 72 line 13)

[100] Clearly Mr. Weber opened numerous accounts at TD Ameritrade using false information.

[101] During the hearing, Mr. Weber requested to demonstrate to the Panel the process of how to open an on-line brokerage account at TD Ameritrade. Mr. Weber submitted that this was relevant because he wanted to show how easy it is for anyone to open an account. In our view, it was not appropriate for Mr. Weber to actually open a new on-line brokerage account during the hearing to demonstrate this process. Instead, we accepted the explanation in Mr. Weber's testimony as to how easy it is to open an account on-line.

[102] We accept that Mr. Weber and Goldbridge never actually invested any money in the accounts that were opened using false information. There is no evidence that there was ever any harm to investors as a result of this conduct. The Respondents only used the extra accounts for the purpose of obtaining extra trading graph tools. Regardless of the fact that it might be "easy" to open on-line accounts, it is inappropriate and unethical that Mr. Weber lied and created accounts using names of other individuals and fictitious names. However, we are not prepared to use the Commission's public interest jurisdiction to find against the Respondents specifically in regard to the opening of fictitious accounts. Mr. Weber's actions have been considered already in our finding that he mislead the Commission contrary to subsection 122(1)(a) of the Act. In addition, we accept that the accounts were opened to access trade graphing tools without intent to fund them or harm investors. While reprehensible, we consider the facts in this case to make this more of a matter between Mr. Weber and TD Ameritrade than a matter to use the Commission's public interest jurisdiction.

c. Breaching the Commission Order Dated October 28, 2008

The Terms of the Commission Order Dated October 28, 2008

[103] The first *ex parte* temporary cease trade order in this matter was issued on October 10, 2008, pursuant to subsection 127(5) of the Act, and it provided, *inter alia*, that pursuant to clause 2 of subsection 127(1) of the Act all trading in securities by Goldbridge, Weber, and Lesperance shall cease, and pursuant to clause 3 of subsection 127(1) of the Act the exemptions contained in Ontario securities law do not apply to Goldbridge, Weber and Lesperance.

[104] On October 28, 2008, a hearing was held before the Commission to consider whether to continue the temporary cease trade order. After considering submissions from Staff, Mr. Weber and Mr. Lesperance, the Commission issued an order dated October 28, 2008, extending the temporary cease trade order and provided a carve-out to permit Goldbridge to trade. The content of the October 28, 2008 order that is relevant to this matter is set out below:

IT IS ORDERED pursuant to clause 2 of subsection 127(1) of the Act that all trading in securities by Goldbridge, Weber and Lesperance shall cease, subject to the exception below;

IT IS FURTHER ORDERED notwithstanding the foregoing order, Goldbridge may trade solely as principal in one account (“the account”) in accordance with the following conditions:

1. the account shall be at E*TRADE Canada (“E*Trade”);
2. the account shall be in the name of Goldbridge Financial Inc.;
3. the account shall contain only funds belonging to Goldbridge contributed by Weber or Lesperance, and shall not be used directly or indirectly to trade on behalf of any other person or company;
4. Goldbridge shall provide Staff with particulars of the account, including the account number, within 7 days of the date of this Order;
5. Goldbridge shall instruct E*Trade to provide copies of all trade confirmation notices with respect to the account directly to Staff at the same time that such notices are provided to Goldbridge;
6. securities traded in the account shall consist solely of securities listed or quoted on the New York Stock Exchange (“NYSE”) or the National Association of Securities Dealers Automated Quotations (“NASDAQ”); and
7. the Respondents shall immediately take steps to remove from the internet all advertising and postings on behalf of the Respondents offering to provide investment services and lessons in day trading;

...

IT IS FURTHER ORDERED that this Order shall expire at the close of business on January 20, 2009, unless it is extended by the Commission, and this matter shall be adjourned to January 19, 2009, at 10:00 a.m.

[105] At the hearing on October 28, 2008, the Commission Panel also explained to the Respondents what the terms of this order meant:

CHAIR: [...] But what we would propose to do is issue a Cease Trade Order from today against all three parties but with an

exception allowing the corporate entity here to trade out of the one E-trade account that has been identified to us. That trading would have to be by the corporate entity as principal trading only through the NYSE and NASDAQ. Trading confirmations will be copied to staff, and staff is entitled at any time to apply for a variation of that order depending on what their views are at the time. And so, Mr. Weber, that means, for our purposes, that account only is authorized to trade.

MR. WEBER: I understand.

CHAIR: You cannot solicit third parties for monies. You can't solicit friends or family to contribute money to that account.

MR WEBER: Okay.

(Hearing Transcript, October 28, 2008 at page 58 lines 8 to 24)

[106] The October 28, 2008 order was subsequently extended by the Commission on January 19, March 20, May 1, and June 29, 2009, and on July 29, 2009, the Commission extended the order until the completion of the Hearing on the Merits or until further order of the Commission.

Overview of the Parties' Positions

[107] Staff takes the position that the Respondents' conduct in this matter breached the Commission Order dated October 28, 2008. Specifically, at paragraphs 18 and 19 of the Statement of Allegations, Staff alleges that:

In December 2008, while the Temporary Order remained in effect, Goldbridge accepted a loan of \$10,000 in cash from [redacted], which was placed in Goldbridge's account to facilitate trading in securities, in breach of the Temporary Order. Weber signed the loan agreement on behalf of Goldbridge. Lesperance, as Treasurer and a Director of Goldbridge, authorized, permitted or acquiesced in the loan agreement transaction and the acceptance and disposition of the funds provided pursuant to that transaction.

In December 2008, Weber opened an online trading account at E*Trade Canada in his own name, contrary to the terms of the October 28, 2008, Temporary Cease Trade Order.

[108] In his closing submissions, Mr. Weber acknowledged that their conduct breached the October 28, 2008 cease trade order and provided the following explanation:

...when I opened an account at E*Trade when it was strictly prohibited to do so, I just submit that I really did not understand that I personally -- my livelihood was threatened. That was my only source of income. I figured, well, if Goldbridge doesn't survive or whatever we've done wrong here, I have to at least be able to trade my own monies. So I went and opened an account. The instant I found out that that was not right, I closed it right away. There were maybe five or six trades, 10 trades that occurred in that account before the Christmas holidays and that account was instantly closed when I realized I'd done wrongdoing. Again, I was forthwith [sic] with my lawyer in mentioning that to him and getting his advice as to tell counsel.

Like I mentioned, this is overwhelming to me. I'm sitting here, standing here trying to defend my privilege to trade. I hope that the mitigating circumstances I've mentioned might offer me that privilege in the future.

(Hearing Transcript, February 12, 2010 at page 44 line 22 to page 45 line 15)

The Respondents Breached the Temporary Cease Trade Order

[109] The terms of the October 28, 2008 temporary cease trade order were such that it permitted the Respondents to conduct trading in limited circumstances. Namely, they were only able to trade using money contributed personally by Mr. Weber and Mr. Lesperance, and they were only able to conduct trading activities in a brokerage account at E*Trade in the name of Goldbridge.

[110] The evidence presented at the hearing demonstrates that the Respondents engaged in conduct that went beyond the scope of trading permitted by the cease trade order.

[111] First of all, Mr. Weber did not trade with money contributed personally by himself or Mr. Lesperance. Mr. Weber accepted money from a third party for the purpose of trading. While the temporary cease trade order was still in effect, Goldbridge accepted a loan of \$10,000 from an acquaintance of Mr. Weber for the purpose of using these funds in Goldbridge's E*Trade account to facilitate the trading of equities on the NASDAQ and NYSE. Mr. Weber signed the loan agreement dated December 16, 2008 on behalf of Goldbridge (although during a compelled examination with Staff on March 4, 2009, Mr. Weber remarked that the loan agreement was actually signed on December 25, 2008) in direct contravention of the October 28, 2008 temporary cease trade order.

[112] In addition, Mr. Weber also breached the October 28, 2008 temporary cease trade order in December 2008 by opening an on-line trading margin account at E*Trade in his name and trading in this new account. In addition to Mr. Weber's admissions, we were provided with the following evidence to support this: (1) Mr. Weber's E*Trade New Client Application Form, signed by him on December 8, 2008; and (2) Mr. Weber's E*Trade account statement for this new account for the period of December 1 to December 31, 2008, which show that Mr. Weber actively traded in this account.

[113] Mr. Weber and Goldbridge engaged in conduct that was not permitted by the October 28, 2008 temporary cease trade order. With respect to Mr. Weber's submission regarding him being able to trade in the future, this is something that can be addressed during the sanctions and costs hearing in this matter. We have issued a temporary order along with these reasons to extend the current temporary order until the issuance of a decision and order in a sanctions and costs hearing in this matter.

iii. Findings

[114] Based on the conduct described above, we find that Goldbridge and Mr. Weber engaged in conduct contrary to the public interest by:

- (i) engaging in unregistered trading and advising without the availability of exemptions in breach of sections 25(1)(a) and 25(1)(c) of the Act;
- (ii) breaching the Commission order dated October 28, 2008.

D. CONCLUSION

[115] For the reasons stated above we find that:

- (a) the Respondents breached subsection 25(1)(a) of the Act;
- (b) the Respondents breached subsection 25(1)(c) of the Act;
- (c) there were no exemptions available to the Respondents;
- (d) Mr. Weber breached subsection 122(1)(a) of the Act; and
- (e) The Respondents engaged in conduct contrary to the public interest by:
 - (i) engaging in unregistered trading and advising without out the availability of exemptions in breach of sections 25(1)(a) and 25(1)(c) of the Act; and
 - (ii) breaching the Commission order dated October 28, 2008.

[116] The parties are directed to contact the Office of the Secretary within the next 10 days to set a date for a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto this 21st day of January, 2011.

"David L. Knight"

David L. Knight, FCA

"Margot C. Howard"

Margot C. Howard, CFA