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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 ON SANCTIONS AND COSTS

Hearing:	May 13, 2011	
Decision:	October 26, 2011	
Panel:	Mary G. Condon	- 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 ON SANCTIONS AND COSTS

I. History of the Proceeding

[1] This was a bifurcated hearing before the Ontario Securities Commission (the "Commission") pursuant to 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 to make an order with respect to sanctions and costs against Mr. Wesley Wayne Weber (Mr. Weber) and Goldbridge Financial Inc. ("Goldbridge") (collectively, the "Respondents").

[2] Prior to the hearing on the merits, Mr. Shawn C. Lesperance ("Mr. Lesperance"), who was also named as a respondent in this matter, settled with the Commission (*Re Goldbridge Financial Inc.* (2009), 32 O.S.C.B. 7387 (oral reasons for settlement with respect to Lesperance)).

[3] The hearing on the merits in this matter took place on February 8, 9 and 12, 2010. During the hearing on the merits, Mr. Weber represented himself and no one appeared for Goldbridge. Evidence at the hearing established that Goldbridge was voluntarily dissolved on September 23, 2009.

[4] The decision on the merits was issued on January 21, 2011 (*Re Goldbridge Financial Inc. et al* (2011), 34 O.S.C.B. 1064 (the "Merits Decision")).

[5] Following the release of the Merits Decision, we held a separate hearing on May 13, 2011, to consider sanctions and costs (the "Sanctions and Costs Hearing"). Staff of the Commission ("Staff") appeared at the Sanctions and Costs Hearing and Mr. Weber represented himself. No one appeared on behalf of Goldbridge.

[6] Staff provided written submissions dated May 2, 2011, along with a Book of Authorities, a Sanctions Hearing Brief, a Bill of Costs, and an Affidavit of Service. Mr. Weber did not provide any written materials at the Sanctions and Costs Hearing.

[7] Staff called one witness at the Sanctions and Costs Hearing. This was Mr. Allister Field, an investigator in the Commission's Enforcement Branch, who provided testimony relating to Mr. Weber's prior criminal record. Mr. Weber did not call any witnesses or provide any evidence at the Sanctions and Costs Hearing.

[8] These are our Reasons and Decision as to the appropriate sanctions and costs to order against the Respondents.

II. The Merits Decision

[9] The Merits Decision addressed the following issues:

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?

(Merits Decision, *supra* at para. 17)

[10] Upon reviewing all the evidence, the applicable law and the submissions made, the Panel concluded in the Merits Decision 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 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.

(Merits Decision, *supra* at para. 115)

[11] It is this conduct that we must consider when determining the appropriate sanctions to impose in this matter.

III. Sanctions and Costs Requested

1. Staff's Position

[12] Staff has requested that the following order be made against the Respondents:

Mr. Weber

(a) pursuant to clause 2 of subsection 127(1) of the Act, Weber cease trading, directly or indirectly, in securities for a period of 25 years except that Weber may trade securities for the account of his registered retirement savings plans, registered retirement income plans, registered education savings plans or tax-free savings accounts (as defined in the Income Tax Act (Canada)) in which he or his spouse have sole legal and beneficial ownership, provided that:

(i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

(ii) Weber does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and

(iii) Weber carry out any permitted trading through a registered dealer and through trading accounts opened in his name only (and he must close any trading accounts that are not in his name only); and

(iv) Weber must give a copy of the Decision, the Sanctions and Costs Decision and the Sanctions and Costs Order to any registered dealer through which he trades in advance of any trading;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, Weber is prohibited for a period of 25 years from acquiring any securities, except that he is permitted to acquire securities to allow the trading in securities permitted by and in accordance with paragraph (a) of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions in Ontario securities law do not apply to Weber for a period of 25 years;

(d) pursuant to clause 6 of subsection 127(1) of the Act, that Weber be reprimanded by the Commission;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Weber resign any position he holds or may hold as an officer or director of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, that Weber be prohibited permanently from becoming or acting as an officer or director of any issuer;

(g) pursuant to clause 9 of subsection 127(1) of the Act, that Weber be required to pay an administrative penalty of $25,000 for failure to comply with Ontario securities law;

(h) to make an order pursuant to section 127.1 of the Act that Weber, jointly and severally with Goldbridge, pay the costs of Staff's investigation and the costs of, or related to, this proceeding, in the amount of $45,278.75; and

(i) to make such other order or orders as the Commission considers appropriate.

Goldbridge

(a) pursuant to clause 2 of section 127(1) of the Act, Goldbridge cease trading, directly or indirectly, in securities permanently;

(b) pursuant to section 127(1) of clause 2.1 of the Act, the acquisition of any securities by Goldbridge be prohibited permanently;

(c) pursuant to clause 3 of section 127(1) of the Act, all exemptions contained in Ontario securities law do not apply permanently to Goldbridge;

(d) to make an order pursuant to section 127.1 of the Act that Goldbridge, jointly and severally with Weber, pay the costs of Staff's investigation and the costs of, or related to, this proceeding, in the amount of $45,278.75; and

(e) to make such other orders as the Commission deems appropriate.

[13] In Staff's submission, the sanctions requested are appropriate in light of the conduct of the Respondents and take into account the multiple breaches of the Act that occurred. In addition, Staff submits that their proposed sanctions will both deter the Respondents as well as like-minded individuals from involvement in similar conduct in the future.

2. The Respondents' Position

[14] Mr. Weber takes the position that the sanctions and costs requested by Staff are too severe and he submits that the Commission should not restrict his ability to trade in securities to earn a living. To summarize, Mr. Weber submits lesser sanctions should be imposed on him because:

- he has shown remorse and respect for the Commission throughout this proceeding;

- he admitted to the wrongdoing that occurred and acknowledges the seriousness of the allegations proven against him;

- he cooperated with Staff and ceased trading when it was brought to his attention that he was in breach of a cease trade order of the Commission;

- the sanctions requested by Staff would severely impact his livelihood, and currently his ability to earn income and find work has been affected;

- he does not have the ability to pay sanctions and costs in the magnitude requested by Staff;

- Goldbridge did not have a large market capitalization and therefore the conduct in this matter did not have a large impact on Ontario's capital markets; and

- Staff did not succeed in proving the public interest allegation that Mr. Weber intentionally communicated false information to financial institutions by providing names other than those of the Respondents in order to gain access to numerous trading charts by opening accounts.

[15] Mr. Weber also submits that his previous criminal record history should be disregarded as that conduct took place in 2001 and he has already served his sentence with respect to that conduct.

[16] Mr. Weber submits that he and Mr. Lesperance were equally involved in the conduct in this matter and as a result sanctions similar to those imposed on Mr. Lesperance should be imposed on him.

3. The Lesperance Settlement

[17] As mentioned above, Mr. Lesperance entered into a settlement agreement with the Commission. In our view, any sanctions imposed on the Respondents should be proportionate and take into consideration the sanctions imposed on the settling respondent in this matter. The following sanctions and costs were ordered against Mr. Lesperance:

- pursuant to s. 127(1)2 of the Act, Lesperance is prohibited for 3 years from trading in securities, subject to the exception that he may continue to trade on his own behalf exclusively in a registered retirement savings plan account;

- pursuant to s. 127(1)8 of the Act, Lesperance is prohibited for 3 years from becoming or acting as a director or officer of any issuer; and,

- pursuant to s. 127.1(1) of the Act, Lesperance is to pay costs of the investigation of this matter to the Commission in the amount of $1000.00 within one week of the date of the order.

IV. The Law on Sanctions

[18] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("*Asbestos*"), the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.
>
> …
>
> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation.
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> (*Asbestos, supra* at paras. 43 and 45 [emphasis added])

[19] In determining the appropriate sanctions to order in this matter, we must keep in mind the Commission's preventive and protective mandate set out in section 1.1 of the

Act, and we must also consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[20] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit gained or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective;

(l) the size of any financial sanctions or voluntary payment when considering other factors.

(*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[21] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

[22] Deterrence is another important factor that the Commission could consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*"), the Supreme Court of Canada explained that deterrence is "…an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). Further, the Supreme Court emphasized that deterrence may be specific to the respondent or general to deter the public at large:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra* at para. 52)

[23] As stated above, the sanctions imposed must be protective and preventive. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> … the role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
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> (*Mithras*, *supra* at 1610 and 1611)

V. Appropriate Sanctions in this Case

1. Specific Sanctioning Factors Applicable in this Matter

[24] Overall, the sanctions we impose must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future.

[25] In considering the sanctioning factors set out above in the case law, we find the following specific factors and circumstances to be relevant in this matter:

(a) The seriousness of the allegations: The Respondents breached a number of key provisions of the Act. When Respondents breach multiple sections of the Act, the Commission may consider the seriousness of the breaches both individually and collectively.

In particular, the Respondents engaged in unregistered trading and advising. As explained in paragraph 95 of the Merits Decision:

> 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. … 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.

In addition, Mr. Weber misled Commission Staff during the case assessment stage of the investigation (Merits Decision, *supra* at para. 85) and misled the Commission during a compelled examination and cease trade order hearing (Merits Decision, *supra* at para. 89). Misleading the Commission is a serious violation of the Act. In particular, the Commission has held that the act of misleading Staff is a particularly egregious violation of the public interest (*Re Koonar* (2002), 25 O.S.C.B. 2691 at 2692).

Furthermore, the Respondents breached the Commission's October 28, 2008 temporary cease trade order (Merits Decision, *supra* at paras. 109 to 113). Breaches of Commission orders show disregard for the rule of law and the Commission, and consequently undermine public confidence in the fair functioning of the capital markets. Such a breach is considered an aggravating factor when determining appropriate sanctions. As established in *Re Duic* (2008), 31 O.S.C.B. 9541 at para. 50:

> In our view, the breach of any Commission order is a matter of the utmost seriousness. The Commission's orders must be adhered to by the persons to whom they apply. Public confidence in the fair functioning of the capital markets is related directly to the public's perception of the effectiveness of the Commission's enforcement efforts. Accordingly, we agree with Staff that significant consequences must follow any breach of the Commission's orders.

(b) Whether the Respondents' violations are isolated or recurrent: At the Sanctions and Costs Hearing Staff provided evidence with respect to Mr. Weber's past criminal history. Staff's investigator did a Canadian Police Information Centre check and provided an up-to-date criminal record for Mr. Weber. Staff also referred us to a transcript of a court proceeding on

October 23, 2001 before Justice DeMarco of the Ontario Court of Justice in the matter of *R. v. Wesley Wayne Weber*, [2001] O.J. No. 6103 which states at page 34 line 16 to page 35 line 6:

> Mr. Weber, you, in regard to the counterfeiting currency offence, you were engaged in a highly sophisticated activity which was abundantly remunerative. You were committing those acts at a time when you were serving a sentence for a related offence in the community and while you were on bail for a related offence. … but because of your guilty plea and your willingness to plead guilty and because also of the fact that you have spent approximately two months in custody, I am of the view that a sentence in the range of five years, while somewhat lenient, is within an acceptable range and accordingly, on count one on information number 01-9489, I sentence you to a term of five years in the penitentiary.

Staff submits that Mr. Weber's past criminal history is relevant because it demonstrates recidivist behaviour. Staff explained that the:

> … respondent's past conduct, when relevant, can be looked at in considering whether they are a future risk to the integrity of the capital markets. Staff submits that Mr. Weber's past criminal conduct is relevant to these proceedings.
>
> Staff's evidence is that Mr. Weber has an extensive criminal record dating from 1993. While some of these offences are not financial in nature, his record is also rife with instances where he failed to comply with judicial orders or with undertakings.
>
> In addition, his past convictions with respect to currency counterfeiting indicate that Mr. Weber is able to carry out highly complex, intricate schemes of a financial nature involving deception and fraudulent conduct which Staff submit is an aggravating factor in considering whether his removal from the capital markets is warranted for a lengthy period of time. Staff submit that it is appropriate in these circumstances.
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> (Hearing Transcript, May 13, 2011 at page 28 line 14 to page 29 line 8)

Mr. Weber takes issue with his past criminal history being raised in this matter. He takes the position that he has served his punishment for those past crimes and that at the time he committed those crimes he was less mature. According to Mr. Weber:

> I paid a severe price for those indiscretions. …

> We're in 2011. Ten years have gone by.
>
> (Hearing Transcript, May 13, 2011 at page 14 line 25 to page 15 line 3)

We recognize that Mr. Weber has served time for his past criminal conduct, but there is a pattern of recidivist behaviour. In particular, Mr. Weber's past conduct (currency counterfeiting) and conduct in this matter (unregistered trading and advising) both involve conduct of a financial nature. As such, we find that it is very important in this matter to impose sanctions that will achieve specific deterrence.

(c) The Respondents' experience and activity in the marketplace: None of the Respondents were ever registered with the Commission. Mr. Weber emphasized that Goldbridge was a small company and its activities were limited and that it did not have a large market capitalization. The Merits Decision concluded that the Respondents were in the business of advising and that they advertised their advising services broadly over the internet. However, there was no evidence that investors contacted Goldbridge or Mr. Weber to provide funds for trading, receive advice or to take trading lessons. As stated in paragraphs 66 and 67 of the Merits Decision:

> 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.
>
> 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 … 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.

In addition, the Respondents actively tried to solicit investors by offering trading services over the internet. As stated in paragraph 42 of the Merits Decision:

> 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.

By offering both trading and advising services over the internet, Mr. Weber was trying to solicit investors, and he was trying to increase his activity in the capital markets to make a profit for himself.

(d) Whether there has been a recognition of the seriousness of the improprieties: Staff takes the position that Mr. Weber has not recognized the seriousness of his improprieties. Staff submits that:

> Mr. Weber throughout all proceedings in this case has failed to demonstrate any remorse for his actions; rather, he repeatedly took the position that he was unaware that anything he did was wrong and took the position that there were no victims, no crimes, and no investor funds lost.
>
> (Hearing Transcript, May 13, 2011 at page 29 lines 11 to 17)

Throughout the Sanctions and Costs Hearing, Mr. Weber objected to Staff's accusations that he has not shown any remorse and that he did not recognize the seriousness of his misconduct. Specifically, Mr. Weber submitted:

> First of all, I want to begin by saying there has been an opinion that I seem to have had no remorse with these proceedings. Yet even sick as a dog I'm here when it's time to be here because I want to verbally say that I completely respect the Commission and what it stands for in protecting capital markets and the like.
>
> (Hearing Transcript, May 13, 2011 at page 40 lines 8 to 14)

In addition, Mr. Weber explained in his submissions that he understood the seriousness of his conduct and that he would not engage in this conduct again in the future:

> Believe me, I will never be before this Commission again. I'm fully crystal clear on the requirements.
>
> (Hearing Transcript, May 13, 2011 at page 45 lines 12 to 13)
>
> They made implications that I had no remorse, because I said there were no victims, no monies lost, no fraud, no criminal things occurred that this implies that I have no remorse and I didn't do anything wrong. I know I did stuff wrong.
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> (Hearing Transcript, May 13, 2011 at page 47 at lines 18 to 22)

We find that Mr. Weber was being sincere, that he understood the severity of his misconduct in this matter, and that he understands the importance of complying with Ontario securities law.

We also find that during the course of this proceeding Mr. Weber was respectful of the Commission's hearing process. He did not cause undue delay and he also admitted to some of the conduct that was at issue in this matter. For example, Mr. Weber specifically stated:

> I admitted to all the wrongdoing that occurred. I had no idea of the level of complexity of what we were getting into. There were breaches.
>
> (Hearing Transcript, May 13, 2011 at page 43 lines 17 to 19)

Through his admissions of unregistered trading and advising, and misleading Commission Staff (see for example paragraphs 4, 38, 39, 44, 48, 83 and 85 of the Merits Decision), Mr. Weber recognized the wrongfulness of his conduct and cooperated with Staff during the merits hearing which streamlined the hearing process.

(e) Mitigating factors: Mr. Weber takes the position that the Panel should take into consideration as a mitigating factor the fact that he approached Staff to inform them about his trading which breached the Commission's temporary cease trade order and that he stopped trading when he learnt that this conduct was in breach of the Commission's order. He explained that:

> I had opened a trading account with the small amount of $10,000 just to try to survive, to get through the hearings, to figure out what was going to happen. And I said, hey, I think I made a mistake, I opened an account. And I reread that, and it says I'm not allowed to open an account. I brought it to [my lawyer's] attention, he brought it to Staff's attention. I'm the one who came forth and said I made a mistake. …
>
> … It's my fault, there's no excuse, but when I did discover it I brought it to my lawyer, and he brought it to Staff's attention, and that was ended.
>
> (Hearing Transcript, May 13, 2011 at page 44 lines 2 to 24)

(f) The size of any financial sanctions or voluntary payment when considering other factors: Staff did not provide evidence with respect to Mr. Weber's current assets and his ability to pay the sanctions and costs requested, nor did Mr. Weber provide evidence as to his inability to pay an

administrative penalty and costs. However, Mr. Weber did submit that he does not have the financial means to pay the administrative penalty and costs requested by Staff and that his ability to earn a living has been affected by the Commission's proceeding against him. He explained to the Commission that since the hearings in this matter began, he has been unable to find employment and that he currently has no assets to satisfy an order of the Commission.

(g) The effect any sanction might have on the livelihood of the Respondent: Mr. Weber submitted that trading was his livelihood and it was his source of income. He also submitted that the administrative penalty and costs requested by Staff would have a devastating effect on his livelihood. Specifically, Mr. Weber stated:

> In my submission, my livelihood would not exist at that level of penalty. It's an unheard of amount of money. I've never had it in my bank account at one time. It would be crippling.
>
> (Hearing Transcript, May 13, 2011 at page 52 lines 20 to 23)

2. Trading and Other Prohibitions

Trading

[26] Staff takes the position that in the circumstances of this case, it would be appropriate to order that the Respondents cease trading in securities and be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to any of the Respondents for a period of 25 years. According to Staff, the Respondents cannot be trusted to participate in Ontario's capital markets unless their participation is restricted and in a limited capacity. In addition, Staff submits that a 25 year trading ban is an appropriate length of time when taking into consideration the multiple breaches of the Act and looking at the totality of the Respondents' conduct.

[27] However, Staff submits that in this case it would be appropriate to allow Mr. Weber to have a carve-out in order to trade securities to save for his retirement since the trading ban requested is for a long period of time. Staff explained that:

> [the] carve-out proposed is only appropriate with the restrictive conditions attached to it. Staff feel that the checks and balances imposed by these conditions would properly limit and restrict Mr. Weber's activities in the market such that the risk factor would be much reduced.
>
> (Hearing Transcript, May 13, 2011 at page 39 lines 2 to 8)

[28] Mr. Weber opposes Staff's request for a 25 year trading ban. According to Mr. Weber, such a lengthy trading ban would hinder his ability to trade for himself and earn a living. Specifically, he submits that he wishes:

> … to participate in capital markets with my own capital. It's very crystal clear to me to not receive any money from anybody for any reason for any way to trade equities. However, if I ever do have my own or my spouse or myself have our own money, then I would hope I would be given the privilege in Ontario to trade these monies if we so chose to do so.
>
> (Hearing Transcript, May 13, 2011 at page 53 lines 5 to 12)

[29] Participation in the capital market is a privilege, not a right (*Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Sup. Ct.) at para. 56). As stated in *Manning v. Ontario (Securities Commission)*, [1996] O.J. No. 3414 at para. 47:

> There is no right of any individual to participate in the capital markets in Ontario. … the Act provides certain exemptions which allows individuals to make certain trades without being registered, however, the OSC has explicit jurisdiction to remove the exemptions if an individual engages in conduct contrary to the letter or spirit of the Act, whether such conduct causes damage to investors or is detrimental to the integrity of the capital markets.

[30] With respect to the appropriate length of a trading ban, we are mindful that there was no evidence of harm to investors, and it was not the objective of the conduct at issue to set up a boiler room scheme to take advantage of investors. As stated in the Merits Decision at paragraph 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.

[31] On the other hand, the respondents did breach multiple provisions of the Act, including subsections 25(1)(a) and 25(1)(c). Mr. Weber also breached subsection 122(1)(a) and he breached a Commission order dated October 28, 2008. Considering the multiple breaches, the seriousness of the conduct in this matter, and the trading ban imposed in Mr. Lesperance's Settlement Agreement, we find it appropriate to order that the Respondents shall cease trading and acquiring securities for a period of 15 years and any exemptions in Ontario securities law do not apply to the Respondents for a period of 15 years. This cease trade order is appropriate because it prohibits Mr. Weber from trading on behalf of third parties during the period of the order.

[32] We questioned Staff during the hearing about the rationale for providing a carve-out restricted to registered accounts as opposed to providing a carve-out for all personal accounts (registered and unregistered). Staff submitted that it is open to the Commission to order whatever is appropriate in the circumstances. We note that there was no evidence that Mr. Weber engaged in fraud, harmed investors or engaged in improper trading practices. In these circumstances we find it unnecessary to prohibit Mr. Weber from trading in his own personal accounts.

[33] We therefore agree that Mr. Weber may trade securities in any of his personal accounts in which he has sole legal and beneficial ownership. The following restrictions and conditions will apply to Mr. Weber's trading: (i) the securities he trades must be listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or be issued by a mutual fund that is a reporting issuer; (ii) Mr. Weber cannot own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; (iii) Mr. Weber must carry out any permitted trading through a registered dealer and through trading accounts opened in his name only (and he must close any trading accounts that are not in his name only); and (iv) Mr. Weber must give a copy of the Merits Decision, the Sanctions and Costs Decision and the Sanctions and Costs Order to any registered dealer through which he trades, in advance of any trading. These restrictions and conditions will provide adequate checks and balances on Mr. Weber's trading activity.

Director and Officer Bans

[34] Staff also requested that Mr. Weber resign from any position that he may hold as a director or officer of any issuer, and that he be prohibited from becoming or acting as a director or officer of any issuer permanently. Staff did not provide any explanation as to why a permanent ban is necessary in this instance, when the trading ban requested was for a 25 year period.

[35] Mr. Weber did not provide any submissions with respect to the director or officer prohibition.

[36] In *Mithras*, the Commission explained that the removal of individuals from the capital markets is an effective mechanism for protecting the public. One such method is to ban individuals from becoming officers or directors. This prevents such persons from participating in the capital markets through positions of control or direction within a company.

[37] In our view, the use of director or officer bans will ensure that Mr. Weber will not be put in a position of direction or trust with any issuer. This is important because the misconduct in this matter took place when Mr. Weber created Goldbridge and used the corporate entity to provide trading and advising services to the public.

[38] Taking all of this into consideration, we find that it is appropriate that Mr. Weber resign from any position he may hold as a director or officer of any issuer and that he be prohibited from acting as a director or officer of any issuer for a period of 15 years. Staff requested a permanent ban from acting as an officer or director, but in our view a permanent ban is too severe considering the conduct at issue in this case. For example, in past cases the Commission has issued permanent director or officer bans in "boiler room" schemes where many investors were harmed and large sums of money were raised by respondents (see for example *Re Limelight et al* (2008), 31 O.S.C.B. 12030 ("*Re Limelight*"); *Re Sabourin et al* (2010), 33 O.S.C.B. 5299 ("*Re Sabourin*"); and *Re Allen et al* (2006), 29 O.S.C.B. 3944, which were referred to us by Staff in their book of authorities). As mentioned above, there was no harm to investors in this case, and the

Respondents did not receive any funds from investors. As a result, a 15 year ban from becoming or acting as an officer or director of any issuer is appropriate.

[39] The combined sanctions of trading bans and prohibitions on acting as a director or officer of any issuer is intended to provide general and specific deterrence to help ensure that similar conduct does not take place in the future.

Reprimand

[40] As stated above, Mr. Weber breached subsections 25(1)(a), 25(1)(c), 122(1)(a) of the Act and breached a Commission temporary cease trade order (dated August 28, 2008). This conduct was contrary to the public interest.

[41] We find it appropriate that Mr. Weber be reprimanded. The reprimand is intended to provide strong censure of his misconduct and to impress on the public the importance of complying with the registration requirements for trading and advising. The Commission has created different registration categories to ensure that market participants fulfill certain criteria. This in turn protects the public and ensures minimum standards. Registration requirements are mandatory for all market participants. Mr. Weber used the internet to solicit investors and to advertise trading and advising services. He was required to be registered to engage in such conduct.

[42] In addition, Mr. Weber misled Commission Staff, the Commission and breached the October 28, 2008 temporary cease trade order. This conduct demonstrates flagrant disregard for the authority of the Commission as well as for obligations under Ontario securities law.

[43] Mr. Weber is hereby reprimanded for the conduct set out in the Merits Decision.

3. Administrative Penalty

[44] Staff requested that an administrative penalty of $25,000 be imposed on Mr. Weber. Staff submits at parargraph 27 of their written submissions that any administrative penalty imposed on Mr. Weber should take into account:

> … the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases.

[45] Mr. Weber opposed the administrative penalty requested by Staff. As stated above at paragraphs 25(f) and 25(g) of our Reasons, Mr. Weber takes the position that he cannot afford to pay an administrative penalty of the magnitude requested by Staff and that his livelihood has been significantly affected by these proceedings. He also points out that Mr. Lesperance, who entered into a settlement agreement with the Commission

in this matter, did not have to pay an administrative penalty but only paid $1,000 in costs to the Commission.

[46] In our view, the imposition of an administrative penalty is not required in this case. We find that the imposition of other sanctions such as trading bans and director or officer bans are better suited to deter Mr. Weber from engaging in similar conduct in the future.

[47] In considering the factors mentioned by Staff, while there were multiple breaches of the Act, we note that Mr. Weber did not realize any profit as a result of the misconduct, there were no funds raised from investors, and investors were not harmed.

[48] In support of their administrative penalty request, Staff referred us to *Re Limelight, supra*, *Re Sabourin*, *supra* and *Re White* (2010), 33 O.S.C.B. 8893 ("*Re White*"). However, Staff conceded that the conduct in this matter was not as severe as the conduct in those cases and that this matter was not a boiler room case where a large number of investors were harmed. Staff explained that:

> … it's difficult in terms of the administrative penalty to compare past precedents for appropriate ranges since it is rare that respondents do not actually take in investor funds. Most of the cases that Staff looked at in formulating this administrative penalty, often it was the case that the respondents took in a very substantial amount of money, which, of course, is not a factor present in this case.
>
> However, Staff do submit that the respondent's attempts to raise funds absolutely do damage the integrity of the capital markets and investor confidence in those markets and so should be subject to an administrative penalty, taking into account the other factors mentioned.
>
> (Hearing Transcript, May 13, 2011 at page 32 lines 6 to 19)

[49] We find that the cases referred to us by Staff to support the imposition of an administrative penalty are not on point with the conduct that occurred in this matter. For example, *Re Limelight* and *Re Sabourin* involved boiler room investment schemes where the company did not have any legitimate business purpose and was set up for the sole purpose of raising investor funds for the benefit of those behind the investment scheme. There was no evidence that Mr. Weber was interested in raising investor funds for a boiler room type investment scheme. In addition, *Re Limelight, Re Sabourin and Re White* involved many investors who were affected by the investment schemes. In contrast, not one individual invested funds with Mr. Weber in the present case. Taking all of this into consideration, we do not find it necessary in the public interest to impose an administrative penalty.

VI. Costs

[50] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of the investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. Rule 18.2 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 sets out a number of factors a Panel may consider in exercising its discretion to order costs.

[51] Staff requested, pursuant to subsection 127.1(2) of the Act, that the Respondents be ordered to pay, jointly and severally, $45,278.75 to cover the costs related to the hearing in this matter. Staff explained that the amount requested takes into account that Mr. Lesperance paid $1,000 in costs as part of his settlement with Staff (otherwise the total costs would have been $46,278.75). Staff calculates their costs as follows:

Staff	Total Hours	Hours Claimed	Total Costs
Christie Johnson (Litigation Counsel)	265.75	170.25	$34,901.25
Allister Field (Staff Investigator)	235.50	61.50	$11,377.50
TOTAL	**719.00**	**231.75**	**$46,278.75**

[52] In support of this request, Staff provided written submissions, an affidavit of Kathleen McMillan dated May 2, 2011 and detailed dockets (as required by Rule 18.1(2)(b) of the Commission's *Rules of Procedure*). These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the bill of costs.

[53] Staff explained that its costs were calculated in accordance with Staff's schedule of hourly rates for various members of Staff of the Enforcement Branch ($205 an hour for Litigation Staff and $185 for Investigation Staff). Staff submits that they have taken a conservative approach to calculating costs, as costs have only been sought for the preparation and attendance at the hearing on the merits. Staff did not request costs related to time spent on the investigation, cease trade order hearings or the sanctions and costs hearing. Staff only requested costs for litigation counsel and one investigator, and not for work done by other support staff. According to Staff, there are no facts that would mitigate the costs in this matter.

[54] Mr. Weber takes issue with the costs requested by Staff and the fixed hourly rates used to calculate Staff's costs. He submits that:

> With respect to the fines and impositions, it's just my opinion that I'm pretty sure that Ms. Johnson does not receive $205 an hour for her paycheque; I'm sure it's more closer to 60 or 80. That would go as well with Mr. Allister Field at $185 an hour. I think those wages are personally in line with some excessive Wall Street pay, and I think maybe counsel's gotten too used to – this is my opinion – too used to litigating against billionaires and millionaires.
>
> (Hearing Transcript, May 13, 2011 at page 48 lines 3 to 12)

[55] In the circumstances, we find that it is appropriate to order that the Respondents pay costs, jointly and severally, in the amount of $45,278.75. We have reviewed Staff's documents in support of their costs request and we find that the costs requested are reasonable. There are no factors present that would mitigate costs in this matter for the Respondents. We note that Mr. Lesperance settled and paid much lower costs in the amount of $1,000. However, we find that $45,278.75 is an appropriate amount of costs for Mr. Weber to pay considering the time and costs involved in mounting a contested merits hearing.

VII. Decision on Sanctions and Costs

[56] We consider that it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[57] We will issue a separate order giving effect to our decision on sanctions and costs and we order that:

(a) pursuant to clause 2 of subsection 127(1) of the Act, Mr. Weber and Goldbridge cease trading, directly or indirectly, in securities for a period of 15 years except that Mr. Weber may trade securities in any of his personal accounts in which he has sole legal and beneficial ownership, provided that:

  (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer;

  (ii) Mr. Weber does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question;

  (iii) Mr. Weber carry out any permitted trading through a registered dealer and through trading accounts opened in his name only (and

he must close any trading accounts that are not in his name only); and

(iv) Mr. Weber must give a copy of the Merits Decision, the Sanctions and Costs Decision and the Sanctions and Costs Order to any registered dealer through which he trades, in advance of any trading;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, Mr. Weber and Goldbridge are prohibited for a period of 15 years from acquiring any securities, except that Mr. Weber is permitted to acquire securities to allow the trading in securities permitted by and in accordance with paragraph (a) of this Order;

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to Mr. Weber and Goldbridge for a period of 15 years;

(d) pursuant to clause 6 of subsection 127(1) of the Act, Mr. Weber is reprimanded by the Commission;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mr. Weber resign any position he holds as an officer or director of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, Mr. Weber is prohibited from becoming or acting as an officer or director of any issuer for a period of 15 years; and

(g) pursuant to section 127.1 of the Act, Mr. Weber and Goldbridge shall pay, jointly and severally, the costs of, or related to, this proceeding, in the amount of $45,278.75.

Dated at Toronto this 26th day of October, 2011.

"*Mary G. Condon*" "*Margot C. Howard*"

Mary G. Condon Margot C. Howard