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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
M P GLOBAL FINANCIAL LTD.,
AND JOE FENG DENG

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the *Securities Act*)

Sanctions Decision:	October 1, 2012	
Sanctions and Costs Hearing:	June 21, 2012	
Panel:	Margot C. Howard, CFA	– Commissioner and Chair of the Panel
Counsel:	Matthew Britton	– For Staff of the Ontario Securities Commission
	Anthony M. Speciale	– For M P Global Financial Ltd. and Joe Feng Deng

TABLE OF CONTENTS

REASONS AND DECISION
ON SANCTIONS AND COSTS

I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") to consider pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") whether it is in the public interest to make an order with respect to sanctions and costs against M P Global Financial Ltd. ("**MP**") and Joe Feng Deng also known as Feng Deng and Yue Wen Deng ("**Mr. Deng**") (collectively, the "**Respondents**").

[2] This proceeding was commenced by a Statement of Allegations and a Notice of Hearing dated September 10, 2009. It was alleged by Staff of the Commission ("**Staff**") that the Respondents contravened subsections 25(1)(a) (unregistered trading), subsection 25(1)(c) (illegal advising in securities) and subsection 53(1) (illegal distribution of securities). Staff further alleged that as a director of MP, Mr. Deng authorized, permitted or acquiesced in the conduct of MP, contrary to section 129.2 of the Act, and that all of the conduct described above was contrary to the public interest.

[3] MP and its associated legal entities were created by Mr. Deng to market and manage different types of financial products. The evidence in the hearing on the merits focused on the sale of debentures which raised amounts aggregating in excess of $25 million that were received by MP and MP Group Ltd. ("**MP Group**"), entities under Mr. Deng's control and the understanding that funds from investors were to be used to fund currency trading. Investors purchased debentures from MP, and were generally given certificates. The majority of the investors were from the Chinese-Canadian community in and around the Greater Toronto Area and there were also investments made through accounts in Hong Kong and certain Caribbean islands. The rates of return promised to the holders of the debentures were high and ranged from 1% to 4% per month.

[4] Of the $8.2 million that was deposited into the MP Group trading accounts, $7.75 million was lost through unprofitable trades by March 2009. Although there were periods of profitable trading, the trend was negative, with one notable period of profitable trading from April 2008 until mid July 2008, where prior losses were recouped, only to be lost again in subsequent months. Given the currency trading losses and the high rates of return promised to holders of the debentures, Mr. Deng found himself in the position of having to use new investors' money to fund returns and redemptions. This situation was not sustainable as the more money raised from investors, the higher the monthly return commitment, and monthly return cheques and redemptions were suspended in March 2009.

[5] During the hearing on the merits, the Respondents were represented by Mr. Anthony Speciale. The decision on the merits was issued on August 19, 2011 (*Re M P Global Financial Ltd.* (2011), 34 OSCB 8897) (the "**Merits Decision**").

[6] Following the release of the Merits Decision, the Commission held a separate hearing on June 21, 2012 to consider submissions from Staff and counsel for the Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). Staff appeared at the Sanctions and Costs Hearing and Mr. Speciale represented the Respondents. Staff provided written submissions dated April 25, 2012, along with a Book of Authorities, and an affidavit, Bill of Costs and dockets in support of the costs request. Counsel for the Respondents provided written submissions dated June 18, 2012.

[7] These are my reasons and decision as to the appropriate sanctions and costs to be ordered against the Respondents. A Sanctions and Costs Order giving effect to these reasons is attached as "Schedule A".

II. THE MERITS DECISION

[8] The Merits Decision addressed the following issues:

1. Did the Respondents engage in unregistered trading in securities in breach of subsection 25(1)(a) of the Act, without any available exemptions?

2. Did the Respondents engage in unregistered investment advisory activity in breach of subsection 25(1)(c) of the Act, without any available exemptions?

3. Did the Respondents engage in a distribution of securities contrary to subsection 53(1) of the Act?

4. Is Mr. Deng responsible for the breaches of MP, pursuant to section 129.2 of the Act?

5. Did the Respondents act contrary to the public interest?

(*Merits Decision*, *supra*, at para. 21)

[9] The panel concluded in the Merits Decision that:

1. the Respondents breached subsection 25(1)(a) of the Act because they:

    i. engaged in trading and acts in furtherance of trades;

    ii. were not registered; and

    iii. did not qualify for any of the registration exemptions under the Act.

2. the Respondents breached subsection 53(1) of the Act because:

    i. a distribution of securities occurred;

ii. no prospectus was issued; and
iii. no exemptions were available;

3. Mr. Deng was a *de facto* officer and director of MP who authorized, permitted and acquiesced in MP's breaches of Ontario securities law pursuant to section 129.2 of the Act;

4. the Respondents engaged in conduct contrary to the public interest by virtue of the breaches referred to above; and

5. There was insufficient evidence to show that the Respondents breached subsection 25(1)(c) of the Act.

[10] It is this conduct that I must consider in determining the appropriate sanctions to impose in this matter.

III. SANCTIONS AND COSTS REQUESTED BY STAFF

[11] Staff requests the following sanctions and costs orders against the Respondents.

Cease trade and other prohibition orders

[12] Staff seeks an order:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1), that the acquisition of any securities by the Respondents cease permanently;

(c) pursuant to clause 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to the Respondents permanently;

(d) pursuant to clause 7 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any issuer permanently;

(f) pursuant to clause 8.1 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of any registrant;

(g) pursuant to clause 8.2 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any registrant permanently;

(h) pursuant to clause 8.3 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an investment fund manager;

(i) pursuant to clause 8.4 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of an investment fund manager permanently; and

(j) pursuant to clause 8.5 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently.

Reprimand

[13] Staff seeks an order, pursuant to clause 6 of subsection 127(1), reprimanding each of the Respondents.

Administrative Penalties

[14] Staff submits that an administrative penalty in the range of $500,000 to $750,000 paid by each of the Respondents is appropriate in the circumstances. The panel found in the Merits Decision that the Respondents each breached two significant sections of the Act. Staff submits that a substantial administrative penalty is necessary to deter Mr. Deng from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants in similar positions.

Disgorgement

[15] Staff seeks an order, pursuant to clause 10 of subsection 127(1) of the Act, requiring the Respondents to disgorge to the Commission all amounts obtained as a result of their non-compliance with Ontario securities law, such amounts to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

[16] Staff seeks a specific order that the Respondents jointly and severally disgorge $7,905,946.61 to the Commission, being the amount equal to the difference between what the Respondents were found to have received from investors and paid to investors.

[17] Staff submits that the entire amount obtained by the Respondents from the investors should be ordered disgorged based on the following factors:

(a) the amount requested to be disgorged represents the entire amount obtained as a result of the Respondents' illegal trading;

(b) the Respondents' misconduct was serious and the investors were seriously harmed by the misappropriation of their funds;

(c) the amounts the Respondents obtained as a result of the non-compliance is reasonably ascertainable;

(d) it does not appear likely that investors will be able to obtain any redress; and

(e) a disgorgement order for the entire amount obtained by the Respondents from the investors would have a significant specific and general deterrent effect.

[18] Citing the reasoning in *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 and *Re Sabourin,* (2010) 33 OSCB 5299, Staff submits that this Panel should order the amounts obtained in non-compliance with Ontario securities law less the amount repaid to investors be disgorged to the Commission. Accordingly, Staff submits that the Panel should order that the Respondents disgorge the difference between the amounts that were obtained by them from investors in non-compliance with Ontario securities law being $18,452,272 and $3,003,674(USD) as set out in clause 1 of paragraph 26 of the Merits Decision and the amounts that were repaid to investors being $10,432,649 and $3,108,882(USD) as set out in clause 4(1) of the Merits Decision.

Staff's Conclusion on Sanctions

[19] Staff submits that the sanctions proposed by Staff are proportionate to the Respondents' serious misconduct and will serve as a specific and general deterrent. An order permanently removing the Respondents from the capital markets, requiring disgorgement of all funds obtained from the investors, and requiring the Respondents to pay significant administrative penalties will signal both to the Respondents and to like-minded individuals that serious misconduct will result in severe sanctions.

Costs

[20] Staff also seeks an order for the payment by the Respondents of the Commission's investigation and hearing costs pursuant to section 127.1 of the Act. Staff submits that the Respondents should be ordered to pay $317,940.92 on a joint and several basis, which amount Staff submits is comprised of the time expended by professionals on the file totalling $271,503.75 and the disbursements totalling $46,437.17.

IV. THE POSITIONS OF THE RESPONDENTS

[21] The Respondents take the position that the Commission should reject Staff's requested sanctions as they are not reflective of the facts in this case nor are they in keeping with the legal principles established by the Commission and the courts.

[22] Furthermore, the Respondents take the position at paragraph 18 of their written submissions on sanctions that "to ask for sanctions on a permanent basis is not equitable and clearly punitive. Furthermore, to close the door forever to the Respondents from the exemptions contained in the Act is manifestly unjust. It is further respectfully submitted that the facts of this case do not warrant for a disgorgement order or administrative penalty to be imposed."

[23] The Respondents take the position in paragraph 19 of their written submissions that the following sanctions are better suited to be ordered in this matter:

(a) that pursuant to clause 2 of subsection 127(1) of the Act, the Respondents cease trading securities or acquiring securities for a specific period of three years from April 13, 2009;

(b) that the Respondents be reprimanded;

(c) that pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mr. Deng be prohibited from acting as a director or officer of any issuer, registrant or investment fund manager for a period of five years from April 13, 2009; and

(d) that pursuant to clauses 8.5 of subsection 127(1) of the Act, the Respondents be prohibited from becoming or acting as a registrant, an investment fund manager and as a promoter for a period of five years from April 13, 2009.

[24] With respect to costs, the Respondents submit at paragraph 21 of their written submissions that "success has been relatively divided in this matter, and accordingly, there should be no award of costs made."

V. SANCTIONS

(i) The Law on Sanctions

[25] The Commission's dual mandate is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).

[26] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. This objective was described in *Re Mithras Management Ltd.* as follows:

> … 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.
>
> (*Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at pp. 1610-1611)

[27] Further, the Supreme Court of Canada has recognized general deterrence as an additional factor that the Commission may consider when imposing sanctions. In *Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60 the Supreme Court stated that: "…it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative".

[28] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of each respondent. The Commission has previously identified the following as some of the factors that a panel should consider when imposing sanctions:

> (a) the seriousness of the conduct and the breaches of the Act;
> (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 recognition by a respondent of the seriousness of the improprieties;
> (e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;
> (f) the size of any profit obtained or loss avoided from the illegal conduct;
> (g) the size of any financial sanction or voluntary payment;
> (h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;
> (i) the reputation and prestige of the respondent;
> (j) the remorse of the respondent; and
> (k) any mitigating factors.
>
> (*Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at p. 7746; and *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 OSCB 1133)

The applicability and importance of such factors will vary according to the circumstances of each case.

(ii) Specific Sanctioning Factors Applicable in this Matter

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

[30] In considering the various factors referred to in paragraph 28, I find the following factors and circumstances to be relevant in this matter:

(a) *The Seriousness of the Misconduct*

[31] The allegations proven in this case involve very serious misconduct and a significant contravention of the Act, as well as conduct contrary to the public interest. The Respondents engaged in unregistered trading. As the panel noted in the Merits Decision, registration requirements serve an important role in securities regulation. We stated in the Merits Decision that:

> 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.
>
> (*Merits Decision*, *supra*, at para. 46)

[32] The Respondents breached two key provisions of the Act, by trading without registration and by engaging in a distribution without satisfying the distribution requirements under the Act. Both of these provisions are intended to protect investors from the very conduct that occurred here; the Respondents actions caused financial damage to the investors and to the integrity of Ontario's capital markets, and were clearly contrary to the public interest.

[33] Registration requirements ensure that market participants meet appropriate proficiency requirements and distribution requirements are designed to provide investors with the information they need to understand the risks and return potential of investments they are considering. MP was issuing securities on a continuous basis and information such as Mr. Deng's actual trading losses, the high level fixed interest obligations that MP had as a result of the issuance of the Debentures and the amount of Debentures outstanding would likely have given a number of investors serious concerns as to investing in MP.

[34] The Respondents failed to maintain high standards of fairness and business conduct to ensure honest and responsible conduct.

(b) *The Respondents' Experience and Knowledge*

[35] Mr. Deng was a former registrant with the Commission. He would have been aware that registration and filing of a prospectus was required under the Act. For someone with experience in the capital markets, I find it troublesome that Mr. Deng did not take all the necessary steps to ensure that he complied with Ontario securities law. In my view, Mr. Deng chose to disregard the registration requirements in Ontario. The Respondents should have obtained proper registration prior to trading MP securities and ensured that they qualified for exemptions. The Respondents chose to ignore the registration requirements. Registration requirements are obligatory for all market participants and must be adhered to by all market participants.

(c) *The Respondents' activity in the marketplace:*

[36] MP was involved in a systematic process of attracting potential investors and selling its securities, and raised a very significant amount of funds. The evidence established that investors purchased approximately $25 million in debentures from the Respondents. The investors understood that these funds would be used in currency trading. The panel found in the Merits Decision that the debentures satisfied the definition of a security under the Act and the panel was satisfied that the Respondents engaged in trading these securities without being registered and without having filed a prospectus. In finding that Mr. Deng engaged in the trading of securities, the panel noted at paragraph 84 of the Merits Decision that:

> Mr. Deng dealt directly with certain investors who made very large investments and he also met with some of the investors to explain the investment to them…. … [S]ome investors, such as J.D., testified that Mr. Deng explained that their investment was "guaranteed…"

(d) ***The Sanctions will Deter the Respondents and Like-Minded People from Engaging in Similar Abuses of the Capital Markets***

[37] In this case, given the Respondents serious misconduct, significant sanctions are appropriate to deter the Respondents and like-minded individuals in similar positions. Mr. Deng was a respected individual within his community who his peers trusted. We must deter others in similar positions from abusing that trust.

(e) ***The Size of any Profit Made or Loss Avoided from the Illegal Conduct***

[38] The panel found in the Merits Decision that $678,134 and $1,387,794 (USD) was paid to Mr. Deng or for his personal benefit and $383,044 and $108,900 (USD) was spent on credit card payments, of which $127,945 was in respect of jewellery purchases by Mr. Deng. These are substantial amounts.

(f) ***The Restraint Any Sanctions May Have on the Ability of a Respondent to Participate Without Check in the Capital Markets***

[39] The requested restrictions on trading and acting as a director or officer of a reporting issuer will have the effect of restraining the Respondents' participation in our capital markets in a way that is directly related to the Respondents' misconduct in this matter. The misconduct in this case related directly to trading in securities while the Respondents were unregistered under the requirements of the Act.

(g) ***The Ability of the Respondents to Pay***

[40] At the Sanctions and Costs Hearing, I was not provided with any affidavit or other evidence as to the Respondents' ability to pay any monetary sanctions. However, counsel for the Respondents submits that MP lost its business and has no assets as a result of these proceedings. Further, Mr. Deng's counsel submitted that Mr. Deng lost his marriage, personal residence, and has no meaningful assets or employment prospects. Mr. Deng returned to China following the completion of the hearing and continues to live there with his family who are supporting him.

[41] Given the seriousness of the Respondents' misconduct and the lack of evidence as to the Respondents' financial resources, I do not consider the Respondents' ability to pay as a significant factor in determining the appropriate monetary sanctions or costs.

(iii) Trading and Other Bans

[42] Staff takes the position that it would be appropriate for me to order that Mr. Deng cease trading in securities permanently and that exemptions contained in Ontario securities law not apply to any of the Respondents permanently.

[43] The Respondents submit that to ask for trading sanctions on a permanent basis is not equitable and is clearly punitive. The Respondents argued that more appropriate sanctions would be for the Respondents to cease trading securities or acquiring securities for three years from April 13, 2009 (now expired), that Mr. Deng be prohibited from acting as a director or officer of any issuer, registrant or investment fund manager for a period of five years from April 13, 2009 and that the Respondents be prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of five years from April 13, 2009.

[44] The trading, exemption and director/officer bans sought by Staff relate directly to the Respondent's conduct of trading in securities and running a business, and to Mr. Deng's oversight role as a director or officer of an issuer. The Respondents engaged in unregistered trading through the issuance of the Debentures, which the Commission regards as a serious breach. However, there was no allegation of fraud as in certain precedents cited by Staff and there was no evidence of abusive trading. In my view, while the conduct of the Respondents is too serious to not issue a trading ban of significant duration on the Respondents, both as a specific and general deterrent, a permanent ban is not appropriate and a carve-out to allow him to trade on behalf of his own account is reasonable.

[45] In all of the circumstances, I have concluded that it is in the public interest to make the following orders:

(a) each of the Respondents shall cease trading in any securities for a period of fifteen years from the date of this decision, with the exception that Mr. Deng is permitted to trade in securities on his own behalf, through a registered dealer;

(b) the acquisition of any securities by the Respondents shall cease for a period of fifteen years from the date of this decision, with the exception that Mr. Deng is permitted to acquire securities on his own behalf, through a registered dealer;

(c) a removal of exemptions against each of the Respondents for a period of fifteen years from the date of this decision;

(d) an order that Mr. Deng resign all positions he may hold as a director or officer of an issuer, registrant or investment fund manager;

(e) an order that Mr. Deng be prohibited for a period of fifteen years from the date of this decision from becoming or acting as a director or officer of an issuer, registrant or investment fund manager; and

(f) an order reprimanding each of the Respondents.

(iv) Disgorgement

[46] Clause 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained as a result of the non-compliance". The disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence.

[47] Disgorgement is not intended primarily as a means to compensate investors for their losses. However, subsection 3.4(2)(b) of the Act allows the Commission to order that amounts paid to the Commission in satisfaction of a disgorgement order or administrative penalty be allocated to or for the benefit of third parties.

[48] I have considered the following factors in determining whether to issue a disgorgement order against the Respondents:

(a) the amount obtained by the Respondents as a result of their non-compliance with the Act;

(b) the fact that the amount obtained as a result of the Respondents' non-compliance is reasonably ascertainable;

(c) the seriousness of the misconduct and breaches of the Act;

(d) whether the individuals who suffered losses are likely to be able to obtain redress by other means; and

(e) the deterrent effect of a disgorgement order on the Respondents and other market participants.

(*Re Limelight Entertainment Inc.*, *supra*, at para. 52)

[49] In my view, a disgorgement order is appropriate in these circumstances because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an order will deter them and others from similar misconduct. However, while I accept the principle from *Re Limelight* that all monies obtained as a result of non-compliance with securities law should be disgorged, the circumstances of this case do not warrant full disgorgement. This was not a case that involved an allegation of fraud or a sham investment scheme of any kind, and therefore a 100 percent disgorgement would verge on the punitive side. In my view, it is appropriate that a disgorgement order in these circumstances relate to the amount obtained by Mr. Deng that he used for his own personal benefit.

[50] I will order that the Respondents disgorge $2,193,873 (CDN) on a joint and several basis. That amount represents the total amount in Canadian dollars that was obtained by the

Respondents and used for their own personal benefit, as detailed in paragraph 9(d) and (e) of Staff's written submissions:

> (d) $678,134 and $1,387,794 (USD) was paid to Mr. Deng or for his own personal benefit;
>
> (e) $380,044 and $108,900 (USD) was spent on credit card payments of which $127,945 was used for jewellery purchases by Mr. Deng.

I included only the $127,945 from subparagraph (e), as there was no dispute that this amount was used for a personal benefit/personal purchase. The remainder of the amount spent on credit card payments may include personal amounts but this was not explored in sufficient detail for me to include them in the disgorgement order.

[51] I impose joint and several liability on MP and Mr. Deng because, as stated in the Merits Decision, Mr. Deng was the directing and controlling mind of MP. Ultimately it was Mr. Deng who managed investors' funds.

(v) Administrative Penalty

[52] In my view, it is appropriate to impose substantial administrative penalties against the Respondents, in addition to my disgorgement order. I have considered the submissions made by Staff as to the appropriate administrative penalty in this case. However, I find it necessary to distinguish this case from the fraud cases which Staff directed me to. In my view, the Respondents' behaviour was not predatory or rapacious, however it is conduct of serious concern where Mr. Deng took large amounts of funds from investors and then was not forthcoming with said investors when all of their funds were lost. This is unacceptable conduct by any person but as a former registrant and someone who was familiar with the markets, there is an expectation placed on such a Respondent for them to comply with the Act. It was clear from the evidence provided by Staff during the hearing on the merits that extensive time was required to gather and analyze the financial records of MP in order to ascertain what happened to investors' funds.

[53] In imposing the following administrative penalty, I have considered the findings in the Merits Decision, the respective roles of each Respondent in the illegal conduct involved in this matter and the extent of the involvement of each Respondent.

[54] I will order that an administrative penalty of $250,000 be paid to the Commission by each of MP and Mr. Deng. The Respondents committed multiple violations of the Act, which caused serious harm to the investors. As noted above, Mr. Deng was the directing and controlling mind of MP and orchestrated the investment of the funds obtained and then mismanaged those funds. A very substantial administrative penalty is justified based on the amount of money that appears to have been lost by investors. Further, a substantial administrative penalty is necessary to signal to the public that you cannot neglect registration and use of a prospectus and avoid monetary penalty. That amount shall be allocated to or for the benefit of third parties in accordance with section 3.4(2)(b) of the Act in accordance with this decision (see paragraph 55 of these reasons).

(vi) Allocation of Amounts for Benefit of Third Parties

[55] Any amounts paid to the Commission in compliance with my orders for disgorgement and administrative penalties shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing with MP, in accordance with subsection 3.4(2)(b) of the Act.

[56] The terms of paragraph 55 shall not give rise to or confer upon any person, including any investor (i) any legal right or entitlement to receive, or any interest in, amounts received by the Commission under my orders for disgorgement and administrative penalties, or (ii) any right to receive notice of any application by Staff to the Commission made in connection with that paragraph or of any exercise by the Commission of any discretion granted to it under that paragraph.

VI. COSTS

[57] Section 127.1 of the Act gives the Commission discretion to order a person or company to pay the costs of an investigation and a 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. The panel held in the Merits Decision that the Respondents contravened subsections 25(1)(a) and 53(1), Mr. Deng contravened section 129.2 and that the Respondents have not acted in the public interest.

[58] Staff seeks an order for the payment of $317,940.92 of the costs of investigation and of the hearing in this matter against all of the Respondents, including disbursements, on a joint and several basis. Staff submitted an affidavit, a Bill of Costs and dockets supporting that amount.

[59] Staff submits that the hearing on the merits took 18 days to complete, and the Respondents did not contribute to the efficiency of the hearing. Their conduct was egregious and their primary defence was without merit.

[60] The claim for costs was calculated according to a schedule of hourly rates for various members of Staff of the Enforcement Branch of the Commission.

[61] The Respondents submit that success was relatively divided in this matter and, accordingly, there should be no award of costs made. Further, the Respondents argue that the dockets provided by Staff in support of the costs request were “grossly deficient”, and that the number of Enforcement Staff present at the hearing was unnecessary. The Respondents submit that the quantum for hours requested for Mr. Humphreys for 315.25 hours and 580 hours for Ms. Collins, respectively, are excessive. Furthermore, they submit that the amounts claimed for these hours at the rate of $185.00 per hour, for a total combined amount of $165,621.25, are inappropriate and seriously offensive to the principle of indemnification.

[62] The Respondents submit that no costs should be paid for internal litigation counsel, being the amount of 438 hours for Mr. Britton and 78.5 hours for Ms. Heydon. They submit that section 127.1 of the Act contemplates only costs which are incurred by outside counsel who are retained to provide services to the Commission. Therefore, the Respondents submit that

Mr. Britton and Ms. Heydon are staff in-house members of the Commission and on top of that, have failed to provide the actual hourly wage information as part of Staff costs submissions.

[63] I do not agree with the Respondents' submissions that certain costs such as internal litigation counsel costs are not recoverable in this matter. The language of subsection 127.1(4) of the Act is quite clear, in which it states that "the costs that the Commission may order the person or company to pay *include, but are not limited to,* all or any of the following:

3. Costs for time spent by the Commission or the staff of the Commission.

Therefore, I do not find that the payment of internal litigation counsel costs by the Respondents inappropriate or outside the parameters of the Act.

[64] Lastly, the Respondents submit that all of the 78.5 hours of Ms. Heydon should be disallowed. This proceeding commenced in 2009. Ms. Heydon was called to the Bar in 2008. The Respondents submit that Ms. Heydon at best fulfilled the role as junior counsel, law clerk or student during the proceeding.

[65] I agree with the Respondents that in this particular matter where one allegation has not been proved by Staff, this should be taken into account regarding a costs award. I also find it reasonable for the Respondents to make the argument that it was Staff's choice to have multiple counsels present at a fairly straight-forward hearing, and therefore it is not entirely fair for Respondents to automatically assume that full burden. Further, while I do not take the view that the dockets provided by Staff were "grossly deficient" as argued by the Respondents, I would note that the dockets lacked detail as to the type of work performed. The dockets do show however that many hours were spent on this case by various members of Staff, and I do not doubt the time spent on this case as it was clear from the Merits Hearing that extensive investigation and financial analysis was required. I have taken the Respondents submissions at paragraphs 61 to 64 into account however I am of the view that the costs requests of Staff sit squarely within the parameters of the Act. I take no issue with the disbursements.

[66] Therefore, I order that costs in the amount of $150,000 shall be payable by the Respondents on a joint and several basis.

VII. CONCLUSION

[67] For the reasons discussed above, I have concluded that the sanctions I impose above are proportionate to the respective conduct and culpability of each of the Respondents in the circumstances and are in the public interest. I will issue a sanctions and costs order substantially in the form attached as Schedule "A" to these reasons.

Dated at Toronto, this 1st day of October, 2012.

"*Margot C. Howard*"

Margot C. Howard

Schedule "A"

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

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

-AND-

IN THE MATTER OF
M P GLOBAL FINANCIAL LTD.,
AND JOE FENG DENG

ORDER
(Sections 127 and 127.1 of the *Securities Act*)

WHEREAS on September 10, 2009, a Statement of Allegations and a Notice of Hearing were issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), in the matter of M P Global Financial Ltd. ("**MP**") and Joe Feng Deng also known as Feng Deng and Yue Wen Deng ("**Mr. Deng**") (collectively referred to as the "**Respondents**");

AND WHEREAS the Commission conducted the hearing on the merits in this matter on February 17, 18, 19, 22, 23, 24, and 25, 2010, March 1, 2010, April 13, 14, 23, 26, 27, 28, 29, and 30, 2010, May 4, 2010 and June 2, 2010;

AND WHEREAS the Commission issued its Reasons and Decision on the merits in this matter on August 19, 2011 (the "**Merits Decision**");

AND WHEREAS the Commission concluded in the Merits Decision that all of the Respondents contravened Ontario securities law and have acted contrary to the public interest;

AND WHEREAS the Commission conducted a hearing with respect to the sanctions and costs to be imposed in this matter on June 21, 2012;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

(a) pursuant to clause 2 of subsection 127(1) of the Act, each of the Respondents shall cease trading in any securities for a period of fifteen years from the date of the Sanctions Decision, with the exception that Mr. Deng may trade on his own behalf in his own account, solely through a registered dealer (which dealer must be given a copy of this Order);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by any of the Respondents is prohibited for a period of fifteen years from the date of the Sanctions Decision, with the exception that Mr. Deng may acquire securities on his own behalf in his own account, solely through a registered dealer (which dealer must be given a copy 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 any of the Respondents for a period of fifteen years from the date of the Sanctions Decision;

(d) pursuant to clause 6 of subsection 127(1) of the Act, each of the Respondents are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mr. Deng shall immediately resign all positions he may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, Mr. Deng shall be prohibited from becoming or acting as a director or officer of any issuer for a period of fifteen years from the date of the Sanctions Decision;

(g) pursuant to clause 8.1 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of any registrant;

(h) pursuant to clause 8.2 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any registrant for a period of fifteen years from the date of the Sanctions Decision;

(i) pursuant to clause 8.3 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of an investment fund manager for a period of fifteen years from the date of the Sanctions Decision; and

(k) pursuant to clause 8.5 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of fifteen years from the date of the Sanctions Decision;

(l) pursuant to clause 9 of subsection 127(1) of the Act, each of MP and Mr. Deng shall pay an administrative penalty of $250,000 to the Commission, such amount to be allocated to or for the benefit of third parties;

(m) pursuant to clause 10 of subsection 127(1) of the Act, MP and Mr. Deng shall jointly and severally disgorge $2,193,873 to the Commission, such amount to be allocated to or for the benefit of third parties; and

(n) pursuant to section 127.1 of the Act, MP and Mr. Deng shall jointly and severally pay costs of $150,000 to the Commission.

DATED at Toronto, Ontario this 1st day of October, 2012.

"*Margot C. Howard*"

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Margot C. Howard