



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)**

ORDER

WHEREAS on September 22, 2010, the Ontario Securities Commission (the “**Commission**”) issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the “*Securities Act*”), accompanied by a Statement of Allegations of Staff of the Commission (“**Staff**”) with respect to the respondents Howard Jeffrey Miller (“**Miller**”) and Man Kin Cheng (“**Cheng**”) for a hearing to commence on October 18, 2010;

AND WHEREAS Miller and Cheng were served with the Notice of Hearing and Statement of Allegations dated September 22, 2010 on September 22, 2010;

AND WHEREAS at a hearing on October 18, 2010, counsel for Staff, counsel for Cheng, and Miller, appearing on his own behalf, consented to the scheduling of a confidential pre-hearing conference on January 11, 2011 at 3:00 p.m.;

AND WHEREAS on November 11, 2010, the Commission issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, accompanied by an Amended Statement of Allegations of Staff which added the respondents Paul Azeff (“**Azeff**”), Korin Bobrow (“**Bobrow**”) and Mitchell Finkelstein (“**Finkelstein**”), for a hearing to commence on January 11, 2011;

AND WHEREAS Miller, Cheng, Azeff, Bobrow and Finkelstein (together, the “**Respondents**”) were served with the Notice of Hearing and Amended Statement of Allegations dated November 11, 2010 on November 11, 2010;

AND WHEREAS following a hearing on January 11, 2011, counsel for Staff, counsel for Azeff, Bobrow, Finkelstein and Cheng, and Miller, appearing on his own behalf, attended a confidential pre-hearing conference;

AND WHEREAS at the confidential pre-hearing conference on January 11, 2011, all parties made submissions regarding the disclosure made by Staff and it was ordered by the Commission, on the consent of all parties, that Staff and the Respondents would exchange written proposals concerning outstanding disclosure issues and that a motion date would be set for February 22, 2011 regarding disclosure issues, if necessary;

AND WHEREAS at the request of the Respondents, and on the consent of Staff, it was agreed that the February 22, 2011 motion date would be adjourned to April 8, 2011;

AND WHEREAS a disclosure motion was held on April 8, 2011 and, after submissions by the parties, the Panel issued a Confidentiality Order and Adjournment Order dated April 8, 2011, adjourning the Respondents' disclosure motion and the hearing in this matter to a pre-hearing conference, the date of which was to be agreed to by the parties and provided to the Office of the Secretary;

AND WHEREAS on April 18, 2011, Staff filed an Amended Amended Statement of Allegations;

AND WHEREAS the Panel issued an amended Confidentiality Order and Adjournment Order dated April 19, 2011 scheduling, on consent of all parties, a confidential pre-hearing conference on June 2, 2011 at 10:00 a.m.;

AND WHEREAS all parties consented to an adjournment of the confidential pre-hearing conference from June 2, 2011 at 10:00 a.m. to August 17, 2011 at 10:00 a.m. to allow Staff to provide the Respondents with further disclosure in this matter;

AND WHEREAS on July 6, 2011, counsel for Finkelstein served Staff with motion materials seeking a stay of the proceeding against him (the "**Stay Motion**") and Staff indicated that: a) it intended to bring a motion that the Stay Motion is premature and should be heard at the hearing on the merits (the "**Prematurity Motion**"); and b) it intended to bring a motion to seek

leave to put before the Panel at the hearing of the Stay Motion certain “without prejudice” communications (the “**Privilege Motion**”);

AND WHEREAS counsel for Azeff and Bobrow indicated that they intend to bring a motion to compel records from a third party (the “**Third Party**” and the “**Third Party Records Motion**”);

AND WHEREAS the Respondents advised that they may seek to continue the hearing of the previous disclosure motion, which had been held on April 8, 2011 and had been adjourned on April 8, 2011 and June 1, 2011, or may bring other motions relating to disclosure issues (the “**Disclosure Motion**”);

AND WHEREAS a pre-hearing conference was held on August 17, 2011 and Staff and the Respondents made submissions regarding the scheduling of the various motions, including the Stay Motion, the Prematurity Motion, the Privilege Motion, the Third Party Records Motion and the Disclosure Motion;

AND WHEREAS on August 30, 2011, the Commission ordered that the Privilege Motion be heard on September 26, 2011; the Prematurity Motion and the Stay Motion be heard together commencing on November 9, 2011; the Third Party Records Motion be scheduled to be heard on a date after the Prematurity Motion and the Stay Motion have been heard and decided; the Disclosure Motion be adjourned to a date that will be fixed after the four motions have been heard and decided; and dates for the hearing on the merits of the matter be set after the five motions have been heard and decided (the “**Scheduling Order**”);

AND WHEREAS the Privilege Motion, the Prematurity Motion and the Stay Motion have been heard and decided in accordance with the Scheduling Order;

AND WHEREAS Staff requested a pre-hearing conference to request, among other things, that the Scheduling Order be amended to schedule the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

AND WHEREAS a pre-hearing conference was held on October 2, 2012 at which time Staff and counsel for the Respondents attended and made submissions;

AND WHEREAS on October 2, 2012, the Commission ordered that the request for a summons to compel the production of certain records of a third party and any motion to quash such summons proceed in accordance with Rule 4.7 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "**Rules of Procedure**"), and that a pre-hearing conference be held on January 16, 2013 at which time the Commission would consider scheduling the Disclosure Motion and the hearing on the merits;

AND WHEREAS a pre-hearing conference was held on January 16, 2013, and Staff and the Respondents made submissions regarding the scheduling of the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

AND WHEREAS on January 16, 2013, the Commission ordered that: 1) the Third Party Records Motion to review the issuance of a summons shall be heard on April 8, 2013 at 10:00 a.m.; 2) the Disclosure Motion shall be heard on July 17, 2013 at 10:00 a.m.; and 3) the hearing on the merits shall commence on May 5, 2014, and continue up to and including June 20, 2014, save and except for Monday, May 19 (Victoria Day), and the alternate Tuesdays each month when meetings of the Commission are scheduled, the dates of which are unknown at this time;

AND WHEREAS on February 28, 2013, counsel for Bobrow, on notice to counsel for Azeff and Staff, requested an adjournment of the Third Party Records Motion, and Staff did not oppose the adjournment request, provided that the dates for the Disclosure Motion and the hearing on the merits were preserved;

AND WHEREAS on April 4, 2013, the Commission ordered that the date of April 8, 2013 for the hearing of the Third Party Records Motion be vacated and that the Third Party Records Motion be adjourned to July 9, 2013 at 10:00 a.m.;

AND WHEREAS on May 6, 2013, at the request of Bobrow and Azeff, the Commission issued a summons for documents from the Third Party (the "**Third Party Summons**");

AND WHEREAS on June 28, 2013, the Third Party filed its motion record for the Third Party Records Motion seeking an order to quash part of the Third Party Summons;

AND WHEREAS the Third Party indicated that it asserted solicitor-client privilege over all documents protected by its privilege;

AND WHEREAS the Third Party Records Motion was scheduled to be argued on July 9, 2013;

AND WHEREAS on July 9, 2013, Staff, counsel for the Third Party and counsel for Bobrow, who also appeared as agent for counsel for Azeff, attended before the Commission and advised that the Third Party Records Motion had been settled on consent of Azeff, Bobrow and the Third Party on the terms of a draft order to be filed with the Commission;

AND WHEREAS on July 9, 2013, counsel for Bobrow, who also appeared as agent for counsel for Azeff, requested that the date for the Disclosure Motion, scheduled for July 17, 2013, be vacated and that the time set aside on July 17, 2013 be scheduled for the hearing of a motion to adjourn the hearing on the merits (the “**Adjournment Motion**”) and a pre-hearing conference;

AND WHEREAS on July 11, 2013, the Commission ordered that: 1) the hearing of the Disclosure Motion, which was scheduled for July 17, 2013, be vacated; 2) the hearing of the Adjournment Motion be held on July 17, 2013 at 9:30 a.m.; and 3) immediately after the hearing of the Adjournment Motion on July 17, 2013, a confidential pre-hearing conference be held on July 17, 2013;

AND WHEREAS on July 16, 2013, the Commission made an order in respect of the Third Party Records Motion (the “**Third Party Records Order**”), which ordered, amongst other things, that the Third Party shall make best efforts to produce, on a rolling productions basis, the documents subject to the Third Party Records Order (the “**Third Party Documents**”) to Bobrow before October 31, 2013, and in any event, no later than December 31, 2013;

AND WHEREAS on July 17, 2013, Staff and counsel for Bobrow, who also appeared as agent for counsel for Azeff, and counsel for Miller, Cheng and Finkelstein attended before the Commission and made submissions regarding the Adjournment Motion brought by counsel for Bobrow;

AND WHEREAS counsel for Bobrow submitted that he is counsel for a respondent in a criminal matter in another province (the “**Criminal Matter**”), in which target trial dates were set following a case management conference on May 21, 2013, and that the target trial dates in the Criminal Matter conflict with the scheduled dates for the hearing on the merits in this matter;

AND WHEREAS counsel for Bobrow advised the Commission that the target trial dates are expected to be affirmed at the next appearance in connection with the Criminal Matter on July 29, 2013;

AND WHEREAS the Respondents were made aware of the Commission's view that a further request for adjournment would be subject to strict scrutiny and the Commission likely would be reluctant to grant another adjournment of the hearing on the merits;

AND WHEREAS on July 17, 2013, Staff and counsel for Bobrow, who also appeared as agent for counsel for Azeff and Finkelstein, and counsel for Miller and Cheng attended a confidential pre-hearing conference immediately following the hearing of the Adjournment Motion;

AND WHEREAS the Commission encouraged the parties to ensure that any further motions would be brought before the Commission in a timely fashion to avoid any further delay of the hearing on the merits;

AND WHEREAS the parties agreed that a Disclosure Motion will be held on November 20, 2013 at 10:00 a.m. and a confidential pre-hearing conference will be held on January 16, 2014 at 10:00 a.m.;

AND WHEREAS Staff and counsel for Bobrow agreed that counsel for Bobrow will use his best efforts to provide to Staff any relevant Third Party Documents that Bobrow and Azeff intend to rely upon as evidence at the hearing on the merits before June 1, 2014, and in any event, no later than July 1, 2014;

AND WHEREAS on July 29, 2013, the Commission ordered that: 1. the Adjournment Motion brought by Bobrow was granted; 2. the original dates scheduled for the hearing on the merits shall be vacated; 3. the hearing on the merits shall commence on September 15, 2014, and continue up to and including November 7, 2014, save and except for September 23, 25 and 26, 2014, October 7, 13 and 21, 2014 and November 4, 2014; 4. a Disclosure Motion shall be held on November 20, 2013; 5. a confidential pre-hearing conference shall be held on January 16, 2014; and 6. counsel for Bobrow will use his best efforts to provide to Staff any relevant Third Party Documents that Bobrow and Azeff intend to rely upon as evidence at the hearing on the

merits before June 1, 2014, and in any event, shall provide such Third Party Documents to Staff no later than July 1, 2014;

AND WHEREAS on November 19, 2013, Staff and counsel for Azeff and Bobrow, the moving parties on the Disclosure Motion, advised the Commission that the parties resolved the Disclosure Motion on consent and without costs, and that Azeff and Bobrow wished to withdraw their Disclosure Motion;

AND WHEREAS on November 20, 2013, the Commission ordered that the Disclosure Motion be withdrawn on a without costs basis and that the hearing date for the Disclosure Motion, being November 20, 2013, be vacated;

AND WHEREAS a confidential pre-hearing conference was held on January 16, 2014 and Staff and counsel for the Respondents attended and made submissions regarding the Respondents' disclosure obligations and provision of witness lists and witness summaries of the Respondents, as well as the authenticity and admissibility of Staff's documents at the hearing on the merits;

AND WHEREAS the parties indicated that they did not have the current intention to bring any further motions prior to the hearing on the merits and the Commission encouraged the parties, once again, to ensure that any further motions be brought before the Commission in a timely fashion to avoid any delay of the hearing on the merits;

AND WHEREAS all parties have the right to bring any motions should issues subsequently arise;

AND WHEREAS on February 7, 2014, the Commission ordered that 1. the Respondents will advise Staff if they intend to object to the authenticity of any of the documents in Staff's hearing brief by July 1, 2014; 2. the Respondents will make their best efforts to advise Staff if they anticipate objecting to the admissibility of any of the documents in Staff's hearing brief by July 1, 2014 and in any event, no later than August 1, 2014; 3. the Respondents will make their best efforts to advise Staff of any additional documents (which are not in Staff's hearing brief) that they anticipate relying on at the hearing by July 1, 2014 and in any event, no later than August 1, 2014; 4. the Respondents will make their best efforts to provide Staff with witness lists and witness summaries in accordance with Rule 4.5(1), (2) and (3) of the Commission's *Rules of*

Procedure by July 1, 2014 and in any event, no later than August 1, 2014; and 5. a further confidential pre-hearing conference shall be held on August 13, 2014 at 10:00 a.m.;

AND WHEREAS on May 21, 2014, counsel for Azeff and Bobrow advised the Registrar of his request to vacate the scheduled hearing dates of October 6, 8 and 9, 2014;

AND WHEREAS on June 2, 2014, the Registrar advised all parties by email that the Hearing Panel is not available to sit on September 15 to 17, 2014, but is available to sit on September 10 to 12, 2014;

AND WHEREAS on June 2, 2014, counsel for Azeff and Bobrow, counsel for Finkelstein and counsel for Cheng advised of their availability via email;

AND WHEREAS on June 3, 2014, Staff and counsel for Azeff and Bobrow attended a motion brought by Staff pursuant to section 152, and counsel for Azeff and Bobrow and Staff made submissions on their availability;

AND WHEREAS on June 3, 2014, the Panel granted Staff's section 152 motion, and reserved the right of the Respondents to bring a motion under Rule 10.2 of the *Rules of Procedure* returnable on August 13, 2014, in the event that the Superior Court of Quebec orders that the evidence of the Quebec Witnesses shall be taken in Quebec via video and audio link from Montreal;

AND WHEREAS on June 3, 2014, the Commission is of the opinion that it is in the public interest to issue this order;

IT IS HEREBY ORDERED that:

1. The dates for the hearing on the merits previously scheduled for September 15 to 17, 2014 and October 6, 8 and 9, 2014 are vacated;
2. Additional dates for the hearing on the merits are added on November 10 to 14, 2014;
and

3. At the August 13, 2014 pre-hearing conference, the parties shall make the following available:

(a) Witness lists and witness summaries; and

(b) A draft index of documents for a joint proposed hearing brief;

DATED at Toronto this 3rd day of June, 2014.

“Alan J. Lenczner”

Alan J. Lenczner

“AnneMarie Ryan”

AnneMarie Ryan

“Catherine E. Bateman”

Catherine E. Bateman