Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
22nd Floor
20 Queen Street West
Toronto ON M5H 3S8
22e 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
WEIZHEN TANG

REASONS AND DECISION
(Subsections 127(10) and 127(1) of the *Securities Act*)

Hearing:	February 17 and 18, 2016		
Decision:	April 21, 2016		
Panel:	Christopher Portner	-	Commissioner and Chair of the Panel
	Deborah Leckman	-	Commissioner
	Timothy Moseley	-	Commissioner
Appearances:	Brendan Van Niejenhuis	-	For Staff of the Commission
	Weizhen Tang	-	Representing himself

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REASONS AND DECISION

I. BACKGROUND

[1] On March 17, 2009, the Ontario Securities Commission (the "**Commission**") issued a Temporary Order (the "**Temporary Order**") that (i) pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), all trading in securities of Oversea Chinese Fund Limited Partnership (the "**Oversea Chinese Fund**"), Weizhen Tang and Associates Inc. ("**Tang and Associates**") and Weizhen Tang Corp. ("**Tang Corp.")** shall cease and that all trading by Weizhen Tang ("**Tang**"), Oversea Chinese Fund, Tang and Associates and Tang Corp. shall cease; and (ii) pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario's securities law do not apply to Tang, Oversea Chinese Fund, Tang and Associates and Tang Corp.

[2] On March 18, 2009, the Commission issued a Notice of Hearing (the "**Original Notice of Hearing**") which set out the Commission's intention to hold a hearing to consider whether, pursuant to section 127 of the Act, it was in the public interest for the Commission to extend the Temporary Order beyond 15 days. On April 1, 2009, and on numerous subsequent dates, the Temporary Order was extended by Order of the Commission.

[3] On May 24, 2011, Tang was charged with having defrauded members of the public of monies having a value exceeding $5,000 by deceit, falsehood or other fraudulent means during the period from March 1, 1999 to March 31, 2009, contrary to subsection 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46.

[4] On October 30, 2012, following a 25-day jury trial, Tang was found guilty of fraud as charged. On February 1, 2013, Tang was sentenced by Justice A. O'Marra of the Superior Court of Justice, who presided over the jury trial, to six years imprisonment and to pay a fine in lieu of forfeiture of the proceeds of crime in the amount of $2,849,459.50 within five years of his release from incarceration and, in the event that the fine is not paid, to serve a further five years of imprisonment.

[5] On September 30, 2013, Staff of the Commission ("**Staff**") filed a Statement of Allegations against Tang (the "**Statement of Allegations**") based on Tang's conviction in the Superior Court of Justice as described in paragraph [4] above (the "**Criminal Conviction**") and sought an enforcement order based on the Criminal Conviction.

[6] On the same day, the Commission issued a new Notice of Hearing (the "**Notice of Hearing**") in connection with the Statement of Allegations. The Notice of Hearing replaced the Original Notice of Hearing and set out the Commission's intention to hold a hearing (the "**Hearing**") to consider whether, pursuant to subsections 127(1) and (10) of the Act, it was in the public interest for the Commission to issue an order that:

(a) Trading in any securities by Tang cease permanently or for such period as is specified by the Commission;

(b) Tang be prohibited permanently, or for such other period as is specified by the Commission, from acquiring any securities;

(c) Any exemptions contained in Ontario securities law not apply to Tang permanently or for such period as is specified by the Commission;

(d) Tang be reprimanded;

(e) Tang resign all positions that he may hold as an officer or director of any issuer, registrant or investment fund manager;

(f) Tang be prohibited permanently, or for such other period as is specified by the Commission, from becoming or acting as an officer or director of any issuer, registrant or investment fund manager; and

(g) Tang be prohibited permanently, or for such other period as is specified by the Commission, from becoming or acting as a registrant, an investment fund manager or a promoter.

[7] Tang appealed his conviction and sentence to the Court of Appeal for Ontario, which appeals were dismissed on June 25, 2015 and October 5, 2015, respectively.

[8] The Hearing was held on February 16 and 17, 2016.

II. BASIS OF PROCEEDING

[9] In seeking the order described in paragraph [6] above, Staff relies on paragraph 1 of subsection 127(10) of the Act which provides that an order in the public interest under subsection 127(1) of the Act may be made in respect of a person if:

> The person…has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[10] In his detailed Reasons for Sentence (*R v. Weizhen Tang* (February 1, 2013), Toronto, Ont. Sup. Ct. (Transcript of the Reasons for Sentence)) (the "**Reasons for Sentence**"), Justice O'Marra stated that:

> There was overwhelming evidence presented at trial that Mr. Tang committed fraud:
>
> (1) by making false representations to potential investors as to the nature of the investments he would make for them;
>
> (2) by providing false account statements about the earned returns on the investors' investment contributions;
>
> (3) by using money of recent investors to redeem the accounts of earlier investors, a fraudulent practice referred to as a "Ponzi" scheme; and,
>
> (4) [by] the unwarranted collection of service and commission fees, contrary to representations made to his investors of his "no profit, no fees" policy.
>
> (Reasons for Sentence at page 93)

[11] In dismissing Tang's appeal of his conviction, the Court of Appeal found that:

> The jury heard evidence that was reasonably capable of establishing that Mr. Tang, over a number of years, defrauded hundreds of individual investors by consistently misrepresenting numerous facets and features of the investments those people were making or had made through Mr. Tang and his related corporate entities. On the Crown's evidence, obviously accepted by the jury, this was a straightforward case of fraud by deceit on a massive scale.
>
> (*R v. Tang*, 2015 ONCA 470 at para. 15)

[12] Staff submits that the requirements for the issuance of an order pursuant to subsections 127(1) and (10) of the Act have been satisfied. More specifically, Staff relies on Tang's conviction in Ontario of an offence arising from a transaction, business or course of conduct related to securities. We address the legal issues relating to subsection 127(10) in paragraphs [20] and following below.

III. PRELIMINARY MATTERS

A. Implications of Tang's Appeal to the Supreme Court of Canada

[13] During the Hearing, Tang submitted that he was in the process of appealing the Criminal Conviction, including the sentence, to the Supreme Court of Canada (the "**Supreme Court**") and that he had filed his appeal materials on December 12, 2015. As a result, Tang submitted that it would not be appropriate for the Commission to proceed with the Hearing as his conviction was not final.

[14] Staff submitted that the Court of Appeal's decision relating to Tang's appeal of his conviction was released on June 10, 2015. Subsection 58(1)(a) of the *Supreme Court Act*, R.S.C. 1985, c. S-26, requires that applications for leave to appeal and all materials necessary for the application must be filed within 60 days after the date of the judgment appealed from. Staff submitted that Tang, by his own admission, did not file his application within the prescribed time and, accordingly, the decision of the Court of Appeal with respect to his conviction dated June 25, 2015, is a final order on which the Commission should act.

[15] We were presented with no evidence that Tang's application for leave to appeal to the Supreme Court had been perfected or that the Supreme Court had agreed to waive Tang's failure to file his appeal on time and hear his appeal. In the circumstances, we concluded that it was appropriate to proceed with the Hearing given that the allegations against Tang have been outstanding for more than seven years and the outcome of his application for leave to appeal to the Supreme Court and of the appeal itself were uncertain. In the event of a successful appeal by Tang to the Supreme Court, Tang would be entitled to make an application to the Commission pursuant to subsection 144(1) of the Act to vary or revoke

any order that the Commission might make at the conclusion of the Hearing that was inconsistent with a judgment or order of the Supreme Court.[1]

B. Lack of Legal Counsel

[16] During the Hearing, Tang also submitted that, as a result of his assets being frozen by directions issued by the Commission pursuant to section 126 of the Act following the issuance of the Temporary Order and such freeze directions having subsequently been extended by the Superior Court of Justice, he had been unable to retain legal counsel to represent him in his criminal proceedings and in the current proceeding before the Commission. He further submitted that the Hearing should not continue if he was unable to obtain legal representation.

[17] The Panel informed Tang that the Superior Court of Justice had jurisdiction over the frozen funds in question and that, as the Commission does not have the resources to provide him with legal representation other than through the Commission's Litigation Assistance Program, the Hearing would continue notwithstanding his submission that it should not do so given his lack of legal representation. It should be noted that, notwithstanding the fact that Tang was advised of the Litigation Assistance Program, he did not make an application for legal assistance under the Program. The Commission did, however, exercise its discretion and, given the complexity of the matter and the consequential nature of the sanctions sought by Staff, agreed to Tang's request that he be provided with Mandarin interpretation services for the Hearing at the Commission's expense.

C. Permitted Evidence

[18] As stated by the Commission in *Re Black* (2014), 37 O.S.C.B. 5847 ("*Re Black*"):

> …subsection 127(10) proceedings are not a forum for re-litigating findings made in another jurisdiction. The purpose of such proceedings is to hear evidence and submissions with respect to the terms of an appropriate reciprocal order to protect Ontario's capital markets by ensuring that similar conduct does not occur in Ontario in the future.
>
> (*Re Black, supra* at para. 24)

[19] Following a number of instances in which the Panel would not permit Tang to lead evidence that amounted to the re-litigation of issues addressed in connection with the Criminal Conviction, and after hearing submissions from the parties, the Panel advised Tang that he would be permitted to present evidence with respect to the following submissions that he wished to make:

(a) The sentence imposed by Justice O'Marra (as described in the Reasons for Sentence) provided sufficient protection to the public;

[1] On April 7, 2016, Tang's motion to the Supreme Court for an extension of the time to serve and file his application for leave to appeal was granted. His motions to appoint counsel and adduce fresh evidence were dismissed as was his application for leave to appeal.

(b) Tang had a history of good faith co-operation with government, i.e., the courts and regulatory authorities, following the date on which he was charged with fraud but not prior to such date;

(c) Tang's investors continued to support him; and

(d) It was important to Tang that he be able to make money in the future [from trading securities] so that he could repay his investors.

IV. THE LAW

A. Subsection 127(10) of the Act

[20] As noted in paragraph [9] above, paragraph 1 of subsection 127(10) of the Act provides that an order may be made against a person under subsection 127(1) of the Act if the person has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[21] It is clear, however, that, once the criteria set out in subsection 127(10) of the Act have been satisfied, the Commission must satisfy itself that an order imposing sanctions under subsection 127(1) of the Act is necessary to protect the public interest in Ontario (*Re Elliott*, (2009), 23 O.S.C.B. 6931 at para. 27).

B. General Principles Relating to the Exercise by the Commission of its Public Interest Mandate

[22] For the purpose of exercising its public interest jurisdiction under section 127 of the Act, the Commission must consider the purposes of the Act which are set out in section 1.1 of the Act as follows:

> (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.

[23] The Commission is required to have regard for a number of fundamental principles in pursuing the purposes of the Act including the following:

> …
>
> ii. restrictions on fraudulent and unfair market practices and procedures, and
>
> iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants[2].
>
> (Paragraph 2 of section 2.1 of the Act)

[2] The term market participant is defined in section 1 of the Act and includes a registrant, a person exempted from the requirement to be registered under the Act and a manager of assets of an investment fund.

[24] In *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("***Asbestos***"), the Supreme Court considered the Commission's public interest mandate and stated that:

> …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 ("***Re Mithras***"). 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. [Emphasis added.]
>
> (*Asbestos, supra* at paras. 43 and 45)

V. FACTUAL BACKGROUND

[25] The following paragraphs summarize the principal findings of fact on which Tang was convicted. These findings are set out in the Reasons for Sentence and are relevant for the purpose of applying the principles relating to the exercise by the Commission of its public interest mandate.

A. False Representations

[26] Tang solicited funds from investors to trade in the Oversea Chinese Fund, a limited partnership established, controlled and operated by Tang. Investors were encouraged to invest a minimum of $150,000. During the period from January 2006 to March 2009, Tang raised over $50 million from over 200 investors who were resident in Canada, the United States and China. Tang told his investors that he would expose only 1% of their investments to risk and that the remaining 99% would be invested in low risk securities such as government and bank bonds. He referred investors to his book, *The Chinese Warren Buffet, the King of 1% Weekly Returns*, which provided further details of his promised investing strategy and return on investment and included the following statement:

> In specific operations, I keep 99% of funds outside the market in various financial institutions protected by all kinds of physical or mechanical barriers. By leaving just 1% of the funds in the market for speculation, I have in actuality put a cap on the maximum loss.
>
> (Reasons for Sentence at page 95)

[27] Tang did not invest the funds he received from investors in low risk securities as he had represented. Instead, the funds received from investors were commingled in various accounts of companies operated by Tang and were used to pay earlier investors who sought to redeem or withdraw their funds, or were paid to Tang or companies that he operated or controlled. As stated by Justice O'Marra:

> The funds appeared to be applied simply on an "as needed" basis as determined by Mr. Tang with no protection of any portion of the investors' funds in safe securities. His assertions were patently false. They were dishonest and led to deprivation.
>
> (Reasons for Sentence at page 96)

B. False Account Statements

[28] Investors received a user name and access code with which they could access a personalized online account purporting to show the daily trading activity in their respective accounts. With the exception of three occasions over a three-year period, the investor accounts showed daily increases. On the three occasions in question, Tang conducted live trading sessions in view of investors and accumulated losses which were reflected in the account statements. On every other trading day, the accounts showed daily increases which amounted to a weekly return of approximately 1%. As stated by Justice O'Marra:

> Like Mr. Tang's representations, every investor's account statement was patently false. Indeed, Mr. Tang would simply make up a daily percentage and increase the account accordingly.
>
> (Reasons for Sentence at page 97)

[29] It was quite evident from the testimony of the investors who testified at Tang's trial, that they had placed considerable reliance on the account statements and most of them reviewed the statements online on a daily basis. One investor testified that, on the basis of the statements, she took out a second mortgage on her home and made a further investment with another person.

[30] Tang admitted in a letter to investors after the collapse of the fund that the reason he had falsified the account statements was "to eliminate interference from investors." As noted by Justice O'Marra, "[T]he interference he sought to eliminate was the withdrawal of their funds." (Reasons for Sentence at page 98)

C. Ponzi Scheme

[31] The investors' account statements continued to show positive returns throughout the material time, which included the global financial crisis in 2008. During a wealth summit that he organized in January 2009 and at a meeting with investors the following month,

Tang represented that the value of the Oversea Chinese Fund exceeded $70 million and that, as a result of his trading skills and methods, he had been able to earn positive returns during the financial crisis.

[32] In reality, it was clear that Tang had been using the funds of recent investors to satisfy withdrawal and redemption requests by prior investors and, as a result, the Oversea Chinese Fund had become a Ponzi scheme. When more recent investors began to make withdrawal requests, Tang attempted to stall them until he was confronted at a meeting with investors on February 27, 2009 and admitted that there was only $1,400 left in the Oversea Chinese Fund's account.

[33] Tang also admitted at the meeting with investors that the Oversea Chinese Fund had lost $29 million in 2006 and 2007 and that he undertook very little trading in 2008. This admission effectively confirmed that Tang's representations to potential and existing investors described in paragraph [31] above were completely false and intended to mislead such investors.

D. Unwarranted Fees

[34] Tang represented to investors that he would not charge fees or commissions on his trading in investors' accounts unless there was a profit. Tang transferred approximately $2.84 million of investors' funds to himself and to the accounts of the entities he controlled. The investor account statements reflected fees and commissions being charged on the fictitious gains that he had reflected in the account statements.

VI. ISSUES

[35] The questions that the Panel must answer are as follows:

(a) Was Tang convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

(b) Are sanctions necessary to protect the public interest?

(c) If sanctions are considered to be necessary, what sanctions would be appropriate?

VII. ANALYSIS

A. Was Tang convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

[36] Tang does not dispute the fact that he was convicted of an offence in Ontario. During the Hearing, however, Tang made the assertion that there was "no… securities or derivatives I really violated [sic]" which we understood to mean that he disputed that securities were involved in the commission of the offence. Tang presented no evidence to support that assertion.

[37] The Criminal Conviction arose from the trading business established by Tang and known as the Oversea Chinese Fund. In operating the business, Tang entered into a series of transactions over a period exceeding three years in which over 200 investors invested in the Oversea Chinese Fund. Given the scope and duration of the transactions, they clearly

constituted a course of conduct. Whether the business and course of conduct related to securities is addressed in the paragraphs that follow.

[38] The term "security" is defined in subsection 1(1) of the Act to include an "investment contract". Although the term investment contract is not defined in the Act, the Supreme Court held in *Pacific Coast Coin Exchange v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 ("***Pacific Coast***") that an investment contract will be found where (i) there is an investment of funds with a view to profit, (ii) in a common enterprise and (iii) the profits are to be derived solely from the efforts of others (*Pacific Coast*, *supra* at page 128).

[39] Investors in the Oversea Chinese Fund entered into their transactions with Tang with an expectation of profit. It is quite evident from paragraphs [26], [28] and [29] above that Tang had represented to investors that they would receive high rates of return with minimal risk of losses and that the investors had relied on such representations when making their respective investments.

[40] In describing the second and third elements of the test to determine the existence of an investment contract, the Supreme Court held that:

> …such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor's role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words the "commonality" necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves.
>
> (*Pacific Coast*, *supra* at page 127)

[41] It was the understanding of the investors in the Oversea Chinese Fund that the transactions were undertaken for their benefit. Tang's investors supplied the capital and nothing more. It was their belief, based on Tang's representations, that the funds would be invested in a manner that would generate returns. Moreover, it was their understanding that the profit realized would be as a result of trading by Tang.

[42] The foregoing facts establish commonality between the investors and Tang, in circumstances where the anticipated profits were to be derived solely from the efforts of others.

[43] The transactions in respect of which Tang was convicted of fraud were investments with a view to profit, in a common enterprise between Tang and the investors, where the profits were to be derived solely from the efforts of someone other than the investors. As a result, we find that all three elements of the test referred to in paragraph [38] above are satisfied and the investment contracts were securities as that term is defined in the Act.

[44] Based on the foregoing, we find that Tang was convicted in Ontario of an offence arising from a transaction, business or course of conduct related to securities as contemplated by subsection 127(10) of the Act.

B. Are sanctions necessary to protect the public interest?

1. Staff's Submissions

[45] In Staff's submission, there is a firm and, indeed, immovable basis to apprehend future harm arising from Mr. Tang's participation in the capital markets.

[46] Staff submits that, as a result of Tang's (i) continued assertions that the failure of Oversea Chinese Fund was caused by regulators, including the Commission, and by the financial crisis of 2008; and (ii) inability to recognize that the Criminal Conviction resulted from his false representations to investors and false account statements, Tang has demonstrated that he cannot be trusted to participate in any fashion in the securities markets of Ontario in the future.

[47] Staff submits that it is the Commission and not the Superior Court of Justice that has the capacity to protect the investing public from future harm. The Crown in Tang's criminal case was precluded from pursuing additional penalties against Tang pursuant to subsection 380.2(1) of the *Criminal Code* whereby Tang would have been prevented from having authority over the money or valuable security of another person, as the provision only came into force after Tang's conduct at issue. Staff submits that, in light of the foregoing, only the Commission has the ability to protect Ontario's capital markets from Tang in the future.

[48] Staff submits that the sanctions requested in this matter and summarized in paragraph [6] above are consistent with sanctions imposed by the Commission in previous cases involving similar conduct including, in particular, *Paul Camillo DiNardo (Re)* 39 O.S.C.B. 935 ("***DiNardo***").

[49] Staff submits that nearly all of the factors considered by the Commission in *DiNardo* apply to Tang's conduct including the following:

(a) Tang exploited securities (investment contracts) to carry out his frauds;

(b) Tang promised investors high rates of return but used funds received from investors to, among other things, repay earlier investors;

(c) As was evident from the victim impact statements considered by Justice O'Marra, many of Tang's investors were vulnerable and the loss of their funds caused some of them to suffer devastating personal and financial consequences;

(d) Tang exploited his relationships and reputation in the Chinese community and used investor funds to elevate his profile within the Chinese community, ostensibly to perform good works but, in fact, for the purpose of self-aggrandizement which exacerbated the fraud;

(e) The frauds were not simple lapses and were committed over a lengthy period of time; and

(f) Tang improperly diverted approximately $2.84 million dollars to himself and entities that he controlled.

2. Tang's Submissions

[50] Tang submits that the sentence imposed on him by the Superior Court of Justice is sufficient protection for the public and that any additional sanctions imposed by the Commission would be inappropriate or "extra" and "unnecessary".

[51] Tang submits that he should not be subject to any prohibitions from trading or other market bans. Tang submits that he would be willing to trade under any terms and conditions established by the Commission.

[52] Tang submits that he is innocent of any wrongdoing and has suffered financial hardship along with his investors and that he took the same, if not greater, investment risks as his investors and therefore suffered with them in any losses. He submits that as a result of the proceedings initiated against him, he had to mortgage his house, the bank has now foreclosed against him and he is without employment and currently eligible for welfare.

[53] Tang submits that he has been the scapegoat for the losses suffered by his investors. As a result, not only Tang, but also his wife and son, have suffered both financially and psychologically.

[54] Tang submits that he has been unjustly persecuted by a few disgruntled investors, the Commission, the police and the Crown, that he is not deserving of any punishment and that he should be allowed to continue to trade to earn back all of the losses and more.

[55] Tang submits that, as the Court has already asserted jurisdiction over his case, the Commission should be precluded from imposing any additional punishment on him and he should not be subject to any sanctions under section 127 of the Act. Tang referred to the Crown's inability to rely on subsection 380.2(1) of the Criminal Code described in paragraph [47] above and submits that, as it was not open to the Crown to pursue trading bans as a part of his sentence, Staff should correspondingly be restricted from seeking such sanctions.

[56] Tang submits that he has a long history of successful trading and that he has been involved in Ontario's capital markets for over 20 years. He submits that his record is one of compliance with the laws and regulations governing Ontario's capital markets and that, to ensure his fund was compliant, he employed a portfolio manager and a compliance officer. Aside from the conduct at issue in this matter, Tang submits that he has never had any issues with the Commission. He submits that all of his trading was undertaken through brokerage firms and banks, none of which has ever complained about his trading activities.

[57] Tang submits that this was his first offence and that he has changed as a result. He submits that his good conduct while on bail and parole should be considered by the Panel as evidence that he can be trusted to be a law-abiding member of society.

[58] Tang submits that his trading activity has been largely successful for his investors. He stated that, from 1993 until 2005, he managed a number of individual accounts on behalf of investors and that he engaged in profitable trading for most of the accounts. He also gave anecdotal evidence of his trading successes, telling the Panel that, in one instance, he used his abilities as a trader to turn $2,000 into $78,000 (although he admitted to having begun with an initial investment of $50,000), and in another instance, turned $1 million into $5 million in five weeks of trading.

[59] Tang submits that he should be allowed to resume trading because his investors want him to be able to do so. Tang submits that he has tried to help his investors in any way he can, including borrowing money from friends and mortgaging his house in order to repay them and that the Panel should consider this as proof of his commitment to his investors.

[60] Mr. W, one of Tang's investors, testified that it would be good news if the Commission were to permit Tang to continue to trade. Tang submits that many more of his investors feel this way, and as evidence, he adduced four letters from investors purporting to support Tang's continued trading on their behalf.

[61] Tang submits that he would like to trade in order to earn back his investors' funds. He submits that if he is allowed to trade under the supervision of the Commission, he would earn back investors' money and that this would be consistent with the investor protection mandate of the Commission.

[62] Tang submits that even considering what he has gone through since he was charged, he remains committed to doing whatever it takes to repay his investors.

[63] Tang also submits that the Panel should consider his community involvement when considering sanctions.

3. Findings

[64] Having considered the evidence and the submissions of the parties, and for the reasons we describe in greater detail below, we find that Tang's conduct as summarized by Justice O'Marra in the Reasons for Sentence was egregious and his continued assertions that he is a victim and not the perpetrator of the fraud on the investors in the Oversea Chinese Fund warrant serious apprehension on our part that his future conduct would be detrimental to the integrity of Ontario's capital markets. In the circumstances, and given our review of the evidence summarized above, we have concluded that sanctions against Tang are appropriate and necessary to protect the integrity of Ontario's capital markets.

C. The appropriate sanctions in this matter

[65] In determining what sanctions would be appropriate, we must consider the specific circumstances of this matter together with any aggravating or mitigating factors to ensure that the sanctions are proportionate to Tang's conduct as well as the range of sanctions ordered in similar cases.

[66] The case law has established a list of factors that are important to consider when imposing sanctions which would also apply in the context of imposing sanctions as part of an order under subsections 127(1) and (10) of the Act. See for example, *Re M.C.J.C. Holdings*, (2002) 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.*, 21 O.S.C.B. 7743 at 7746. Of such factors, we consider the following to be of particular relevance in determining the appropriate sanctions in this matter:

(a) The seriousness of the criminal offence of which Tang was convicted;

(b) Tang's experience in the marketplace;

(c) Whether or not there has been any recognition by Tang of the seriousness of the misconduct;

(d) The need to deter Tang and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(e) Whether the offence was isolated or recurrent; and

(f) Any mitigating factors, including Tang's remorse.

[67] The relevance and relative importance of each factor will vary according to the facts and circumstances of the case. We will consider each of the foregoing factors in the paragraphs that follow.

1. The seriousness of the criminal offence for which Tang was convicted

[68] Tang was convicted in the Superior Court of Justice of having committed fraud by (i) making false representations as to the nature of the investments he sold to unsuspecting investors; (ii) providing the investors with false and seriously misleading account statements on which they relied to their detriment; (iii) misappropriating a significant portion of the funds provided by investors; and (iv) improperly compensating himself out of the funds provided by investors.

[69] Fraud is undoubtedly a serious offence, particularly in a matter involving securities, and in the words of the Court of Appeal:

> On the Crown's evidence, obviously accepted by the jury, this was a straightforward case of fraud by deceit on a massive scale. Clearly, we do not accept Mr. Tang's submission that "there is no evidence there was a crime".
>
> (*R v. Tang*, *supra* at para. 15)

2. Tang's experience in the marketplace

[70] Tang was involved in the investment industry for more than 15 years[3] and testified at the Hearing that he had traded "billions of dollars in the industry" and was well known by the banks and brokerage firms. Regardless of the volume of his trades or the length of his involvement, Tang operated in the industry for long enough to have acquired extensive experience and an understanding of the psychology of investors, particularly investors from the Chinese community.

3. Whether or not there has been any recognition by Tang of the seriousness of his misconduct

[71] Tang's submission that he is the victim of persecution as described in paragraphs [53] and [54] above reflects a pattern of behavior by Tang to which Justice O'Marra refers in the Reasons for Sentence and which the Panel observed during the Hearing. Whether Tang is incapable of appreciating the fact that the financial and emotional harm that was suffered by many of his investors and his own family was caused by his commission of fraud over a lengthy period of time, or relies on his incessant efforts to ascribe blame to

[3] The number of years is based on his testimony at the Hearing. Elsewhere (see paragraph [56] above, for example), he stated that he had been involved in the investment industry for more than 20 years.

others to obscure his own culpability, is not relevant. What is relevant, is that Tang demonstrates absolutely no recognition of the seriousness of his misconduct or the financial ruin and emotional devastation that was suffered by many of his investors at his hands.

4. The need to deter Tang and other like-minded individuals from engaging in similar abuses of the capital markets in the future

[72] In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("***Cartaway***"), the Supreme Court stated that deterrence is "…an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). The Supreme Court also emphasized that deterrence may be specific to the respondent or general so as 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)

[73] Both general and specific deterrence are important considerations when imposing sanctions. General deterrence requires the imposition of sanctions that will send a strong message to any other like-minded individuals that the misconduct engaged in by Tang is unacceptable and will not be tolerated by the Commission.

5. Whether the offence was isolated or recurrent

[74] The evidence in this matter has established that Tang's fraud was not an isolated event but was undertaken and implemented over a period exceeding three years and involved more than 200 investors. As noted by Justice O'Marra:

> There was a considerable degree of planning and sophistication involved in the fraud committed by Mr. Tang. He organized events, such as the Wealth Summits, and he wrote and promoted his book to entice investors into his investment fund. He created investor accounts and arranged to input each trading day false returns and profits. In effect, for every trading day over a three-year period, other than a few, Mr. Tang falsified the account reports, hiding the true status of the investor funds, the purpose of which was to prevent, as he himself said, investor interference.
>
> (Reasons for Sentence at page 111)

6. Any mitigating factors, including remorse

[75] The fact that a respondent in a proceeding contested in good faith would not express remorse or contrition is not remarkable and would not ordinarily be an aggravating factor

in the Commission's determination of sanctions. However, Tang's persistent and belligerent defiance in the face of incontrovertible evidence, including admissions by Tang, that he committed, in the words of the Court of Appeal, fraud on a massive scale (see paragraph [11] above) with no regard for the harm he caused to investors, and his insistence that he should be permitted to resume trading in Ontario's capital markets, raise a significant concern in our minds about the harm that he is likely to cause to investors in the future if given the opportunity.

[76] In our view, there are no mitigating factors that we should consider including the facts, according to Tang, that the Criminal Conviction was his first offence and that there have been no issues of non-compliance with the terms of his parole.

7. Findings

[77] We find that the misconduct for which Tang was convicted was so abusive that, when considered in the context of his response to the Criminal Conviction during the Hearing described above, we are compelled to conclude that, unless he is permanently banned, his future conduct would be detrimental to the integrity of Ontario's capital markets. We agree with Staff that specific and general deterrence are required to maintain the high standards of fitness and business conduct expected of market participants.

[78] As stated by the Commission in *Re Mithras* (referred to in paragraph [24] above and cited with approval by the Supreme Court in *Asbestos*), the role of the Commission is "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 doing so, 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…" (*Re Mithras, supra* at page 1611).

[79] Tang submits that permitting him to trade in a manner that would allow him to earn back his investors' money would be consistent with the Commission's investor protection mandate. Tang also testified that many of his investors want him to trade again. Mr. W, the only investor to testify at the Hearing (see also paragraph [60] above), was asked by counsel to Staff if he would give Tang more money to invest in the future. Mr. W's reply was "No, that's impossible."

[80] Given that the Oversea Chinese Fund had a remaining balance of only $1,400, if Tang were permitted to trade again, he would have to solicit funds from a new generation of investors who need to be protected by the Commission from the serious risk of fraud.

[81] Although Tang was sentenced in the Superior Court of Justice to a term of imprisonment for fraud, the Commission retains jurisdiction to make orders in the public interest under section 127 of the Act relating to the same misconduct. (*Re Yoannou*, (2014) 37 O.S.C.B. 10762)

VIII. CONCLUSION

[82] Based on the foregoing, we have concluded that the requirements for the imposition of an order under subsection 127(10) of the Act have been satisfied and that it is in the public interest to make an order under subsection 127(1) of the Act banning any future participation by Tang in Ontario's capital markets. We will issue a separate order giving effect to our decision as set out below.

IX ORDER

[83] We will therefore issue an order that provides that:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Tang shall cease permanently;

(a) Pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Tang is prohibited permanently;

(b) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Tang permanently;

(c) Pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Tang shall resign any positions that he holds as director or officer of any issuer, registrant or investment fund manager;

(d) Pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Tang is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

(e) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, Tang is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

Dated at Toronto this 21st day of April, 2016.

"Christopher Portner"

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Christopher Portner

"Deborah Leckman"

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Deborah Leckman

"Timothy Moseley"

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Timothy Moseley