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Citation: Meharchand (Re), 2019 ONSEC 7
Date: 2019-01-30
File No. 2017-4

IN THE MATTER OF
DENNIS L. MEHARCHAND
and VALT.X HOLDINGS INC.

REASONS AND DECISION ON SANCTIONS AND COSTS
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing:	December 18, 2018	
Decision:	January 30, 2019	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	Deborah Leckman	Commissioner
	Robert P. Hutchison	Commissioner
Appearances:	Dennis L. Meharchand	For himself and Valt.X Holdings Inc.
	Kate McGrann	For Staff of the Commission

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REASONS AND DECISION

I. OVERVIEW

[1] In a merits decision dated October 19, 2018 (the **Merits Decision**),[1] the Ontario Securities Commission (the **Commission**) found that the respondents Dennis L. Meharchand and Valt.X Holdings Inc. (**Valt.X**; together, the **Respondents**) illegally distributed securities of Valt.X and engaged in the business of trading in securities of Valt.X without being registered.

[2] Through these activities, the Respondents raised at least C$1.5 million and US$140,000 from investors. Less than C$50,000 was returned to investors.

[3] The Commission also found that Mr. Meharchand defrauded existing and potential investors by making false statements to them regarding the use of their funds, and by using invested funds for improper purposes.

[4] At a first attendance to schedule the sanctions and costs hearing, Staff of the Commission (**Staff**) brought a motion for an interim order, pending the release of this decision, prohibiting the Respondents from trading in or acquiring securities, and denying the availability of exemptions provided for under Ontario securities law. We granted that order, with reasons to follow. Our reasons for that decision are set out in paragraphs [22] to [31] below.

[5] At the sanctions and costs hearing, Staff requested an order that:

a. the Respondents be removed permanently from Ontario's capital markets, as more particularly described below;

b. the Respondents be required to disgorge C$1,450,000 and US$140,000;

c. Mr. Meharchand pay an administrative penalty in the range of $500,000 to $700,000; and

d. Mr. Meharchand and Valt.X be required to pay costs of $165,083.17 and $110,055.45, respectively.

[6] For the reasons that follow, we find that it is in the public interest to order:

a. the permanent bans requested by Staff;

b. that the Respondents be required, jointly and severally, to disgorge C$1,450,000 and US$140,000; and

c. that Mr. Meharchand pay an administrative penalty of $550,000.

[7] We also find that the Respondents should be required to pay the costs requested by Staff.

II. PRELIMINARY MATTERS

[8] Before beginning our analysis of the appropriate sanctions and costs, we address several preliminary matters, beginning with the events leading up to the sanctions and costs hearing.

[1] *Meharchand (Re)*, 2018 ONSEC 51, (2018) 41 OSCB 8434

A. Scheduling the sanctions and costs hearing

[9] On November 9, 2018, the Commission held a hearing to schedule the sanctions and costs hearing. At that hearing, we ordered that the sanctions and costs hearing proceed on December 19, 2018, despite Mr. Meharchand's request for more time so that he could retain counsel. The relevant facts, and our reasons for making that order, are as follows.

[10] The Merits Decision, which was delivered to the parties on October 19, 2018, required that the parties contact the Registrar to arrange a first attendance to deal with scheduling a sanctions and costs hearing. The following day, Mr. Meharchand wrote to the Registrar and to Staff to advise that he was available any day between November 5 and 9, 2018.

[11] By email dated October 24, 2018, the Registrar advised that the first attendance hearing would take place at 8:30am on November 9, 2018.

[12] On November 5, 2018, Staff wrote to the Respondents, proposing that the sanctions and costs hearing take place between December 13 and 21, 2018, with Staff's and the Respondents' materials to be delivered by November 23 and December 7, respectively.

[13] On November 7, 2018, Mr. Meharchand replied to Staff. He proposed to retain counsel by December 21, 2018, and to deliver his materials by January 21, 2019. He also suggested that the sanctions and costs hearing take place in late February 2019. On November 8, 2018, Staff replied to Mr. Meharchand, advising that it was concerned about the delay that would result from his proposed schedule, and that the matter would be raised at the first attendance hearing the following day.

[14] At 8:23am on November 9, seven minutes before the first attendance hearing was to begin, Mr. Meharchand sent an email to the Registrar and to Staff. In the email, Mr. Meharchand stated: "As I previously indicated [in his email of November 7 to Staff] I am no longer resident in Ontario and unable to attend in person. Please re-schedule so that I can attend via phone."

[15] Seven minutes later, at 8:30am, the scheduled start time of the first attendance hearing, Mr. Meharchand sent another email to the Registrar and to Staff. In that email, Mr. Meharchand stated: "I wish to be represented by Counsel. Suggesting a 6 week adjournment to seek representation via the Legal Assistance program."

[16] The hearing commenced at 8:35am in the absence of the Respondents. Staff made brief submissions to this Panel as to how Staff wished to proceed. We marked three documents as exhibits, including the two emails from Mr. Meharchand referred to above. At 8:43am, the hearing was recessed briefly so that the Registrar could attempt to contact Mr. Meharchand by telephone.

[17] The Registrar was successful. At 8:57am, the hearing resumed with Mr. Meharchand present by telephone. Mr. Meharchand advised that he was not prepared to "discuss anything with the Commission" unless he was represented by counsel.[2] He stated that he wanted an opportunity to apply to the Commission's Litigation Assistance Program, which offers the services of lawyers

[2] Hearing transcript, *Meharchand (Re)*, November 9, 2018, at 12 line 16-17

acting *pro bono*, and through which the Respondents had received representation for attendances leading up to the merits hearing.

[18] In response to questions from the Panel, Mr. Meharchand advised that he had not yet applied to the program for representation in connection with the sanctions and costs hearing.

[19] After hearing submissions from the parties, we decided to fix December 18, 2018, as the date for the sanctions and costs hearing. We were not prepared to await the Respondents' retaining counsel before fixing a date, for numerous reasons:

a. in the three weeks since Mr. Meharchand had received the Merits Decision, he had taken no steps to retain counsel;

b. even if the Respondents had insufficient funds to pay for counsel (a position not asserted by the Respondents), Mr. Meharchand was fully familiar with the Commission's Litigation Assistance Program, having benefited from it many months earlier, and having referred to it in his second email on November 9, 2018;

c. despite that familiarity, Mr. Meharchand had not applied to the program for representation in connection with the sanctions and costs hearing, and he offered no explanation for not having done so;

d. the content of Mr. Meharchand's two emails, the timing of those emails, the fact that the Registrar was able to reach Mr. Meharchand immediately, and the fact that Mr. Meharchand was able to participate in the hearing despite his request to "re-schedule so that [he could] attend via phone" all demonstrated to us that Mr. Meharchand was simply seeking to delay this proceeding;

e. Staff confirmed that for the purposes of sanctions, it would rely on the Merits Decision and the evidentiary record from the merits hearing, and would adduce no additional evidence;

f. it was in the public interest for this proceeding to move forward without unreasonable or unnecessary delay; and

g. in all the circumstances, a two-month period between the issuance of the Merits Decision and the sanctions and costs hearing allowed more than enough time for the Respondents to retain and instruct counsel, if they chose to do so.

[20] We note that at no time following the attendance on November 9, up to and including the sanctions and costs hearing on December 18, did the Respondents or anyone on their behalf suggest that the Respondents were in fact taking steps to retain counsel, through the Litigation Assistance Program or otherwise.

B. Interim order

[21] The second preliminary matter arises from Staff's request that the Commission issue an interim order, pending the release of these reasons, that would restrict the Respondents' participation in the capital markets.

1. Background

[22] On October 26, 2018, Staff served the Respondents, by email and by courier, with a motion record in support of Staff's request for an interim order pending the release of this decision. During the first attendance hearing on November 9, 2018, Mr. Meharchand initially claimed that he had not received the motion record. However, after a further exchange, Mr. Meharchand confirmed that he had received the motion record by email. We find that the Respondents were properly served with the motion record.

[23] Staff's requested order would, pending the release of this decision:

a. prohibit the Respondents from trading in or acquiring any securities, pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Securities Act*[3] (the **Act**); and

b. deny the availability of any exemptions provided for under Ontario securities law, pursuant to paragraph 3 of subsection 127(1) of the Act.

[24] In support of its request, Staff relied not only on the Merits Decision, but also on evidence that the Respondents continued to solicit investments in Valt.X on the company's website since the release of the Merits Decision. Between the conclusion of the merits hearing and the release of the Merits Decision, the Respondents also continued to solicit investments in Valt.X by email.

[25] The Respondents offered no evidence to contradict the evidence presented by Staff; nor did they deny its accuracy. We accept Staff's evidence in this regard. We find that the Respondents continued to solicit investments following the conclusion of the merits hearing and following the release of the Merits Decision.

2. Legal framework

[26] Subsection 127(1) of the Act lists orders that the Commission may make where it is in the public interest to do so. The Commission must exercise this jurisdiction in a manner consistent with the purposes of the Act, including the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets and confidence in the capital markets.[4]

[27] The Supreme Court of Canada has held that the public interest jurisdiction and the orders listed in subsection 127(1) of the Act are protective and preventative and are intended to be exercised to prevent future harm to Ontario's capital markets.[5]

3. Analysis

[28] Typically, the measures listed in subsection 127(1) of the Act are imposed either following the conclusion of a sanctions and costs hearing, or through a temporary order granted under subsection 127(5) or extended under subsections 127(7) or 127(8). Staff's request for an interim order pending the release of the sanctions and costs decision is atypical. However, the scope of section 127

[3] RSO 1990, c S.5
[4] The Act, s 1.1
[5] *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

permits such an order to be made. There is nothing in the section to suggest otherwise and no statutory impediment to our issuing such an order.

[29] The interim order sought by Staff would not impose sanctions for past conduct. Rather, Staff sought an order protecting investors pending a determination of what the appropriate sanctions will be. While Staff's request is not made pursuant to the temporary order provisions in subsections 127(5), (7) and (8), we consider the purposes of such a temporary order, and of the interim order sought here, to be similar. Both forms of order seek to protect investors and the capital markets by restricting activity temporarily.

[30] The Respondents benefitted from the same procedural protections in connection with the requested interim order as any respondent would receive relating to sanctions requested at the conclusion of a full sanctions and costs hearing. The Respondents received notice of Staff's request, and they had the opportunity to attend at and fully participate in the hearing regarding that request, including by adducing evidence and making submissions. Staff's request was properly made, at an appropriate stage of the proceeding.

[31] As to the merits of Staff's request, given the particularly serious findings in the Merits Decision, the Respondents' apparent unwillingness to abide by Ontario securities law, and the risk to investors and the capital markets, we concluded that it was in the public interest to issue the order sought.

C. Respondents' participation in the sanctions and costs hearing

[32] The sanctions and costs hearing proceeded as scheduled on December 18, 2018. Mr. Meharchand participated, at least initially, by telephone.

[33] Staff began by filing an affidavit that established proper service on the Respondents of Staff's written submissions, authorities, and affidavit evidence relating to costs. In an email sent to Staff and to the Registrar in the early morning hours of December 18, and at the sanctions and costs hearing itself, Mr. Meharchand claimed not to have received the materials.

[34] We reject Mr. Meharchand's assertion. He claimed that the email address used by Staff "is not approved in our system for receiving emails", even though he previously exchanged emails with Staff at that same address. He also previously denied receiving emails relating to this proceeding, even though that denial also proved to be untrue (see paragraph [22] above). Further, despite knowing that Staff was required to serve materials by November 23, Mr. Meharchand did not attempt to contact Staff to find out where those materials were. Finally, Mr. Meharchand asserted in the hearing that he had asked Staff to serve him at a business location in the United States of America; however, he offered no evidence of that request and Staff advised that no such request was received. We find that he indeed received Staff's materials in a timely way.

[35] Following that discussion with the Panel, Mr. Meharchand advised that he would not participate any further, stating "You can continue without me."[6] He disconnected from the telephone call. At the Panel's request, the Registrar immediately sent an email to the Respondents, advising that the line would

[6] Hearing transcript, *Meharchand (Re)*, December 18, 2018, at 9 line 27

remain open should Mr. Meharchand wish to call back. The hearing proceeded in his absence and concluded without Mr. Meharchand rejoining the call.

[36] The Respondents did not file written submissions. Mr. Meharchand disconnected from the call without making any oral submissions regarding specific sanctions or Staff's request for costs. We were therefore left without any submissions on the Respondents' behalf.

D. Representation of Valt.X

[37] The final preliminary matter relates to the representation of Valt.X in this proceeding.

[38] At the beginning of the merits hearing on May 14, 2018, Mr. Meharchand explicitly confirmed that he was representing Valt.X at the hearing.[7]

[39] No contrary advice was provided to the Commission, by Mr. Meharchand or anyone else, at any time, until November 10, 2018, the day following the first attendance hearing. Upon receipt of the Commission's order resulting from that attendance, Mr. Meharchand sent an email to the Registrar and to Staff, advising "yet again that At [*sic*] no time in any of the Hearings have I represented Valt.X Holdings Inc.". This assertion was clearly incorrect.

[40] At the beginning of the sanctions and costs hearing, Mr. Meharchand explicitly confirmed that he was representing Valt.X at that hearing,[8] although as noted above, Mr. Meharchand disconnected from the call shortly thereafter.

III. ANALYSIS – SANCTIONS

[41] We turn now to consider what sanctions would be in the public interest.

A. Introduction

[42] The sanctions listed in subsection 127(1) of the Act are protective and are intended to be exercised to prevent future harm to Ontario's capital markets.

[43] The Commission has identified a non-exhaustive list of factors to be considered with respect to sanctions generally, including the seriousness of the misconduct, the size of the profit made from the illegal conduct, any mitigating factors, and the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence"). Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[9]

B. Contraventions of the Act

1. Illegal distribution of securities

[44] The requirement to provide sufficient disclosure to those who are investing in securities is a cornerstone of Ontario securities law. The delivery of a proper prospectus that reviews the risks associated with an investment helps investors make an informed decision about that investment.[10]

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[7] Hearing transcript, *Meharchand (Re)*, May 14, 2018, at 5 line 27
[8] Hearing transcript, *Meharchand (Re)*, December 18, 2018, at 6 line 21
[9] *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19, (2016) 39 OSCB 4907 at para 28; and at para 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60
[10] *M P Global Financial Ltd (Re)*, 2011 ONSEC 22, (2011) 34 OSCB 8897 at para 117

[45] In this case, the Respondents traded in securities of Valt.X, where such trades were distributions. No prospectus was ever filed or delivered. The distributions, which were contrary to subsection 53(1) of the Act, raised at least C$1.5 million and US$140,000 from more than 100 investors.

[46] The Respondents attempted to avail themselves of the accredited investor exemption from the prospectus requirement. However, as the Commission found in the Merits Decision, the Respondents relied entirely on the investors' self-certification as to their own qualifications as accredited investors. The Respondents undertook no inquiry to assess whether a particular investor's circumstances were sufficient to justify that investor not receiving prospectus disclosure. The accredited investor exemption was therefore improperly relied upon by the Respondents.

2. Engaging in the business of trading securities without being registered

[47] Registration is another cornerstone of Ontario securities law. It protects investors and promotes confidence in the capital markets by seeking to ensure that those who sell or promote securities are proficient and solvent and that they act with integrity. When an unregistered individual or firm engages in activity that requires registration, the individual or firm defeats some of the necessary legal protections, shields the activity somewhat from regulatory monitoring, puts investors at risk, and undermines the integrity of the capital markets.

[48] The Commission found that the Respondents engaged in the business of trading in securities of Valt.X, without being registered, contrary to subsection 25(1) of the Act. The Respondents did so regularly and continuously over many years.

3. Fraud

[49] Mr. Meharchand engaged in fraudulent conduct contrary to clause 126.1(1)(b) of the Act, by making false statements to existing and potential investors about the use to which invested funds would be put, and by using invested funds for improper purposes. In doing so, he knowingly put investors' funds at risk.

[50] Specifically, the Commission found in the Merits Decision that:

a. Mr. Meharchand actively and repeatedly solicited investor funds over a number of years;

b. contrary to Mr. Meharchand's representations, the Respondents did not meaningfully carry on a legitimate cybersecurity business during the relevant time period;

c. Mr. Meharchand used investor funds to bet on horses, to pay the mortgage on his home, to pay credit card bills, to satisfy what he claimed were debts owing to him, and for other unknown and undocumented purposes;

d. Mr. Meharchand adduced no documentary evidence, and no reliable oral evidence, to establish that investor funds were used for legitimate purposes;

e. as Mr. Meharchand admitted, he routinely commingled investor funds with his own personal funds; and

f. Mr. Meharchand's activities resulted in a loss of virtually all of the investor funds.

[51] The circumstances of this case amply demonstrate why the Commission has consistently held that fraud is "one of the most egregious securities regulatory violations".[11] Typically, fraudulent activity causes direct and immediate harm to its victims, many of whom entrust a substantial portion of their savings to those who abuse that trust. Fraud significantly undermines confidence in the capital markets and therefore has wide-ranging negative effects on investor interests and on capital formation.

[52] Mr. Meharchand's conduct showed callous disregard for the financial security of existing and potential investors in Valt.X.

C. Application of the relevant factors

[53] The misconduct in this case was very serious. It was recurring, it extended over many years, and it affected many investors. The manner in which the Respondents raised funds denied investors the protections to which they were entitled. In addition, the Respondents exerted pressure on potential investors, both by imposing artificial deadlines for investment opportunities, and by urging investors to borrow against their homes to invest in the CrowdBuy program.

[54] We consider the Respondents' admitted and cavalier commingling of funds, the absence of any records, and the failure to engage even rudimentary bookkeeping assistance, to be aggravating circumstances that increase the seriousness of the misconduct. These factors preclude a reliable and complete accounting of the extent of investor losses. The Respondents ought not to be able to benefit from the uncertainty that they themselves created.

[55] As explained above, Mr. Meharchand's conduct was particularly serious, given its fraudulent nature and his callous disregard for investors' interests.

[56] As a result of the Respondents' misconduct, they obtained at least C$1.5 million and US$140,000 from investors. That is a significant sum. Less than $50,000 was returned to investors.

[57] Mr. Meharchand expressed no remorse. While there is no obligation on a respondent to express remorse, and a respondent's failure to express remorse is not an aggravating factor, we note the absence of remorse in this case. Mr. Meharchand has neither recognized the seriousness of his misconduct nor shown any concern for the harm he has caused.

[58] There are no mitigating factors.

D. Sanctions sought by Staff

1. Introduction

[59] Staff seeks market bans, disgorgement of the funds obtained by the Respondents and an administrative penalty.

[11] *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11, (2010) 33 OSCB 5535 at para 214, quoting D. Johnston & K.D. Rockwell, *Canadian Securities Regulation*, (4th ed., Markham: LexisNexis, 2007) at 420

2. Market bans

[60] Staff asks that the Commission:

a. permanently prohibit the Respondents from acquiring or trading in securities or derivatives;

b. order that the exemptions contained in Ontario securities law shall not apply to the Respondents permanently;

c. require Mr. Meharchand to resign any position he holds as a director or officer of an issuer, registrant or investment fund manager, and prohibit him from ever holding any such position; and

d. permanently prohibit Mr. Meharchand from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[61] Participation in the capital markets is a privilege, not a right.[12] Staff's requested order would essentially deny that privilege to the Respondents.

[62] The Commission's role is to deny that privilege where it concludes, based on a respondent's past conduct, that the respondent's continued participation in the capital markets "may well be detrimental to the integrity of [the] capital markets."[13]

[63] Mr. Meharchand's egregious and fraudulent conduct, and his refusal to accept responsibility for his actions, lead us to conclude that he cannot be trusted to participate in those markets in any way. His conduct demonstrates a serious risk to the public.

[64] As the Commission has found in similar circumstances,[14] only a permanent removal from the capital markets would be proportionate to the type of misconduct found in this case, would be sufficient to protect investors from Mr. Meharchand, and would deliver the necessary deterrent message to others who might contemplate similar misconduct.

[65] We note Staff's requested order would refer explicitly to both "registrants" and to "investment fund managers". We adopt the Commission's reasons in *Inverlake Property Investment Group Inc (Re)*[15] and *Vantooren (Re)*,[16] in which the Commission found such a distinction unnecessary, given that the definition of "registrant" in subsection 1(1) of the Act includes an investment fund manager, by virtue of subsection 25(4) of the Act. As a result, the order we shall issue refers to registrants, which term includes investment fund managers.

3. Disgorgement

[66] Paragraph 10 of subsection 127(1) of the Act provides that if "a person or company has not complied with Ontario securities law", the Commission may, if it determines it to be in the public interest to do so, issue "an order requiring the

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[12] *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451, [2003] OJ No 593 (Div Ct) at paras 55-56

[13] *Mithras Management Ltd (Re)* (1990), 13 OSCB 1600 at 1610-11

[14] *2196768 Ontario Ltd (Re)*, 2015 ONSEC 9, (2015) 38 OSCB 2374 at para 51; *Lyndz Pharmaceuticals Inc (Re)*, 2012 ONSEC 25, (2012) 35 OSCB 7357(***Lyndz***) at para 80

[15] *Inverlake Property Investment Group Inc (Re),* 2018 ONSEC 35, (2018) 41 OSCB 5309 at para 39

[16] *Vantooren (Re),* 2018 ONSEC 36, (2018) 41 OSCB 5603 at para 30

person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance."

[67] The purpose of a disgorgement order is not to provide restitution; rather, it is a remedy that seeks to prevent wrongdoers from benefiting from their breaches of Ontario securities law, and to deter those wrongdoers and others from engaging in similar misconduct.[17]

[68] While the Commission is authorized to order disgorgement of the full amount obtained by respondents, it need not do so. The Commission has set out various factors that it will take into account in determining whether a disgorgement order is appropriate, and if so, in what amount:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.[18]

[69] We will now apply each of those factors to the circumstances of this case.

(a) Did the Respondents obtain an amount as a result of the non-compliance with Ontario securities law?

[70] In the Merits Decision, the Commission found that the Respondents obtained investor funds in a manner that contravened Ontario securities law. We therefore conclude that both Respondents may be subject to a disgorgement order in respect of the funds raised.

(b) Seriousness of the misconduct and whether the misconduct caused serious harm

[71] As noted above, the Respondents' conduct was very serious. Mr. Meharchand perpetrated a fraud on investors, and the misconduct of both Respondents caused investors to lose virtually all of their funds.

(c) Is the amount obtained as a result of the non-compliance reasonably ascertainable?

[72] As Mr. Meharchand admitted, his personal funds and those of Valt.X were commingled. There are no records that would permit a proper accounting. While the absence of records precludes a precise accounting, the evidence does clearly establish that the amounts obtained were at least C$1.5 million and US$140,000. Staff limits its requested disgorgement order to those amounts, less C$50,000 that was returned to investors.

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[17] *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 (***PFAM***) at para 48
[18] *PFAM* at para 56

(d) Are those who suffered losses likely to be able to obtain redress?

[73] The onus does not lie on Staff to demonstrate that victims of misconduct are unlikely to obtain redress. The difficulties inherent in such a determination would impose a burden that is inconsistent with the Commission's investor protection mandate. Rather, if the Respondents were to show that those who suffered losses are likely to obtain redress, the Commission might reduce the disgorgement amount, or not order any disgorgement at all.[19]

[74] The Respondents adduced no such evidence.

(e) Deterrent effect on the Respondents and others

[75] It is essential both for the protection of investors and for the promotion of confidence in the capital markets that those entrusted with investor money strictly adhere to sound practices that reflect the importance of that trust.

[76] The Respondents disregarded their obligations to investors in Valt.X. Their repeated, deliberate and dishonest conduct, and the need to deter them and others from engaging in similar conduct, require us to demonstrate unequivocally, to the Respondents and others, that such behaviour is unacceptable. It is in the public interest to require the Respondents, jointly and severally, to disgorge the sums of C$1,450,000 and US$140,000, being the amount that the Respondents obtained as a result of their contraventions of sections 25 and 53 of the Act less the amount of funds returned to investors.

4. Administrative penalty

[77] Staff proposes an administrative penalty of between $500,000 and $700,000 against Mr. Meharchand. Staff submits that an administrative penalty in this range would be appropriate and proportionate due to the seriousness of the breaches and the fact that the breaches, including the fraud, occurred over a prolonged period of time.

[78] The Commission has stated in previous decisions that the purpose of administrative penalties is to "deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets."[20] Thus, the Commission intends that administrative penalties will achieve both specific and general deterrence.

[79] In support of its position, Staff directed our attention in particular to six previous decisions of the Commission.

[80] In *Maple Leaf Investment Fund Corp (Re)* (***Maple Leaf***),[21] an individual respondent engaged in unregistered trading and illegal distribution of securities of a corporate respondent. The two respondents purported to rely on the accredited investor exemption but made no effort to determine whether the investors were qualified. They also perpetrated a fraud on the investors by providing false information regarding the use of investor funds and the activities of the corporate respondent. Of the $4.5 million that the respondents raised

[19] *PFAM* at para 70
[20] *Limelight Entertainment Inc (Re),* 2008 ONSEC 28, (2008) 31 OSCB 12030 at para 67
[21] *Maple Leaf Investment Fund Corp (Re)*, 2012 ONSEC 8, (2012) 35 OSCB 3075

from 80 investors over a period of 19 months, $1.3 million was returned to investors. The Commission ordered that the individual respondent pay an administrative penalty of $450,000.[22]

[81] We note that *Maple Leaf* did involve an additional breach not applicable in this case, *i.e.*, making prohibited representations to potential investors about a future listing on a stock exchange.

[82] In *Lyndz*, the Commission imposed administrative penalties of $500,000 and $600,000 on two individual respondents, following findings that the corporate respondent had no true underlying business, and that the individual respondents had fraudulently used a substantial portion of the approximately $2.1 million raised from investors for personal expenses. The respondents' activities in *Lyndz* extended over ten years, involving investors in Ontario and the United Kingdom.

[83] *New Found Freedom Financial (Re)*[23] resulted in administrative penalties of $250,000 against each of two individual respondents who persuaded investors to advance funds for foreign exchange trading on the promise of unrealistic returns. Instead, the respondents used the funds to pay earlier investors and themselves. The Commission found that the respondents had engaged in the business of trading in securities and had conducted illegal distributions, through which they perpetrated a fraud, depriving investors of at least $1.1 million.

[84] In *Bradon Technologies Ltd (Re)* (***Bradon***),[24] the Commission found that the two individual respondents had perpetrated a fraud on investors by purporting to sell securities of one of the corporate respondents to at least 46 investors, causing a net aggregate loss to those investors of approximately $1.6 million. In doing so, the respondents engaged in the business of trading securities without being registered, and illegally distributed those securities. As in *Maple Leaf*, the *Bradon* respondents committed a breach not present in this case, *i.e.*, making a prohibited representation regarding listing on an exchange. The Commission imposed administrative penalties of $500,000 and $300,000 on the individual respondents, taking into account the differing extent of each respondent's contact with investors.

[85] *Portfolio Capital Inc (Re)* (***Portfolio***)[25] also involved respondents who engaged in the business of trading securities without being registered and who conducted illegal distributions of securities. The respondents raised approximately US$980,000 and C$544,000 from more than 200 investors over almost five years. Even though the *Portfolio* respondents were not found to have defrauded investors, the Commission imposed administrative penalties of $500,000 and $150,000 on the two individual respondents. Once again, the differing amounts reflected the role that each respondent played.

[86] Finally, the respondents in *Black Panther Trading Co*[26] raised more than $425,000 from 16 individuals, on promises to invest the funds and produce specified returns. Instead, the respondents fraudulently used the funds to pay earlier investors and family members, or for personal expenses. The Commission

[22] *Maple Leaf* at para 44
[23] *New Found Freedom Financial (Re)*, 2013 ONSEC 26, (2013) 36 OSCB 6758
[24] *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19, (2016) 39 OSCB 4907
[25] *Portfolio Capital Inc (Re)*, 2015 ONSEC 27, (2015) 38 OSCB 7357
[26] *Black Panther Trading Co (Re)*, 2017 ONSEC 8, (2017) 40 OSCB 3727

ordered that the respondents be jointly and severally liable for an administrative penalty of $300,000.

[87] In our view, given the seriousness of Mr. Meharchand's misconduct, an administrative penalty of $550,000 is proportionate, is sufficient to act as a specific and general deterrent, and is appropriate in all the circumstances. That amount lies within the range of the administrative penalties referred to above. Its location toward the high end of that range reflects the aggravating factors we have cited.

IV. ANALYSIS – COSTS

A. Introduction

[88] We turn now to consider Staff's request that the Respondents pay some of the costs associated with this matter.

[89] Given the Commission's finding that the Respondents did not comply with Ontario securities law, section 127.1 of the Act empowers the Commission to order them to pay the costs of the investigation and/or hearings in this matter. Such an order is not a sanction; instead it allows the Commission to recover some of the costs expended in connection with the investigation and hearings.

B. Relevant factors

[90] The issues at stake in this proceeding are important. While there is little about the Respondents' conduct that was novel or precedent-setting, the misconduct that occurred was very serious and had a significant effect on numerous investors. It was important that there be an appropriate regulatory response.

[91] There was nothing about Staff's conduct that unduly lengthened the proceeding. The Commission found that the Respondents contravened the Act in all of the ways alleged by Staff. Both of Staff's witnesses were required in order to prove Staff's case, and Staff delivered both witnesses' evidence in writing, greatly contributing to a shorter hearing.

[92] We do not find the Respondents' conduct during this proceeding to be a relevant factor in determining costs. While we have been critical of that conduct when addressing adjournment requests and evidentiary issues, we recognize that the Respondents were unrepresented by counsel for some of the preliminary attendances and throughout the merits hearing. Staff does not seek an adjustment to whatever costs order we might otherwise make, based on the Respondents' conduct. We need not make any such adjustment.

C. Staff's request

[93] Staff submitted evidence supporting total costs of the investigation and proceeding in this matter of $892,629.47. That sum is made up of Staff time of $880,412.50 and disbursements of $12,216.97. The amount for Staff time is based on hourly rates previously approved by the Commission, and excludes, among other things, time spent by law clerks, students-at-law, and members of Staff who recorded 35 or fewer hours on the file.

[94] Staff seeks costs of $275,138.62, which represents a discount of 69% from the total recorded. Staff submits that the total should be divided so that Mr. Meharchand and Valt.X pay costs of $165,083.17 and $110,055.45, respectively. These amounts are 60% and 40% of the total, based on three

contraventions having been proven against Mr. Meharchand (being engaged in the business of trading, illegal distributions, and fraud), and two contraventions having been proven against Valt.X (being engaged in the business of trading, and illegal distributions).

D. Conclusion as to costs

[95] The total amount sought by Staff is both appropriate and proportionate. It reflects a significant discount from the total costs recorded, but adequately respects the principle that wrongdoers ought to pay some portion of the costs associated with investigations and proceedings.

[96] In our view, Staff's proposed basis for apportionment of costs between the two Respondents is reasonable. We will therefore make the order requested.

V. CONCLUSION

[97] For the reasons set out above, we shall issue an order as follows:

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

b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the Respondents are prohibited permanently from acquiring securities;

c. pursuant to paragraph 3 of subsection 127(1) of the Act, the exemptions contained in Ontario securities law shall not apply to the Respondents permanently;

d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Mr. Meharchand shall resign any positions he holds as a director or officer of an issuer or a registrant;

e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Mr. Meharchand is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;

f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mr. Meharchand is prohibited permanently from becoming or acting as a registrant or as a promoter;

g. pursuant to paragraph 9 of subsection 127(1) of the Act, Mr. Meharchand shall pay an administrative penalty of $550,000, which amount shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act;

h. pursuant to paragraph 10 of subsection 127(1) of the Act, the Respondents shall be required, jointly and severally, to disgorge to the Commission the sums of C$1.45 million and US$140,000, which amounts shall be designated for allocation or use by the Commission in accordance with subclause 3.4(2)(b)(i) or (ii) of the Act;

i. pursuant to section 127.1 of the Act, Mr. Meharchand shall pay costs of $165,083.17 to the Commission; and

j. pursuant to section 127.1 of the Act, Valt.X shall pay costs of $110,055.45 to the Commission.

Dated at Toronto this 30th day of January, 2019.

"*Timothy Moseley*"
Timothy Moseley

"*Deborah Leckman*"
Deborah Leckman

"*Robert P. Hutchison*"
Robert P. Hutchison