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Citation: Cheng (Re), 2019 ONSEC 8

Date: 2019-02-04

File No. 2017-13

**IN THE MATTER OF
BENEDICT CHENG, FRANK SOAVE,
JOHN DAVID ROTHSTEIN and ERIC TREMBLAY**

REASONS AND DECISION

Hearing: September 4, 6, 7, 10, 11, 13, 14, 18, 21, 24 and
November 9, 2018

Decision: February 4, 2019

Panel: Philip Anisman Commissioner and Chair of the Panel
Deborah Leckman Commissioner
Robert P. Hutchison Commissioner

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REASONS AND DECISION

I. INTRODUCTION

- [1] The fair and efficient operation of securities markets requires timely disclosure of information that is likely to affect the value of securities that are traded so that investors have equal access to it when they make investment decisions. Trading by persons who have material information about an issuer that is not generally available to investors is inconsistent with this goal; it erodes market integrity and confidence in the fairness of our securities market.
- [2] Accordingly the *Securities Act* (Ontario) (the **Act**) prohibits any “person in a special relationship with an issuer” whose securities are publicly traded from purchasing or selling the issuer’s securities with knowledge of a material fact with respect to the issuer that has not been generally disclosed.¹ As information is easily transmissible, the Act also prohibits a person in a special relationship from informing another person (a **tippee**) of an undisclosed material fact, except in the necessary course of business, and includes the tippee as a “person in a special relationship” so that the tippee cannot trade with or further disseminate the information.
- [3] A “special relationship” thus includes persons in a direct relationship with an issuer, such as directors, officers, employees and persons conducting business with the issuer, and a potentially unending chain of tippees and subtippees. To avoid catching persons who trade innocently, the definition of “person in a special relationship with an issuer” includes only tippees who know or reasonably ought to know that their informer is in a special relationship with the issuer.²
- [4] As knowledge is subjective, direct evidence of knowledge is often not available, and proof of insider trading and a person’s status as a tippee must be based on circumstantial evidence. For this reason, and because information may be conveyed in many, sometimes subtle ways, it may be difficult for staff of the Commission (**Staff**) to prove improper insider trading, especially by a tippee.
- [5] This proceeding, relating to the purchase by the respondent, Frank Soave, of shares in Amaya Gaming Group Inc. (**Amaya**) shortly before it announced an acquisition that would make it the world’s largest online gaming company (the **Acquisition**), provides an example of this difficulty. Staff allege that John David Rothstein, an officer of Aston Hill Asset Management Inc. (**AHAM**) which was participating in the financing of Amaya’s Acquisition, informed Mr. Soave of AHAM’s participation and the imminent announcement of the Acquisition and that Mr. Soave purchased 5,000 shares of Amaya following receipt of this information, which he sold the day after the announcement at a profit of \$38,166.³ For the reasons that follow, the Commission hearing panel (the **Panel**) have concluded that Staff have not proved that Mr. Soave knew or should have

¹ RSO 1990, c S.5, s 76(1). The section says “knowledge of a material fact or material change”. A material change relates to an issuer’s timely disclosure obligations and is invariably a material fact as well; see *AiT Advanced Information Technologies Corp (Re)*, 2008 ONSEC 3, (2008) 31 OSCB 712 at paras 209-215 (**AiT**). As the distinction between the two is not relevant in this proceeding, these reasons use only “material fact”.

² Act, s 76(5) “person in a special relationship” (e).

³ They also allege that Mr. Soave made misrepresentations to Staff in a compelled examination, when he denied these allegations.

known that Mr. Rothstein was in a special relationship with Amaya when he purchased the shares and that the case against him must be dismissed.

II. BACKGROUND

A. Amaya's Acquisition

- [6] At 9:24 p.m. on June 12, 2014, Amaya announced that it had reached an agreement to acquire Oldford Group Limited (**Oldford**), the parent company of Rational Group Ltd., the world's largest poker business, which owned PokerStars, the world's largest online poker site, for cash consideration of US\$4.9 billion.⁴ The purchase price was to be financed through a combination of (i) cash on hand, (ii) senior secured credit facilities of US\$2.1 billion underwritten by three large banks, (iii) US\$800 million senior secured term loans from these banks and affiliates of GSO Capital Partners LP (**GSO**), the credit division of The Blackstone Group (**Blackstone**), and an investment manager subsequently identified as BlackRock Financial Management, Inc. (**BlackRock**), and (iv) a convertible preferred share private placement of US\$1 billion in which GSO and the investment manager would participate. Amaya would also receive (v) \$500 million through the issuance, in an underwritten bought-deal private placement, of subscription rights priced at \$20 and convertible into common shares on a one-for-one basis upon completion of the Acquisition, with an additional \$140 million underwriter's option, and (vi) a commitment from GSO to purchase common shares for gross proceeds of up to US\$55 million.
- [7] At the time of the announcement, Amaya's business was primarily providing technology-based gaming solutions to the regulated gaming industry, with an online poker outlet that was ranked nearly 30th in online poker traffic. The Acquisition would make it the world's largest publicly traded online gaming company, would provide strong cash flow from its combined operations, and was expected immediately to increase its combined earnings significantly.
- [8] Discussions leading to the announcement began over six months earlier, in December, 2013, and Amaya, Oldford and holders of a majority of its shares entered a letter of intent on January 13, 2014. In the six months leading up to the announcement, the parties to the proposed agreement conducted due diligence and negotiated the terms of the Acquisition and its financing, and the underwriter sought purchasers of the subscription rights.
- [9] During this period there was speculation among analysts and in blogs about Amaya's prospects and a possible acquisition. Analysts commented on Amaya having pursued an acquisition strategy in developing its business. In late May, rumours of the possibility of an acquisition of PokerStars were published on websites and in market blogs, accompanied by increases in the market price and trading volume of Amaya shares. In response to these rumours and trading activity, Amaya published a press release on May 26, 2014 stating that while acquisitions were a part of its growth strategy, it did not publicly comment on potential acquisitions before there was a binding legal agreement and that it would not comment further on the current rumours unless and until comment was warranted.

⁴ Unless otherwise indicated, all references to currency in these reasons are to Canadian dollars.

- [10] Between May 26 and June 10, 2014, Amaya's shares traded between approximately \$10 and \$11 with relatively consistent trading volumes. On June 11, the volume increased substantially and its shares closed at just over \$12.
- [11] On June 12, Bloomberg News Service published an article (the **Bloomberg Article**) at 9:07 a.m. announcing a \$1 billion financing by Blackstone for an acquisition by an existing client that would make the client a global player in its industry; this information was repeated in an email from a blog known as "SeekingAlpha.com" (**SeekingAlpha**) sent at 10:15 a.m. Mr. Soave purchased 5,000 shares of Amaya for \$60,755 (\$12.15 per share) at 10:35 a.m. The price of Amaya's shares rose to \$14.08 by 12:22 p.m., when trading was halted by the Investment Industry Regulatory Organization of Canada (**IIROC**). Amaya published its press release announcing the Acquisition that evening, and its shares opened the following day at \$19.05 and closed at \$20, the offering price of Amaya's subscription rights.

B. AHAM and Mr. Rothstein

- [12] On April 29, 2014, AHAM signed a non-disclosure agreement to enable it to receive information about and participate in the private placement of Amaya's subscription rights for common shares. AHAM was a registered investment fund manager, exempt market dealer and portfolio manager specializing in mutual funds. It managed its own funds and third-party mutual funds under a subadvisory contract with Industrial Alliance Clarington (**Clarington**), a mutual fund company.
- [13] AHAM was a subsidiary of Aston Hill Financial Inc. (**AHF**), a financial company that managed, marketed, distributed and administered mutual funds, private equity funds, hedge funds, segregated institutional funds and other investment products.
- [14] Benedict Cheng, a respondent in this proceeding, was the president and chief investment officer of AHF and the co-chief investment officer at AHAM and was responsible for managing AHAM's staff. He was registered as a portfolio manager, managed the Clarington mutual funds and authorized the signing of the non-disclosure agreement by AHAM; he also supervised the management of other funds and the general operations of AHAM. In June, 2018, Mr. Cheng entered a settlement agreement with Staff in which he admitted that he told Mr. Rothstein of the Acquisition and suggested that Mr. Rothstein inform Mr. Soave.⁵ He testified as a Staff witness at the hearing.
- [15] AHAM's president was Michael Killeen, a lawyer, who was also AHF's chief operating officer. Mr. Killeen was a Staff witness at the hearing.
- [16] The chief executive officer and chair of AHF was Eric Tremblay. Mr. Tremblay was also the chair of Argent Energy Trust (**Argent**), a public trust that held oil and gas assets, whose units traded on the Toronto Stock Exchange. AHF was responsible for Argent's general administration; Mr. Tremblay was in charge of AHF's management and administration contract with Argent and his primary responsibility as CEO and chair of AHF was dealing with Argent. Mr. Tremblay also entered a settlement agreement with Staff in this proceeding.

⁵ Exhibit 240, Settlement Agreement with Mr. Cheng; (2018) 41 OSCB 5131.

- [17] John David Rothstein was AHAM's senior vice president and national sales manager. Mr. Rothstein managed AHAM's internal and external sales teams and reported to Mr. Cheng. His primary functions were to act as a "wholesaler", engaging with investment advisers, mainly in the greater Toronto area, to encourage them to invest funds they managed for clients in AHAM's mutual funds. To this end, he facilitated contact between AHAM's portfolio managers and these investment advisers by arranging meetings in which AHAM portfolio managers would discuss the market, AHAM's mutual funds and their favourite securities holdings. These meetings occurred at the offices of the investment advisers and at lunches and dinners elsewhere. If an investment adviser was interested in information on an issuer covered by the portfolio managers, Mr. Rothstein attempted to ensure that a portfolio manager addressed the investment adviser's questions. He also conveyed recommendations and analyses of portfolio managers to these advisers in emails and orally.
- [18] Mr. Rothstein was interviewed by Staff in compelled examinations pursuant to a summons under section 13 of the Act on three occasions. On June 15, 2016, in his first interview, although he admitted that he might have given Mr. Soave a "heads up", he denied having been told of the Acquisition by Mr. Cheng and denied any knowledge of Mr. Soave's purchase of Amaya shares. In his second interview, on January 24, 2017, he admitted that he lied in his first interview, that Mr. Cheng had told him about the Acquisition and told him to inform Mr. Soave and that he did so in a telephone conversation on June 12, 2014. On April 12, 2017, Mr. Rothstein entered a settlement agreement with Staff based on his evidence in this interview.⁶ In his third interview, on October 23, 2017, Mr. Rothstein corrected his statement that he spoke to Mr. Soave and other statements in his second interview and in his settlement agreement.

C. The Respondent

- [19] Mr. Soave was a registered investment adviser and vice president at CIBC World Markets Inc. (**CIBC**) who was initially registered in 1986. He joined CIBC's Thornhill branch in 2001. In June, 2014, he had assets under management of approximately \$175 million, most of which were invested in managed funds, including AHAM's mutual funds. Other than in this matter, he has not been the subject of discipline by an employer or of a regulatory proceeding.
- [20] Mr. Soave had known Mr. Rothstein for over ten years and had recommended him to Mr. Cheng for his position with AHAM. CIBC's Thornhill branch was Mr. Rothstein's most significant firm by holdings and Mr. Soave was Mr. Rothstein's most significant investment adviser.

D. The Tip

- [21] Mr. Soave had invested approximately \$1 million of his clients' money and had invested personally in Argent on the basis of a presentation by Mr. Tremblay. Other investment advisers at the CIBC Thornhill branch also invested in Argent. In 2014 Argent's securities deteriorated significantly; Mr. Soave and other investment advisers in his branch became dissatisfied with their investment and with the information they were receiving from Mr. Tremblay. Mr. Soave, particularly, expressed strong dissatisfaction to Mr. Rothstein, who was

⁶ Exhibit 234, Settlement Agreement with Mr. Rothstein; (2017) 40 OSCB 3718.

concerned that Mr. Soave would cease to invest in and withdraw his investments from AHAM's mutual funds because of Mr. Tremblay's association with AHAM.

- [22] Mr. Rothstein expressed these concerns to Mr. Cheng. As a result, Mr. Cheng told Mr. Rothstein of Amaya's impending Acquisition and suggested he tell Mr. Soave and the other investment advisers at his branch to purchase shares in Amaya. Mr. Cheng testified that he told Mr. Rothstein in late May or early June; Mr. Rothstein testified that he received the information on or about June 11, as he himself purchased Amaya shares immediately after he received the information from Mr. Cheng. While it is likely Mr. Rothstein's recollection is accurate, when he received this information is less significant than what he did with it.
- [23] On June 11, 2014, Mr. Rothstein sent Mr. Soave text messages recommending that he purchase shares in Amaya. He testified that in the morning of June 12, 2014, he telephoned Mr. Soave and left a voicemail message informing him of the impending Acquisition. Although it is clear that Mr. Rothstein said something about the Acquisition – in June and July, 2014, he told Mr. Cheng and Mr. Killeen that he had done so, as both testified – he does not remember specifically what he said in his voicemail message. As a result, Staff bases much of their case on records of communications between Mr. Rothstein and Mr. Soave on June 11 and 12, 2014, on the timing and amount of Mr. Soave's purchase of Amaya shares and on his sale the following day at a significant profit, none of which is contested.
- [24] Staff prepared a chronology of events on June 11, 12 and 13, 2014 that included telephone calls, emails and text messages between Mr. Rothstein, Mr. Soave and other persons at CIBC's Thornhill branch and elsewhere with whom they communicated.⁷ The communications between Mr. Rothstein and Mr. Soave, which form the central elements of Staff's case, and Mr. Soave's trades in Amaya follow:

June 11, 2014

- at 11:54 a.m., Mr. Rothstein called Mr. Soave's cell phone, but there is no record of the call having been received;
- at 11:55 a.m., Mr. Rothstein sent Mr. Soave a text saying "Call me if you get a chance. Thx";
- at 2:56 p.m., Mr. Rothstein telephoned Mr. Soave's cell phone, but there is no record of the call having been received;
- at 4:05 p.m., Mr. Rothstein sent Mr. Soave a text saying "AYA", which was Amaya's trading symbol;
- at 7:58 p.m., Mr. Soave texted Mr. Rothstein, saying "Sorry never owned it should I";
- at 8:13 p.m., Mr. Rothstein sent a reply text saying "Yes";

⁷ Exhibit 57, Staff Chronology of Events. This chronology with the Panel's addition of other significant events on June 11, 12 and 13 accompanies these reasons as an appendix.

June 12, 2014

- at 9:45 a.m., Mr. Rothstein telephoned Mr. Soave's cell phone and left a voicemail message; the call lasted 1 minute and 19 seconds;
- at 10:10 a.m., Mr. Soave telephoned his cell phone from his office phone; the call lasted 1 minute and 4 seconds;
- at 10:15 a.m., Mr. Soave sent an email to Mr. Rothstein saying "Thanks";
- at 10:18 a.m., Mr. Rothstein sent a reply email to Mr. Soave saying "Blackrock, blackstone and another huge one behind it";
- at 10:35 a.m., Mr. Soave purchased 5,000 shares of Amaya for \$60,755 (at \$12.10 per share);
- at 12:22 p.m., IIROC halted trading in Amaya shares;
- at 1:23 p.m., Mr. Soave sent a text to Mr. Rothstein saying "Wholy [sic] Shit";

July 13, 2014

- before the markets opened, Mr. Soave reallocated the Amaya shares to three trading accounts in his wife's and his name;
- at 9:32 a.m., Mr. Soave sold the 1,780 Amaya shares in one of these trading accounts for \$20 per share;
- at 9:33 a.m., Mr. Soave sold the 2,370 Amaya shares in a second trading account for an average price of \$19.73 per share;
- at 9:38 a.m., Mr. Soave sent Mr. Rothstein a text saying "Thank You";
- at 10:31 a.m., Mr. Rothstein phoned Mr. Soave's cell phone, but there is no record of the call having been received;
- at 10:54 a.m., Mr. Rothstein sent a text to Mr. Soave saying "Unbelievable";
- at 12:16 p.m., Mr. Soave sold the 850 Amaya shares in the third trading account for \$19.77 per share;
- at 12:18 p.m., Mr. Soave sent Mr. Rothstein a text saying "What fund won on the Trade";
- at 12:21 p.m., Mr. Rothstein sent an email to the gaming industry analyst at AHAM asking "Which funds got an allotment to Amaya?"

[25] These facts are not contested. The inferences to be drawn from the messages between Mr. Rothstein and Mr. Soave are key questions in this proceeding.

III. ISSUES

[26] Section 76 of the Act prohibits a person in a special relationship with an issuer from purchasing or selling securities of the issuer with knowledge of a material fact with respect to the issuer that has not been generally disclosed.

[27] The questions in this proceeding are whether Mr. Soave was in a special relationship with Amaya and contravened section 76 when he purchased shares in Amaya on June 12, 2014. The definition of a "person in a special relationship with an issuer" includes a person who learns of a material fact with respect to

the issuer from any other person in a special relationship with it and who “knows or ought reasonably to have known that the other person” was in a special relationship.

- [28] As AHAM had entered into a non-disclosure agreement on April 29, 2014, it was engaging in a business activity or was considering or evaluating whether or proposing to engage in a business activity with Amaya and was therefore in a special relationship with Amaya.⁸ As officers and employees of AHAM, Mr. Cheng and Mr. Rothstein were also in a special relationship with Amaya.⁹
- [29] The issues to be resolved are thus whether Mr. Soave received from Mr. Rothstein a material fact, whether the material fact had been generally disclosed by 10:35 a.m. on June 12, 2014, when he purchased shares in Amaya, and whether he knew or should have known that Mr. Rothstein was in a special relationship with Amaya. The first two issues are components of the alleged prohibited conduct, that Mr. Soave purchased shares in Amaya with knowledge of a material fact that was not generally disclosed; the third issue, his knowledge of Mr. Rothstein’s special relationship, determines whether he was subject to the prohibition in subsection 76(1).¹⁰
- [30] Staff has the onus of proving each of these matters on a balance of probabilities.¹¹ If it is necessary to draw inferences, both the facts on which the inferences are based and the facts inferred must satisfy this same standard of proof; it must be more likely than not that they occurred.¹²

IV. EVIDENCE AND FINDINGS

A. Knowledge of a Material Fact

- [31] A material fact is “a fact that would reasonably be expected to have a significant effect on the market price or value” of the securities to which it relates.¹³ Materiality is thus an objective standard, based on the likely market impact of an event and its effect on investor expectations and investment decisions, influenced by the probability of the event occurring and its magnitude with

⁸ Act, s 76(5) “person in a special relationship with an issuer” (b).

⁹ Act, s 76(5) “person in a special relationship with an issuer” (c)(iv).

¹⁰ Mr. Soave’s knowledge of a material fact is addressed in section IV.A of these Reasons; general disclosure is addressed in section IV.B; and Mr. Soave’s knowledge of Mr. Rothstein’s status is addressed in section IV.C.

¹¹ *F.H. v McDougall*, 2008 SCC 53 at para 40; *Azeff (Re)*, 2015 ONSEC 11, (2015) 38 OSCB 2983 at paras 41-42, affirmed 2018 ONCA 61 (CanLII), leave to appeal denied 2017 CanLII 84246 (SCC) (**Azeff**). This standard is often described as requiring clear, cogent and convincing evidence. This does not indicate a standard of proof other than a balance of probabilities. The Commission previously applied a standard that required clear, cogent and convincing evidence in proceedings for serious offences like insider trading and proceedings affecting a person’s livelihood, which standard was treated as more onerous than a balance of probabilities and less than the criminal beyond-a-reasonable-doubt; see e.g. *Donnini (Re)*, (2002) 25 OSCB 6225 at paras 100-101 and 229, affirmed 76 OR (3d) 43, 2005 CanLII 1622 (CA); *ATI Technologies Inc (Re)*, 2005 ONSEC 14, (2005) 28 OSCB 8558 at paras 13-15 (**ATI Technologies**); *AiT* at para 196. The Supreme Court’s 2008 decision determined that there is only one civil standard of proof; clear, cogent and convincing evidence means only sufficient evidence to prove a fact on a balance of probabilities; *McDougall* at paras 45-46.

¹² *R v Munoz*, (2006) 86 OR (3d) 134; *Walton v Alberta (Securities Commission)*, 2014 ABCA 273, leave to appeal denied, 2015 CanLII 14759 (SCC); *Azeff* at paras 43-49.

¹³ Act, s 1(1) “material fact”.

respect to the securities' value if it occurs.¹⁴ Such facts are commonly understood to include facts relating to a possible merger, takeover bid, other corporate acquisition and other significant changes in a business's operations.¹⁵

- [32] The parties do not contest that Amaya's proposed acquisition of PokerStars was a material fact; in light of its impact on Amaya's position in the internet gaming industry and on its income, there is no doubt that it was. The question is whether Mr. Soave was informed of it in the messages from Mr. Rothstein before his purchase of shares at 10:35 a.m. on June 12, 2014.

1. Evidence

- [33] Whether Mr. Soave was informed of a material fact must be determined in the context of the facts identified in Staff's chronology.¹⁶ To summarize, in the afternoon and evening of June 11, 2014, Mr. Rothstein sent Mr. Soave text messages identifying Amaya and recommending that he purchase its shares. The following morning at 9:45 a.m., Mr. Rothstein called Mr. Soave's cell phone and left a voicemail message; the call lasted 1 minute and 19 seconds. Mr. Soave called his cell phone from his office at 10:10 a.m.; this call lasted 1 minute and 4 seconds.¹⁷ Four minutes later, at 10:15 a.m., Mr. Soave sent Mr. Rothstein an email saying "Thanks". Three minutes after this, at 10:18 a.m., Mr. Rothstein sent a reply email saying "Blackrock, blackstone and another huge one behind it". Seventeen minutes later, at 10:35 a.m., Mr. Soave purchased 5,000 Amaya shares, which he sold the following day.
- [34] The content of Mr. Rothstein's voicemail message is central to whether Mr. Soave had knowledge of a material fact.

(a) Mr. Cheng's Testimony

- [35] Mr. Cheng testified that he told Mr. Rothstein of AHAM's participation in financing the Acquisition and that he could tell Mr. Soave and other individuals at CIBC's Thornhill branch who had invested in Argent to purchase shares of Amaya. He said Mr. Rothstein subsequently asked him about the financial backers of the Acquisition and he identified Blackstone and BlackRock. After the announcement, Mr. Rothstein told him he had informed Mr. Soave of the deal. Mr. Cheng so informed Mr. Tremblay and Mr. Killeen in late June and July. Mr. Cheng's evidence, however, does not indicate what Mr. Rothstein said in his voicemail message to Mr. Soave.

(b) Mr. Killeen's Testimony

- [36] In late June, Mr. Killeen informed Mr. Cheng and Mr. Tremblay that he was conducting a compliance review of possible trading by employees of AHAM and another AHF affiliate in shares of Amaya before the announcement. He then learned from Mr. Tremblay that Mr. Cheng told Mr. Rothstein "to tell Frank Soave to buy the stock".¹⁸ Mr. Cheng confirmed that following his request, Mr. Rothstein

¹⁴ The Commission's decisions on this standard are summarized in *Canaco Resources Inc (Re)*, 2013 BCSECCOM 310 at para 84; see also *SEC v Texas Gulf Sulphur Co*, (1968) 401 F2d 978 (2d Cir) at 985, cert denied (1969) 394 US 976.

¹⁵ See e.g. *National Policy 51-201 - Disclosure Standards (NP 51-201)*, para 4.2.

¹⁶ See para 24, above.

¹⁷ The fifteen-second difference was likely the time required for Mr. Rothstein to listen to the voicemail greeting on Mr. Soave's cell phone before he left his message.

¹⁸ Exhibit 201, Killeen Memorandum, July 2, 2014.

“passed on the tip” to Mr. Soave “who then traded and made large profits.”¹⁹ After learning this, Mr. Killeen questioned Mr. Rothstein, who said that he had traded personally “shortly after Ben [Cheng] asked him to tell Frank Soave to buy the stock.”²⁰ Mr. Killeen testified that he wrote his two memoranda shortly after receiving this information. His evidence, however, does not address what Mr. Rothstein actually said, beyond indicating that he “passed on the tip” and told Mr. Soave to buy Amaya shares.

(c) Mr. Rothstein’s Testimony

- [37] As neither Mr. Cheng nor Mr. Killeen was able to provide direct evidence of what Mr. Soave was told, Mr. Rothstein’s evidence is the most relevant. This brings Mr. Rothstein’s credibility into issue. Mr. Rothstein, as he admitted in his testimony, has a poor memory and lied to Staff in his first interview. In that interview, although he admitted that he might have given Mr. Soave a “heads up”, he denied that Mr. Cheng told him of the Acquisition, denied tipping Mr. Soave and denied knowing that Mr. Soave purchased shares.²¹
- [38] In his second interview, he admitted having lied about each of these matters and said that Mr. Cheng told him to tell Mr. Soave and others in CIBC’s Thornhill branch to buy shares in Amaya. He said he spoke with Mr. Soave by telephone on June 12, 2014 and had no specific recollection of the conversation, but probably told Mr. Soave that Mr. Cheng said to call and inform him of Amaya’s Acquisition and the urgency of his purchasing. He said Mr. Soave asked him who was involved in financing Amaya’s Acquisition and that he obtained that information and subsequently sent the email identifying BlackRock and Blackstone to Mr. Soave. Basing his evidence on the information provided to him by Staff concerning the timing of his telephone call to Mr. Soave that afternoon, the content of his texts to Mr. Soave and a telephone call from Mr. Cheng inviting him to a meeting in AHAM’s boardroom, he said Mr. Cheng gave him the information in the boardroom around noon on June 11. He had no recollection of speaking to anyone else at CIBC’s Thornhill branch.²²
- [39] In his third interview, Staff informed Mr. Rothstein that they had new information showing that his telephone call to Mr. Soave resulted in a voicemail message and that he could not have spoken to him on his 9:45 a.m. call on June 12. Mr. Rothstein then said that the information he gave Mr. Soave could have been in a voicemail. Mr. Rothstein was also informed that Staff had seen calendar entries relating to his visit to AHAM’s boardroom on June 11, which showed that he was called to a meeting in the boardroom with a third party relating to an acquisition of AHAM; as a result, Mr. Rothstein said he was likely not informed of the Acquisition by Mr. Cheng in that meeting, but must have been informed of it that day, as he recalled purchasing shares of Amaya immediately after receiving the information. In addition, Staff informed Mr. Rothstein that they had recently obtained telephone records showing that he had three calls with the Thornhill branch manager on June 11, 2014; Mr. Rothstein

¹⁹ Exhibit 202, Killeen Memorandum, July 12, 2014.

²⁰ *Ibid.*

²¹ Exhibit 241, Compelled Interview of John David Rothstein, June 15, 2016.

²² Exhibit 235, Continued Compelled Interview of J D Rothstein, January 24, 2017.

said he had not recalled them, but he thought the discussion with the branch manager was limited to Argent.²³

- [40] In his testimony in the hearing, Mr. Rothstein said he lied in his first interview because he was trying to protect Mr. Cheng, who was his supervisor at AHAM, and Mr. Soave. He testified that Mr. Cheng informed him of the Acquisition and AHAM's participation in it and told him to pass the information on to Mr. Soave and other investment advisers at CIBC's Thornhill branch who had invested in Argent. He testified that in his voicemail message on June 12, he informed Mr. Soave of the fact that Amaya had a deal and of the immediacy to make sure Mr. Soave would buy shares and told him that AHAM funds were participating in the transaction.
- [41] On cross-examination, he admitted that his evidence in his interviews about being informed of the Acquisition in AHAM's boardroom on June 11 was an assumption. He also admitted that his statement about having spoken with Mr. Soave was incorrect; he said he had remembered that there was a telephone call, but not that he had left a voicemail message. He said again that he could not be sure what he said; his best recollection was that he said there was a deal, conveyed the immediacy of the situation and said that Mr. Soave should buy Amaya shares. He admitted his testimony that he informed Mr. Soave of AHAM's participation in the transaction was only an assumption. He also admitted that because he had left a voicemail message, Mr. Soave could not have talked to him. He could not explain his subsequent email concerning BlackRock and Blackstone.

(d) Mr. Soave's Testimony

- [42] Mr. Soave testified that after he received Mr. Rothstein's recommendation to purchase shares of Amaya on the evening of June 11, he conducted research into Amaya on his computer, looking at two websites, and was aware of the published rumours of Amaya's Acquisition of PokerStars. He said that the following morning, June 12, 2014, he reviewed newswire information, spoke to another adviser in his office who was familiar with Amaya and who himself owned Amaya shares and that his decision to purchase shares was based on Mr. Rothstein's June 11 recommendation, his own research, his discussion with the other adviser and the increase in Amaya's share price. He did not see the Bloomberg Article; he received the email from SeekingAlpha because he held shares in Blackstone, but said he did not connect it to Amaya.²⁴ He had no recollection of the voicemail message or of having listened to it and said his email thanking Mr. Rothstein at 10:15 a.m., four minutes after his call to his cell phone, related to the recommendation on June 11. He also said he did not connect Mr. Rothstein's 10:18 a.m. email about BlackRock and Blackstone to Amaya.

2. Findings

- [43] Mr. Hausman, counsel for Mr. Soave, submitted that in view of Mr. Rothstein having lied on his first interview, his poor memory and his assumptions, Mr.

²³ Exhibit 236, Continuing Compelled Interview of John David Rothstein, October 23, 2017.

²⁴ See para 11, above.

Rothstein's evidence concerning what he told Mr. Soave in his voicemail message should not be relied on in any manner.

- [44] There is no doubt that Mr. Rothstein's memory was poor. For example, he did not recall having spoken to the Thornhill branch manager on June 11 and even when shown the three calls with the branch manager, his recollection of their content was based on assumption, as he admitted in cross-examination. He had no recollection of the specifics of any of his conversations and was often mistaken about events. Much of his evidence in his second and third interviews and in the hearing reflected assumptions based on the undisputed facts concerning his telephone, email and other messages and the responses to them. These included his initial evidence about where Mr. Cheng informed him of the Acquisition, his statement that he spoke to Mr. Soave on June 12 and that Mr. Soave asked him about Amaya's financial supporters, again as he admitted in cross-examination.
- [45] After his first interview, Mr. Rothstein acknowledged these failings. Overall, he attempted to be honest in the hearing and his evidence, including his admissions on cross-examination, was credible with respect to his recollection that he informed Mr. Soave of the Acquisition and its imminent announcement and encouraged him to buy shares immediately. His testimony to this effect was consistent, including his statements in his three interviews. In his first interview, although denying almost everything about his conduct, he said he may have given Mr. Soave a "heads up". Following this interview, he consistently testified to a telephone call and to telling Mr. Soave that there was a deal, of its immediacy and that he should trade. This evidence was not shaken on cross-examination.
- [46] It was also consistent with the telephone calls and messages between Mr. Rothstein and Mr. Soave and with Mr. Soave's conduct. On June 11, Mr. Rothstein recommended that Mr. Soave purchase shares in Amaya. In view of the reason for the tip and the length of the voicemail message which followed this recommendation on June 12, it is reasonable to infer that more was said in explanation. Mr. Rothstein's recollection that he informed Mr. Soave of the impending transaction and the imminence of the announcement so that he would buy shares is credible. Despite his failure to remember doing so, it is much more likely than not that Mr. Soave listened to this message at 10:10 a.m. His 10:15 a.m. email thanking Mr. Rothstein is best understood as a response to Mr. Rothstein's voicemail message.
- [47] Mr. Rothstein replied three minutes later saying in his email, "Blackrock, blackstone and another huge one behind it". Staff argued that this email itself disclosed a material fact by identifying BlackRock because BlackRock's identity was not disclosed by Amaya until its management information circular was published on June 30, 2014. Although identification of a participant in a financing may provide additional certainty about the probability of a transaction and therefore be a material fact,²⁵ it need not be determined whether it was in this instance. In the context of the email from SeekingAlpha received by Mr. Soave at 10:15 a.m., which reported Blackstone's US\$1 billion financing for an existing client, Mr. Rothstein's 10:18 a.m. email clearly linked BlackRock and Blackstone to the Acquisition; it said they and "another huge one" were "behind it". This

²⁵ See e.g. *SEC v Mayhew*, (1997) 121 F3d 44 at 51 (2d Cir) (**Mayhew**).

email thus confirmed the material fact, namely, the Acquisition, disclosed in his voicemail message.

- [48] Even though Mr. Soave had received the 10:15 a.m. SeekingAlpha email, he testified that he did not connect Mr. Rothstein's 10:18 a.m. email with the Amaya transaction. He said he found it "a bit weird". This is not surprising in view of the fact that he had no recollection of the voicemail message. Whether or not he associated the email with Mr. Rothstein's preceding voicemail message, the only reasonable inference, on a balance of probabilities, is that Mr. Soave's purchase seventeen minutes later was motivated by the information he received from Mr. Rothstein. In all of the circumstances, there can be little doubt that Mr. Soave was informed of the impending announcement of Amaya's Acquisition of PokerStars.

B. General Disclosure

- [49] A person with privileged access to material facts about an issuer who trades with an informational advantage does not incur the same risks as investors who do not have equal access to the information. With equal access, that is, once information is equally available to public investors, the information will generally be reflected in the market price of securities. The Act therefore prohibits insider trading only when the material facts known to an insider have not been generally disclosed.²⁶
- [50] General disclosure, however, is not defined in the Act or the regulations and rules under it. Reflecting the policy in the Act, regulators have consistently held that a material fact has not been generally disclosed until it has been disseminated in a manner that ensures it reaches the marketplace and public investors have had reasonable time to consider its implications.²⁷ This has long been the Commission's position,²⁸ and is reflected in NP 51-201.²⁹ While disclosure originates with and is usually made by issuers, it is possible that material information may be generally disclosed by others.³⁰

1. Evidence

- [51] There were rumours of an acquisition by Amaya in May, 2014, which appear to have resulted in increased trading volume and prices for Amaya's shares. On May 23, 2014, for example, a blogger called "goldencalf" wrote a three-line post headed "fact or fiction" on Stockhouse, an internet site with market information about securities; it asked whether anyone had heard the rumour that Amaya might be buying PokerStars.net, stating "someone I know high up at a major brokerage firm mentioned this to me the other day."³¹ This was followed by a second post by "solarman2013" the same day which suggested that the trading in Amaya's shares supported the rumour, concluding "I suspect they have the

²⁶ Act, s 76(1).

²⁷ See e.g. *Faberge, Inc*, Securities Exchange Act Release No 10174, May 25, 1973, [1973] CCH Fed Sec L Rep, ¶ 79,378 (SEC).

²⁸ See *Connor (Re)*, [1976] OSCB 149 at 174-177 (suggesting a minimum one-day waiting period) (**Connor**).

²⁹ NP 51-201, para 3.5.

³⁰ See e.g. *Lum (Re)*, 2015 BCSECCOM 189 at paras 70-73.

³¹ Exhibit 190, Stockhouse post, May 23, 2014 (goldencalf).

biggest acquisition yet lined up and that the current level of \$10+ will be far surpassed when they announce."³²

- [52] On May 24, 2014, a website called "CalvinAyre.com" (**CalvinAyre**) published an article referring to unidentified sources that said "that an agreement is in place that would see Amaya assume ownership of the Isle of Man-based online poker colossus" that owned PokerStars. This article stated, however, that on its face, the "mechanics of the deal don't seem feasible ... [PokerStars'] asking price would presumably be seriously out of Amaya's budget." It concluded with a question as to whether this was smoke or fire or a towering inferno.³³ Another internet article the same day was entitled "Amaya Gaming Soaring share price triggers takeover speculation", but it did not contain additional information.³⁴
- [53] A subsequent post on May 26, 2014, again by goldencalf, reasserted the rumours and concluded that the only possible buyer of PokerStars was a gambling enterprise other than Amaya. In response to these rumours, Amaya published its May 26 press release stating that it did not comment on acquisitions unless and until there was a binding legal agreement.³⁵ And on May 29, 2014, poker-online.com, an internet website, published an article entitled "Rumored Amaya-PokerStars Merger Might Not Happen."³⁶
- [54] There were no further significant reports until June 12, 2014, when at 9:07 a.m., the Bloomberg Article was published online stating that at an investor conference in New York, the head of Blackstone's credit business said Blackstone was preparing to announce its largest ever credit deal with a commitment of over US\$1 billion for an acquisition financing deal with a North American company that was an existing client of GSO to which it had lent funds two years previously and that the acquisition would make the company a global player in its industry.³⁷ This information was circulated later that morning by SeekingAlpha in the email received by Mr. Soave at 10:15 a.m.³⁸ Although neither of these reports identified Amaya or PokerStars, Amaya was GSO's existing client.
- [55] An article published in the Financial Post at 1:54 p.m., after the trading halt, said PokerStars was "near a deal to be acquired by" Amaya and that a knowledgeable person who asked not to be named "because the talks aren't public" said it might be announced that day. The article referred to GSO as among Amaya's backers, to the US\$1 billion financing amount and to the purchase of PokerStars' parent corporation. It also said a spokesman for Amaya declined to comment, "citing company policy not to comment on rumours or speculation" and that spokespersons for PokerStars and Blackstone also declined to comment.³⁹

2. Expert Evidence

- [56] Dr. Jennifer Marietta-Westberg, a senior economist at Cornerstone Research and a member of the Investor Advisory Committee of the US Securities and

³² Exhibit 191, Stockhouse post, May 23, 2014 (solarman2013).

³³ Exhibit 182, CalvinAyre article, May 24, 2014.

³⁴ Exhibit 183, Recentpoker.com article, May 24, 2014.

³⁵ Exhibit 54, Amaya Press Release, May 26, 2014 at 388; see para 9, above.

³⁶ Exhibit 187, poker-online.com article, May 29, 2014.

³⁷ Exhibit 193, Email from AHAM gaming analyst to AHAM portfolio manager.

³⁸ Exhibit 62, Soave documents at 55.

³⁹ Exhibit 224, "Amaya Gaming said to be near takeover deal of PokerStars gambling site", June 12, 2014.

Exchange Commission (**SEC**), was called as an expert witness on behalf of Mr. Soave. Prior to joining Cornerstone Research, Dr. Marietta-Westberg obtained a Ph.D. in finance, was an assistant professor at Michigan State University, and worked for ten years at the SEC, ultimately as deputy chief economist/deputy director from 2013 to 2016. Dr. Marietta-Westberg's testimony was advanced to provide context to assist the Commission in determining what information was available in the market and not to provide an opinion on general disclosure. A majority of the Panel qualified Dr. Marietta-Westberg to provide expert evidence, primarily to ensure that Mr. Soave had a full opportunity to present his defence.⁴⁰

- [57] Dr. Marietta-Westberg's report and testimony were based on her review of information relating to Amaya contained in analyst and news reports, including websites and blogs, that were published between March, 2013 and June 12, 2014, and her analysis of trading volumes and prices of Amaya's shares during this period. Characterizing the publications as "public speculation of the likelihood, timing, financing and target of an upcoming Amaya acquisition", she concluded that prior to Amaya's announcement on June 12, 2014, "a reasonably informed market participant would have been able to obtain from multiple public sources, including analyst reports and message boards, relevant information related to the likelihood, timing, financial and ultimate target of Amaya's acquisition of ... [PokerStars and that this] information would have been available to traders and other market participants trading in Amaya's common stock prior to the official announcement date."⁴¹ She also concluded that the daily market movements in Amaya's common stock were "consistent with market participants trading on the early public news dissemination regarding Amaya's potential upcoming acquisition."⁴²
- [58] Having heard this evidence, the Panel concluded that it was of little assistance in determining whether Amaya's imminent announcement of the Acquisition was generally disclosed when Mr. Soave purchased its shares; nor did it assist in determining whether Mr. Soave was aware that he was receiving inside information from Mr. Rothstein.

3. Findings

- [59] Mr. Hausman submitted that the publications preceding Amaya's announcement contained sufficient information to disclose generally Amaya's Acquisition of PokerStars and its imminent announcement. He argued that this was supported by the increase in Amaya's trading volume and price in May and June and, particularly, by the increases on June 12, following publication of the Bloomberg Article and the SeekingAlpha email. He argued that the Financial Post article in the afternoon of June 12 indicated that the information about Amaya's Acquisition had been generally disclosed prior to IIROC's trading halt. In his

⁴⁰ Commissioner Anisman would not have qualified Dr. Marietta-Westberg. In his view, her evidence was not necessary to assist the Panel in determining whether Amaya's intended Acquisition of PokerStars was generally disclosed or with respect to Mr. Soave's knowledge; see *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at paras 19-23; *R v Mohan*, [1994] 2 SCR 9 at paras 21-22.

⁴¹ Exhibit 308, Expert Report of Jennifer Marietta-Westberg, Ph.d., paras 8(a) and 15.

⁴² *Ibid*, paras 8(h) and 19.

submission, the one-day waiting period suggested by the Commission in its 1976 *Connor* decision is neither appropriate nor necessary in the internet age.

- [60] The Panel does not agree that the Acquisition was generally disclosed when Mr. Soave made his purchase. Rumours are not themselves facts; they lack the certainty required to be factual rather than speculative.⁴³ While the reports in May drew attention to the possibility of an acquisition by Amaya, none of them contained any specific information and none suggested that the Acquisition would actually occur or even that it was likely. They did not constitute general disclosure of a transaction that Amaya itself refused to acknowledge on May 26, 2014, when it issued a press release saying it did not as a matter of policy confirm rumours and that if there were a transaction to announce, it would be announced only when an agreement was signed.
- [61] Mr. Hausman characterized Amaya's May 26 press release as a "non-denial denial". Although the existence of negotiations relating to the Acquisition may have been a material fact, Amaya was not required to disclose them until they constituted a material change in its business, operations or capital, and a denial of ongoing negotiations would have been a misrepresentation.⁴⁴ Amaya's press release reflected its policy concerning its timely disclosure obligations for acquisitions. The prohibition against insider trading applies in such circumstances so that persons who are aware of the negotiations may not trade before the fact that negotiations are being conducted has been generally disclosed. In the context of the Act's provisions, the characterization of Amaya's press release as a "non-denial denial" highlights the fact that the Acquisition was not then generally disclosed.
- [62] The Bloomberg Article and SeekingAlpha email on June 12 also did not generally disclose the Acquisition. While a sophisticated investor might have been able to draw inferences from them, they did not provide sufficient certainty or specificity to generally disclose the imminent announcement of the Acquisition to the public marketplace, let alone to give public investors adequate time to assess it with a view to making their own investment determinations.⁴⁵ This is evident from the fact that Mr. Soave himself did not relate Mr. Rothstein's 10:18 a.m. email identifying BlackRock and Blackstone to Amaya's Acquisition, even though he had received the SeekingAlpha email three minutes earlier. It is reinforced by the characterization of these reports by Amaya's spokesman in the subsequent Financial Post article as rumours and speculation. In any event, as the Financial Post article followed IIROC's trading halt, it does not reflect general disclosure of the Acquisition prior to Mr. Soave's purchase of Amaya shares over three hours earlier.
- [63] As a result, it is not necessary to address the appropriate waiting period in light of the development of the internet. Nevertheless, it should be noted that the minimum one-day waiting period suggested in the *Connor* decision to ensure

⁴³ See e.g. *Compact Edition of the Oxford English Dictionary* (OUP 1971) at 2601 ("statement or report circulating in a community, of the truth of which there is no clear evidence"); *Oxford Living Dictionaries English*, <https://en.oxforddictionaries.com/definition/rumour> ("currently circulating story or report of uncertain or doubtful truth"); *Oxford Living Dictionaries, English: Thesaurus*, <https://en.oxforddictionaries.com/thesaurus/rumour> (synonym: speculation; antonym: hard facts).

⁴⁴ Act, s 1(1) "material fact" and ss 75 (timely disclosure "where a material change occurs") and 126.2 (misleading statements); and see *AiT* at paras 209-223.

⁴⁵ See *Waheed (Re)*, 2014 ONSEC 23, (2014) 37 OSCB 8007 at para 396; see also *Mayhew* at 50-51.

public investors have an opportunity to analyze material information published by an issuer before its insiders can trade was a guideline, not a mandatory requirement applicable in all cases. As the Commission said in *Connor*:

[t]here can be no firm rule as to what time interval this will normally be. It very much depends upon the nature and complexity of the information, the nature of the market for the stock, the place of the market for the stock, the place of the company's operations and the place of the dissemination of the news release. We do feel confident in saying, however, that an insider may not trade with the release of the news⁴⁶

In other words, each case must turn on its own facts. While the principle concerning the timing of trading by insiders is well-established, the implications of electronic communications for the length of the one-day minimum waiting period must await a proceeding in which a determination is required on the facts presented.

- [64] On the facts in this proceeding, the Panel find that Mr. Soave purchased the Amaya shares with knowledge of a material fact that had not been generally disclosed at the time of his purchase. This finding, however, does not resolve this matter. Whether Mr. Soave was in a special relationship with Amaya when he made the purchase must now be addressed.

C. Special Relationship

- [65] The prohibition against insider trading is intended to prevent insiders from taking advantage of material information that is not available to other market participants and thus engaging in potentially riskless trading to obtain an unfair advantage from their privileged access to the information. Because of the difficulties of demonstrating use of such information or intention, the prohibition is premised on the insiders' "special relationship" with the issuer and knowledge of a material fact.⁴⁷ A person not in a direct fiduciary, professional or business relationship with an issuer who receives material information is defined by the Act as being in a special relationship only if the recipient "knows or ought reasonably to have known" that the person providing the information is a person in a special relationship.
- [66] Mr. Soave would thus have been in a special relationship with Amaya only if he knew or reasonably should have known that Mr. Rothstein was in such a relationship when he delivered the voicemail and other messages. Mr. Soave

⁴⁶ *Connor* at 174. It is also worth noting that *Connor* was decided when the Act contained only a civil remedy for persons harmed when an insider made use of undisclosed specific confidential information for his or her own benefit or advantage and did not prohibit insider trading; *Securities Act*, RSO 1970, c 426, s 113. "Insider" was then defined as a director, senior officer or ten-per-cent shareholder of a public corporation; ss 109(1)(b) and (c). See also NP 51-201 at para 3.5 n 21 (time parameters in *Connor* may not be "appropriate for modern technology").

⁴⁷ The Act's original prohibition against improper insider trading contained a defence if a person proved "that he did not make use of [his] knowledge of the material fact" in selling or purchasing a security; *Securities Act*, 1978, SO 1978, c 47, s 75. The "make use of" standard enabled a person who traded with knowledge of an undisclosed material fact to avoid liability on the basis that the knowledge did not influence his or her decision to purchase or sell and was therefore not used; see e.g. *Green v Charterhouse Group Canada Ltd*, (1976) 12 OR (2d) 280 (CA) at 306-308; *Connor* at 169-170. The Act was amended in 1987 to adopt the approach in section 76; see *Securities Act*, RSO 1980, c 466, s 75, as amended by SO 1987, c 7, s 7.1. Tippees were added to the definition of "special relationship" at this time.

would have known this if Mr. Rothstein had informed him that AHAM signed the non-disclosure agreement or was participating in the financing of Amaya's Acquisition or had provided other information that clearly indicated its derivation from a privileged source,⁴⁸ however that information was conveyed.

1. Mr. Soave's Knowledge

(a) Evidence

- [67] Although Mr. Rothstein testified that he told Mr. Soave that AHAM funds were participating in the financing of Amaya's Acquisition, he did not recall the specific content of his voicemail message and he said in cross-examination that his testimony concerning this information was not a recollection but was an assumption. Mr. Soave was aware that insider trading was prohibited under the Act and in CIBC's policy manual. He testified that he had no recollection of receiving or listening to the voicemail message. While he knew that a mutual fund could participate in a private placement, he testified that he did not know when this occurred and that he was not aware that AHAM was participating in the financing of Amaya's Acquisition until he was examined by Staff in the course of their investigation. He knew that AHAM funds held shares in Amaya and said he believed Mr. Rothstein's recommendation and messages came from a portfolio manager or analyst at AHAM. There is thus no direct evidence that Mr. Soave was told that AHAM was participating in Amaya's Acquisition or that he knew that Mr. Rothstein was in a special relationship with Amaya.
- [68] Much of the evidence related to Mr. Rothstein's activities as a wholesaler and his efforts to encourage Mr. Soave and other investment advisers to invest in AHAM's mutual funds. Mr. Rothstein arranged meetings with portfolio managers who provided information about their top holdings to investment advisers. Mr. Soave said that wholesalers passed on such recommendations to him all the time, that Mr. Rothstein and other wholesalers provided access to recommendations from their portfolio managers and often summarized the recommendations of their portfolio managers outside of meetings, primarily by email. Mr. Cheng identified such an email about an issuer other than Amaya that was sent to colleagues of Mr. Soave by Mr. Rothstein on May 13, 2014 as typical.⁴⁹
- [69] Mr. Soave often invested in securities based on such recommendations, sometimes placing his order during a portfolio manager's presentation in a meeting. Jordan Zale, a former colleague at CIBC's Thornhill branch, testified that Mr. Soave had a large risk appetite. Mr. Soave said he accepted greater personal risks than he would for his clients and adduced evidence concerning his personal investments. He produced and reviewed a number of statements from 2014 and 2015 for his and his family's accounts, which he administered, and identified twenty-two purchases between approximately \$28,000 and \$300,000, twenty of which were based on recommendations from portfolio managers. Of these twenty, twelve purchases were greater than \$60,000 and six of these were

⁴⁸ It is not necessary that the ultimate source be identified; see e.g. *Azeff* at paras 177, 180 and 202-205.

⁴⁹ Exhibit 254, Email from Mr. Rothstein to CIBC investment advisers, May 13, 2014.

\$100,000 and more. All purchases in these “pro accounts” had to be reviewed by a branch administrator and his branch manager.⁵⁰

- [70] Although he had not previously held shares in Amaya, Mr. Soave had invested in two gaming companies, one of which had been acquired by Amaya. After Amaya’s announcement he sent emails to AHAM’s gaming analyst inquiring whether the Amaya transaction would be beneficial for the gaming company in which he still held securities; the book value of this investment was approximately \$92,000.⁵¹ In March, 2015, he purchased shares of NYX Gaming Group Ltd. for over \$70,000 for his wife’s account after a luncheon meeting in which it was recommended by a non-AHAM portfolio manager.
- [71] Following his Amaya purchase and the trading halt, Mr. Soave sent a number of emails to Mr. Rothstein and to colleagues concerning Amaya. The first was to Mr. Rothstein at 1:23 p.m. on June 12, 2014, in which Mr. Soave simply said “Wholy [sic] Shit”. He explained this email as a response to the price increase in Amaya’s shares after his purchase and the fact that by the time of the trading halt he had made \$10,000. He subsequently sent emails to Mr. Zale and to his assistant about Amaya; after he informed Mr. Zale at 1:24 p.m. that it was up \$2, he asked his assistant how many shares he had purchased and when told 5,000, he responded “Shit I wish I had bought more”.⁵²
- [72] The next morning, prior to the opening of the market, he reallocated his Amaya shares to three different accounts before selling the shares; the reallocation required approval by a CIBC Thornhill branch administrator who could refer it to his branch manager. Mr. Soave also sent texts or email messages to a colleague at CIBC informing her of his purchase, to others in the industry asking whether they held Amaya shares, to a client who held shares in Amaya asking about his holdings, and to his branch manager, whom he told he had held 5,000 Amaya shares.⁵³
- [73] Mr. Soave also sent a text message to Mr. Rothstein at 12:18 p.m. on June 13 asking him “What fund won on the Trade”. Mr. Rothstein interpreted this question as relating to Amaya’s private placement and at 12:21 p.m. sent an email to AHAM’s gaming analyst asking which funds received an allotment. Mr. Rothstein testified that this was his understanding, but on cross-examination, he admitted that in his second interview by Staff, he had interpreted this question as meaning which AHAM fund held Amaya shares and that he could not be sure that his initial understanding was accurate. Mr. Soave testified that he was asking which fund benefitted from the price increase as a result of its holdings in Amaya.

(b) Findings

- [74] Mr. Hausman submitted that knowledge of Mr. Rothstein’s special relationship can only be demonstrated by direct evidence. This is not the case. Knowledge of a tipper’s relationship with an issuer, like knowledge of a material fact, is

⁵⁰ A “pro account” is an account of a registrant or a member of the registrant’s family with the same residence as the registrant.

⁵¹ Exhibit 294, Soave CIBC Account Statement, June 2014, Tab 2A.

⁵² Exhibit 57, Staff Chronology of Events; see Appendix, below.

⁵³ Exhibit 239, Emails with Mr. Soave at 110-111 (branch manager); and see Appendix, below.

frequently a matter of inference.⁵⁴ It goes without saying that any such inference must reasonably flow from facts that are proved in evidence.⁵⁵

- [75] Factors that are relevant to such an inference are the tippee's position and knowledge, the tipper's position and relationship with the tippee, the nature of the disclosed information, the timing of the receipt of the information and the tippee's trades, whether the tippee conducts any research or makes inquiries of the tipper, the tippee's prior ownership of the securities traded, the significance of the trade in light of the tippee's prior trading, portfolio and assets, and any attempt by the tippee to conceal the trading. An inference of knowledge must take these factors into account, to the extent they are relevant, in the context of all of the evidence.
- [76] At the time of his purchase, Mr. Soave had been a registrant for twenty-eight years and had managed client accounts at CIBC's Thornhill branch since 2001. He knew that mutual funds receive confidential information in connection with private placement transactions in which they participate and that Mr. Rothstein was employed by a fund manager. Mr. Rothstein had never previously recommended a specific security in the manner he recommended Amaya in his text messages on June 11, 2014, and Mr. Soave received material information in Mr. Rothstein's voicemail and subsequent email the following morning, which led him to purchase the Amaya shares.⁵⁶ Although he looked at two websites to obtain information on Amaya the night before, looked at newswire information and spoke to another investment adviser in the morning on June 12, and was aware of the rumours of the Acquisition, he did not ask Mr. Rothstein how he knew there was a deal. Instead he made a \$60,000 purchase almost immediately after he received Mr. Rothstein's email at 10:18 a.m., and he sold the shares the next day at a substantial profit. These facts, taken alone, could lead to an inference that he knew that Mr. Rothstein was in a special relationship with Amaya, as Staff submitted.
- [77] When viewed in light of all the evidence, however, this inference is less than compelling. Mr. Soave had dealt with Mr. Rothstein as a wholesaler for AHAM and other fund managers for over ten years and he had not received inside information from him during that time. He customarily received recommendations from Mr. Rothstein and other wholesalers that reflected the views of their portfolio managers. Although he had never before received a recommendation from Mr. Rothstein like the one on June 11, the manner in which it was sent was not sufficiently different from other recommendations to lead him to believe that Mr. Rothstein was in a special relationship with the issuer.
- [78] The information he received in Mr. Rothstein's voicemail and subsequent email was also not sufficient to alert him to Mr. Rothstein's special relationship. Mr. Rothstein told him in the voicemail that a deal was about to be announced in which he should invest quickly. While this was a material fact that influenced his

⁵⁴ See e.g. *Suman (Re)*, 2012 ONSEC 29, (2012) 35 OSCB 2809 at para 307 (**Suman**); *Azeff* at para 43; see also e.g. *SEC v Michel*, (2007) 521 F Supp 2d 795 at 823-825.

⁵⁵ *Suman* at paras 305-309; the use of circumstantial evidence is fully discussed in *Suman* at paras 288-304; see also para 30, above.

⁵⁶ See paras 45-48, above.

purchase,⁵⁷ it was not information that could only have come from a confidential source in a special relationship with the issuer. In this respect, it is unlike detailed, very specific information such as the price and timing of a future takeover bid, which could only come from an insider source, as was the case in the Commission's *Azeff* decision.⁵⁸ It should be noted in this context that the Commission in *Azeff* suggested that on the facts of that case, a tip that the target was "in play" could have been based on a rumour.⁵⁹ In short, the information in Mr. Rothstein's voicemail message would not necessarily lead to an inference by Mr. Soave that it came from a person in a special relationship with Amaya.

- [79] Nor would Mr. Rothstein's subsequent email identifying BlackRock and Blackstone. Although the identification of BlackRock might provide a basis for an inference of knowledge, it was not sufficient in the context to inform Mr. Soave of a special relationship in view of his belief that the source of Mr. Rothstein's information was a portfolio manager conveying information about an issuer whose securities were held by AHAM and followed by its portfolio managers and its gaming analyst. This belief could also explain why he did not ask Mr. Rothstein where he obtained the information, especially as Mr. Rothstein's position as a sales manager and wholesaler would not ordinarily be expected to give him access to confidential information relating to a proposed private placement or non-disclosure agreement.
- [80] Although Mr. Soave purchased Amaya shares virtually immediately following his receipt of Mr. Rothstein's information, the purchase was consistent with his trading practice. The uncontroverted evidence was that he had an appetite for risk and often purchased securities quickly after receiving a recommendation from a portfolio manager, sometimes during the course of the manager's presentation. The size of his Amaya purchase was also not out of the ordinary; he frequently made such investments in amounts greater than \$60,000. The amount of this one was in the middle of those presented in evidence. There was also evidence of his selling securities quickly to obtain a relatively small profit. In light of this evidence, the fact that he had not purchased shares in Amaya previously is not a sufficient basis for an inference of knowledge, especially as he had previously made equally significant investments in issuers in the gaming industry and did so again the following year.
- [81] Staff argued that Mr. Soave's texted query, "What fund won on the Trade", demonstrated his awareness of AHAM's participation in Amaya's financing. Although Mr. Rothstein so understood it, as is clear from his email to AHAM's gaming analyst three minutes later, Mr. Soave testified that he was asking which mutual fund held Amaya shares and benefitted from the increase in their trading price. Both understandings are possible in view of the ambiguity of Mr. Soave's question. Mr. Rothstein's understanding, and Staff's reading, interprets "won" as meaning which fund received an allotment of subscription rights. On the other hand, Mr. Soave's evidence interprets "won on" to mean "benefitted from" and

⁵⁷See *ibid*; see also *Mayhew* at 51 (confirmation of rumours "transformed the likelihood of a ... merger from one that was ... possible to one that was highly probable quite soon").

⁵⁸ *Azeff* at paras 138, 146-148, 197 and 203(d).

⁵⁹ *Ibid* at para 203(d). This was a determination which reflected the facts before the Commission panel; a different conclusion might be reached in other circumstances.

“trade” to mean Amaya’s transaction. Both interpretations are equally difficult and equally plausible.

- [82] Finally, Mr. Soave’s conduct on June 12 and 13 following his purchase is relevant to his knowledge when he traded. Conduct that attempts to conceal a trade, including after the trade occurred, suggests a consciousness of impropriety and may indicate knowledge that a tippee’s informer was in a special relationship.⁶⁰ Although the converse will not always reflect a lack of knowledge, conduct following a trade that suggests a lack of awareness of impropriety may be taken into account when considering whether knowledge should be inferred.
- [83] Mr. Soave’s conduct following his purchase must be considered. His first response to Mr. Rothstein at 1:23 p.m., following the \$2 price increase and the trading halt, “Wholy [sic] Shit”, suggests surprise and is inconsistent with his knowing he received inside information, which goes with knowledge of a special relationship. Had he known this, the price increase would likely have been expected. His comment to his assistant at 1:28 p.m. that he should have bought more is to the same effect. Mr. Soave’s communications with colleagues and others on June 13 revealing that he owned Amaya shares also suggest no consciousness of impropriety. This is especially so with respect to his emails to his branch manager about his Amaya holding, as the purchase and his reallocation of Amaya shares earlier that day had to be reviewed and his email on June 13 would have drawn the branch manager’s attention to Mr. Soave’s purchase the day before.
- [84] Although an inference of knowledge is possible, taking into account all the evidence, it has not been shown on a balance of probabilities that Mr. Soave knew that Mr. Rothstein was in a special relationship with Amaya. There is no direct evidence to so link him, as the recommendation and other information received by Mr. Soave from Mr. Rothstein did not indicate that AHAM had signed a non-disclosure agreement or was participating in the financing of Amaya’s Acquisition. Nor is an inference of knowledge compelled by the facts, as Mr. Rothstein’s recommendation and other messages were consistent with his activities as a wholesaler. It was not unreasonable in the circumstances for Mr. Soave to have believed that these communications reflected recommendations from a portfolio manager as his post-purchase conduct suggests and as he testified.
- [85] The Panel find, therefore, that it has not been proved that Mr. Soave knew that Mr. Rothstein was in a special relationship with Amaya when he purchased Amaya shares.

2. Whether Mr. Soave should have known

- [86] The same factors apply to a determination of whether Mr. Soave ought reasonably to have known that Mr. Rothstein was in a special relationship.⁶¹ Unlike actual knowledge, this is an objective standard based on what a

⁶⁰ See e.g. *ATI Technologies* at para 71. On the use of post-offence circumstantial evidence to support an inference of intention or knowledge, see e.g. *R v S.B.1*, 2018 ONCA 807.

⁶¹ See para 75, above; *Azeff* at paras 43 and 64-65; see also *Re Investors Management Co, Inc*, Securities Exchange Act Release No 9267, July 29, 1971, [1970-1971] CCH Fed Sec C Rep, ¶ 78,163 at 80,520-80,521.

reasonable person with Mr. Soave's knowledge and experience should have inferred in the circumstances.⁶²

- [87] Under this standard Mr. Soave's status as a registrant and his experience in the industry should be given greater weight, as "a higher standard of alertness is expected of" a registrant than of a member of the general public.⁶³ Although section 76 does not expressly impose a positive obligation to conduct due diligence, this higher standard reflects the expectations that accompany registration, namely, that the training, experience and ethical conduct required of registrants will be taken into account.⁶⁴ For example, a registrant's failure to ask questions may be more significant when determining what the registrant ought to have understood from information of which he or she was aware when trading.
- [88] In light of his experience as a registrant and having received material information about Amaya's Acquisition and its immediacy in the voicemail message, the SeekingAlpha email and the subsequent email identifying BlackRock and Blackstone, which information triggered his purchase, it can be concluded that Mr. Soave should have known that Mr. Rothstein was in a special relationship. Even though he did not, it is arguable that a reasonable securities professional in his position, knowing what he knew, should have realized that it came from a privileged source and special relationship.
- [89] Mr. Soave's experience as a registrant, however, includes his relationships with wholesalers for fund managers and their practice. In the circumstances, it was not unreasonable for him to believe that the information came from a portfolio manager or analyst who was following Amaya for the reasons expressed above with respect to his actual knowledge.⁶⁵ A portfolio manager or gaming sector analyst following Amaya would be expected to know of rumours and other developments, including information in the SeekingAlpha email that Blackstone was financing the transaction.⁶⁶ The additional identification of BlackRock in Mr. Rothstein's 10:18 a.m. email would likely not have indicated to a person who was not following Amaya with the same intensity that its source must have been a person in a special relationship.
- [90] As a result, whether Mr. Soave should have known of Mr. Rothstein's special relationship with Amaya is a close question, with the evidence permitting either inference. This does not satisfy the standard of proof. In the Panel's view, Staff have not proved on a balance of probabilities that Mr. Soave should have known of Mr. Rothstein's relationship.
- [91] For these reasons, the Panel find that Mr. Soave was not in a special relationship with Amaya when he purchased its shares on June 12, 2014.

⁶² *Azeff* at para 63.

⁶³ *Ibid* at para 64(c).

⁶⁴ See e.g. *Danuke (Re)*, (1981) 2 OSCB 31C (September 18) at 40C-41C.

⁶⁵ See paras 77-79, above.

⁶⁶ In fact, AHAM's gaming analyst was aware of this information, as he sent an email with a copy of the 9:07 a.m. Bloomberg Article to an AHAM portfolio manager at 9:11 a.m.; Exhibit 193, Email from AHAM gaming analyst to AHAM portfolio manager.

D. Misrepresentations to Staff

- [92] Staff also alleged that Mr. Soave made misrepresentations in his compelled examination when he denied that Mr. Rothstein informed him of material facts on the basis of which he purchased shares in Amaya and when he provided false explanations of texts and emails.⁶⁷ In their oral submissions, Staff conceded that if Mr. Soave is not found to have contravened section 76 of the Act, these allegations cannot be maintained.
- [93] For all of these reasons, the proceeding against Mr. Soave is dismissed.

V. STAFF CONDUCT

- [94] In his submissions, Mr. Hausman alleged that Staff unfairly published Mr. Rothstein's settlement agreement and the initial Statement of Allegations in this proceeding, both dated April 12, 2017, because they incorrectly said that Mr. Rothstein had spoken with Mr. Soave when he had not and that Staff had not disclosed this fact to the Commission panel that approved Mr. Rothstein's settlement. He argued that publication of the incorrect statements damaged Mr. Soave's reputation and should not have occurred. Although he did not request any form of relief, he submitted that the Panel should address this alleged unfairness. Although this submission does not affect the merits of this proceeding, it involves a serious allegation and should be addressed.
- [95] Staff have an obligation to act honestly and fairly in all their enforcement activities, and the Commission relies on Staff to do so.⁶⁸ If Staff fail to conduct themselves in accordance with these standards, any unfairness can be addressed on an application or a motion by a person who is affected, assuming that a remedy is sought.⁶⁹
- [96] Mr. Hausman's submission is premised on Staff having been aware at the time of Mr. Rothstein's settlement that Mr. Rothstein had not spoken to Mr. Soave. The record in this case does not support this premise. Mr. Rothstein's settlement agreement was consistent with the evidence he provided to Staff in his second interview on January 24, 2017.⁷⁰ Christine George, a senior forensic accountant in the Enforcement Branch of the Commission who was the primary investigator in this matter and was called by Staff as a witness, testified that at the time of Mr. Rothstein's second interview, she did not have all the office telephone lines from CIBC's Thornhill branch.⁷¹ In Mr. Rothstein's third interview on October 23, 2017, Staff said that since his prior interview, they had made further inquiries of CIBC and had obtained information which indicated that he had left a voicemail

⁶⁷ Exhibit 212, Amended Statement of Allegations, October 26, 2017, (2017) 40 OSCB 8817.

⁶⁸ See e.g. *RBC Dominion Securities Inc (Re)*, 2017 ONSEC 24, (2017) 40 OSCB 5551 at para 13; *Assante Capital Management Ltd (Re)*, 2017 ONSEC 45, (2018) 41 OSCB 99 at para 7(h).

⁶⁹ See *Ontario Securities Commission Rules of Procedure and Forms*, (2017) 40 OSCB 8988, rr 17 and 28. An application or motion would require a full record. For example, the Panel was not provided with the panel's reasons for approving Mr. Rothstein's settlement; see *Cheng (Re)*, 2017 ONSEC 14, (2017) 40 OSCB 4451. When referring to the facts admitted in the settlement agreement, the panel said those "facts remain unproven against the remaining respondents" (para 3). In summarizing the facts, they said only that Mr. Rothstein "contacted Frank Soave" and the following day "provided further confidential information" to him (para 8).

⁷⁰ Exhibit 234, Settlement Agreement with Mr. Rothstein; (2017) 40 OSCB 3718; and see para 38, above.

⁷¹ Transcript, September 7, 2018 at 150, lines 1-11.

message on June 12, 2014 and had not spoken with Mr. Soave.⁷² They then questioned him concerning this new information.

[97] Following this third interview, Staff amended the Statement of Allegations to delete the references to a telephone conversation, as well as making other corrections.⁷³ In the circumstances, this was the appropriate action. On the basis of the record in this proceeding, there is no support for Mr. Hausman's allegation concerning Staff's conduct.

Dated at Toronto this 4th day of February, 2019.

"Philip Anisman"

Philip Anisman

"Deborah Leckman"

Deborah Leckman

"Robert P. Hutchison"

Robert P. Hutchison

⁷² See para 39, above.

⁷³ Exhibit 212, Amended Statement of Allegations, October 26, 2017; (2017) 40 OSCB 8817; Exhibit 213, Blacklined Amended Statement of Allegations.

APPENDIX
Chronology of Events, June 11-13, 2014*

Wednesday, June 11, 2014 – JD Rothstein Contacts Frank Soave

Time	Event	From	To	Description
11:49 AM	Email	JD Rothstein	CIBC Thornhill Branch Manager (BM)	Re: Could we have a chat today? "Hope you are well. Cheers, JD"
11:54 AM	Call	JD Rothstein	Frank Soave	Call from Rothstein (office) (1 minute) to Soave (cell) (no record of call received)
11:55 AM	SMS	JD Rothstein	Frank Soave	"Call me if you get a chance. Thx"
12:00 PM	Lunch			Ben Cheng, JD Rothstein and others attended lunch with [*third party] at Aston Hill offices
12:12 PM	Email	Ben Cheng	JD Rothstein	"Boardroom. Come on down."
12:16 PM	Email	BMO InvestorLine	JD Rothstein	Re: Your email address has been updated
1:00 PM	Email	BM	JD Rothstein	Re: Could we have a chat today? "At my desk"
2:09 PM	Call	JD Rothstein	BM	Call from Rothstein (office) (15 minutes) to BM (office)
2:49 PM	Trade			JD Rothstein buys 700 Amaya shares in Rothstein trading account at BMO InvestorLine [Market order filled at \$11.875 for \$8,322]
2:50 PM	Call	JD Rothstein	BM	Call from Rothstein (office) (1 minute) to BM (office)
2:56 PM	Call	JD Rothstein	Frank Soave	Call from Rothstein (office) (1 minute) to Soave (cell) (no record of call received)
3:30 PM	Taxi			Cheng taxi pickup for airport
3:49 PM	Email	JD Rothstein	Eric Tremblay	Re: Argent Feedback "Eric, I ain't going to lie that I'm doing some damage control at CIBC currently ... I am doing my best to ease the situation so that these guys will be more receptive in a few months from now."

* Boldfaced words in the description column are boldfaced in Exhibit 57; the Panel's additions are identified by an asterisk.

Time	Event	From	To	Description
4:05 PM	SMS	JD Rothstein	Frank Soave	"AYA"
4:09 PM	Call	JD Rothstein	BM	Call from Rothstein (office) (3 minutes) to BM (office)
5:40 PM	Flight			Cheng/Killeen/LT [*LT was an AHAM employee]/Tremblay flight Toronto to New York
7:04 PM	Email	JD Rothstein	LA [*LA was an employee at AHAM]	JD Rothstein just left the Aston office
7:35 PM	Arrival			Cheng/Killeen/LT/Tremblay – arrival in New York
7:58 PM	SMS	Frank Soave	JD Rothstein	"Sorry never owned it should I"
8:13 PM	SMS	JD Rothstein	Frank Soave	"Yes"
9:25 PM	Flight			Cheng/Killeen/LT/Tremblay flight from New York to Brazil

Thursday, June 12, 2014 – Frank Soave Buys Amaya Shares

Time	Event	From	To	Description
7:55 AM	Flight			JD Rothstein – Toronto to Sudbury
8:20 AM	Arrival			Cheng/Killeen/LT/Tremblay – arrival in Brazil
9:01 AM	Arrival			JD Rothstein – arrival in Sudbury
9:07 AM*	News			Bloomberg Article
9:45 AM	Call	JD Rothstein	Frank Soave	JD Rothstein (cell) (1 minute, 19 seconds) calls Frank Soave (cell) (voicemail message)
10:10 AM	Call	Frank Soave	Frank Soave	Frank Soave (office) (1 minute, 4 seconds) calls Frank Soave (cell)
10:15 AM	Email	Frank Soave	JD Rothstein	Re: Thanks
10:15 AM*	Email	SeekingAlpha	Frank Soave	"Blackstone investor day: Rooting for a correction"
10:18 AM	Email	JD Rothstein	Frank Soave	Re: Thanks "Blackrock, blackstone and another huge one behind it"
10:35 AM	Trade			Frank Soave bought 5,000 shares for \$60,755
12:22 PM	News			Amaya Gaming Group Inc. stock (TSX: AYA) is halted by IIROC

Time	Event	From	To	Description
1:23 PM	SMS	Frank Soave	JD Rothstein	"Wholy [sic] Shit"
1:23 PM	SMS	Frank Soave	Jordan Zale	"Did u see AYA"
1:24 PM	SMS	Jordan Zale	Frank Soave	"No what happened [sic]"
1:24 PM	SMS	Frank Soave	Jordan Zale	"Up \$2"
1:25 PM	PIN	Frank Soave	Soave's Assistant (JW)	"How many AYA did I buy today"
1:28 PM	PIN	JW	Frank Soave	"5000"
1:29 PM	PIN	Frank Soave	JW	"Shit I wish I had bought more"
1:30 PM	PIN	JW	Frank Soave	"Smooth move Frank. Where did you get that tip?"
2:06 PM	PIN	Frank Soave	JW	"Did it reopen"
2:07 PM	PIN	JW	Frank Soave	"Yes bid and. Ask 14.04"
2:11 PM	SMS	Frank Soave	Jordan Zale	"What's going on with AYA"
2:34 PM	SMS	Jordan Zale	Frank Soave	"Halted"
2:36 PM	SMS	Frank Soave	Jordan Zale	"Still"
2:37 PM	SMS	Jordan Zale	Frank Soave	"Yes"
2:40 PM	PIN	Frank Soave	JW	"Are u sure it's trading"
2:41 PM	PIN	JW	Frank Soave	"No it actually not trading ... sorry"
3:26 PM	SMS	Frank Soave	Jordan Zale	"What are u hearing? Do u own any?"
3:27 PM	SMS	Jordan Zale	Frank Soave	"None"
3:30 PM	Flight			JD Rothstein flight from Sudbury to Toronto
4:38 PM	Arrival			JD Rothstein - arrival in Toronto
6:01 PM	SMS	Jordan Zale	Frank Soave	"Call me when u have a minute. Tks"
9:24 PM	News			Amaya Press Release re: PokerStars transaction

Friday, June 13, 2014 – Frank Soave Sells Amaya Shares

Time	Event	From	To	Description
8:24 AM	Email	Jordan Zale	Frank Soave	Re: you are rich "Pre market on aya is 19.05"
Before markets open	Trade			Frank Soave cancels the 5,000 buy trade in his spouse's CASH trading account and buys Amaya for a total of 5,000 shares in three trading accounts: 850 shares in his spouse's CASH account, 2,370 shares in her TFSA account and 1,780 shares in Frank Soave's TFSA account.
9:32 AM	Trade			Frank Soave sold all the 1,780 Amaya shares in his TFSA trading account [Limit order at \$19.95, filled immediately at \$20.00]
9:33 AM	Trade			Frank Soave sold all the 2,370 Amaya shares in his spouse's TFSA trading account [Limit order at 9:33:15 at \$19.90, changed at 9:33:51 to \$19.65, filled by 9:35:22 at average price of \$19.73]
9:38 AM	SMS	Frank Soave	JD Rothstein	"Thank You"
9:42 AM	SMS	Frank Soave	BBT	"AYA" [*BBT is a colleague at another CIBC branch office]
9:45 AM	SMS	BBT	Frank Soave	"Wow! Clairvoyant or what?"
9:50 AM	Email	Frank Soave	KS	Re: Were u long AYA [*KS was a business associate of Soave]
10:04 AM	Email	Frank Soave	DM	Re: Tell me you are still long AYA!!!!!!!!!!!!!! [*DM was a business associate of Soave]
10:31 AM	Call	JD Rothstein	Frank Soave	Call from Rothstein (office) (1 minute) to Soave (cell) (no record of call received)
10:54 AM	SMS	JD Rothstein	Frank Soave	"Unbelievable"
12:16 PM	Trade			Frank Soave sold all the 850 Amaya shares in his spouse's Cash trading account [Limit order at \$19.77, filled immediately at \$19.77]
12:18 PM	SMS	Frank Soave	JD Rothstein	"What fund won on the Trade"

Time	Event	From	To	Description
12:21 PM	Email	JD Rothstein	AHAM gaming analyst (MK)	Re: Which funds got an allotment to Amaya?
12:33 PM	Email	MK	JD Rothstein	Re: Which funds got an allotment to Amaya "We are participating but have not been given out [sic] total fill yet"
3:54 PM	Trade			JD Rothstein sold all the 700 Amaya shares in the Rothstein [*trading] account [Market order filled at \$19.77 for \$13,829]
4:47 PM*	Email	Frank Soave	LG (client)	"How did you do with Amaya a gaming today?"
4:57 PM*	Email	LG	Frank Soave	"Most I ever made on one stock. I did not sell yet. What is your advise [sic]"
5:11 PM*	Email	Frank Soave	LG	"I had 5000 I sold did u get any of the issue at \$20"
5:13 PM*	Email	Frank Soave	BM	Re: Did u own any Amaya
5:17 PM*	Email	BM	Frank Soave	Re: Did u own any Amaya: "Yes"
5:21 PM*	Email	Frank Soave	BM	Re: Did u own any Amaya: "Big"
5:22 PM*	Email	BM	Frank Soave	Re: Did u own any Amaya: "Not much"
5:22 PM*	Email	Frank Soave	BM	Re: Did u own any Amaya: "Pro or client I had 5000"