

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

**AND**

**DARREN DELAGE**

**STATEMENT OF ALLEGATIONS OF STAFF  
OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

**I. Background**

1. Polar Securities Inc. ("Polar Securities") was established in 1991 and is a registered Investment Dealer and Futures Commission Merchant, whose business includes the management of hedge funds.
2. Polaris Energy Offshore Master Fund (the "Polaris Fund") was established in 2003 and was a \$25 million offshore, non-prospectus qualified hedge fund managed by Polar Securities. The Polaris Fund described itself as a broadly diversified, market neutral, long/short energy equity hedge fund. The investors in the Polaris Fund included another hedge fund managed by Polar Securities and external investors.
3. The respondent, Darren Delage ("Delage"), is a resident of Oakville, Ontario. Delage was employed by Polar Securities from April 2004 to July 15, 2005 to advise and trade on behalf of the Polaris Fund. Delage was not registered with the Commission in any capacity. During his employment, Delage executed the

majority of the trades for the Polaris Fund. Delage is currently registered with the Commission as an Associate Portfolio Manager with another registered firm.

4. Environmental Applied Research Technology House-Earth (Canada) Corporation (“EAR”) was a stock that traded on the Canadian Venture Exchange (“CDNX”) under the stock symbol “EAR”. EAR’s business was the development and commercialization of technologies for the extraction of hydrocarbons from upstream oil and gas produced water. On November 4, 2005, EAR was renamed TORR Canada Inc.
5. On June 23, 2005, the Polaris Fund participated in a private placement of EAR units. The Polaris Fund purchased approximately 2.75 million units at a cost of \$0.10 per unit. Each unit consisted of one common share and one share purchase warrant of the corporation, with each share purchase warrant exercisable for one common share at a price of \$0.13. Pursuant to Ontario securities law, there was a four month restriction on the resale of these shares. This private placement was recommended for the Polaris Fund by an employee of Polar Securities.

## **II. Delage’s trading activity in EAR shares**

6. Between June 27, 2005 and July 12, 2005, Delage entered into numerous purchases of freely-tradable EAR shares, which were reported on the public market via CDNX, when he knew or ought reasonably to have known that the trades would result in or contribute to a misleading appearance of trading activity in EAR shares, or an artificial price for those shares. These trades involved:
  - a. entering into trades at or near the end of the trading day which resulted in the appearance of strength for the closing price of EAR shares;
  - b. entering into orders to buy EAR shares at a price higher than the last reported trade (“Upticks”);

- c. entering into orders to buy EAR shares at a share price higher than the EAR shares had previously traded in 2005 (“New Highs for 2005”);
  - d. entering into orders to buy EAR shares in quantities that dominated the daily market and/or end of day market for EAR shares.
7. On June 27, 2005, Delage entered eleven purchase orders for a total of 210,000 EAR shares between 3:32 p.m. and 4:00 p.m. The fills resulted in ten Upticks and two New Highs for 2005. In the last 28 minutes of trading, during the time of Delage’s trading, the share price increased from \$0.13 to \$0.24 per share, or based on the last board lot traded, the share price increased from \$0.15 to \$0.24 per share. Delage’s trading dominated the volume of trading in EAR shares in the last 30 minutes of trading.
  8. On June 28, 2005, Delage entered two purchase orders for a total of 125,000 EAR shares between 3:54 and 4:00 p.m. The fills resulted in five Upticks. In the last five minutes of trading, during the time of Delage’s trading, the share price increased from \$0.18 to \$0.215 per share. Delage’s trading dominated the volume of trading in EAR shares in the last 30 minutes of trading.
  9. On June 29, 2005, Delage entered four purchase orders for a total of 100,000 EAR shares between 3:53 and 4:00 p.m. The fills resulted in one Uptick. On this day, there was no net effect on the price of EAR shares, which had a value of \$0.20 per share at market close. Delage’s trading represented 100 per cent of the volume of trading in EAR shares in the last 30 minutes of trading.
  10. On June 30, 2005, Delage entered purchase orders for a total of 20,000 EAR shares between 2:50 and 4:00 p.m. The fills resulted in two Upticks. In the last 55 minutes of trading, during the time of Delage’s trading, the share price increased

- from \$0.175 to \$0.20 per share. Delage's trading represented 100 per cent of the volume of trading in EAR shares in the last 30 minutes of trading.
11. On July 8, 2005, Delage entered purchase orders for a total of 30,000 EAR shares between 12:16 and 4:00 p.m. Of Delage's purchase orders, 20,000 EAR shares were purchased. The fills resulted in three Upticks. In the last 77 minute of trading, during the time of Delage's trading, the share price increased from \$0.20 to \$0.225 per share. Delage's trading dominated the volume of trading in EAR shares in the last 30 minutes of trading.
  12. On July 11, 2005, Delage entered two purchase orders for 5,000 EAR shares between 3:34 and 4:00 p.m. One order of 5,000 shares was filled at a price of \$0.21 per share while the other order was not filled. Delage's trade was the last of the day and was at the same price as the previous trade.
  13. On July 12, 2005, Delage entered his first purchase order for 5,000 EAR shares at 9:42 a.m. Later that same day, Delage entered four more purchase orders for a total of 25,000 EAR shares between 3:46 and 4:00 p.m. The fills resulted in two Upticks. In the last 14 minutes of trading, during the time of Delage's trading, the share price increased from \$0.20 to \$0.22 per share. Delage's trading represented 100 per cent of the volume of trading in EAR shares in the last 30 minutes of trading.

### **III. Effect of trading on Polaris Fund**

14. The Polaris Fund's objective, as advertised on the Polar Securities website, was to "produce consistent positive absolute returns with low volatility and with low correlation to both the S&P/TSX energy index and broad equity indices." However, in the period of time from January 2005 until May 2005, the Polaris Fund fluctuated between trading profits and losses.

15. The Polaris Fund was valued monthly on the basis of the closing price of the securities held in the Polaris Fund on the last trading day of the month. In June 2005, the market price of EAR shares had a significant positive impact on the value of the monthly profit and loss recorded for the Polaris Fund due to the 2.75 million units of EAR held.

#### **IV. Termination of Delage**

16. On July 6, 2005, as a result of inquiries initiated by an employee of Polar Securities, Polar Securities commenced an investigation into Delage's trading activity regarding his purchases of EAR shares at the end of June, 2005. As a result of this investigation, Delage was terminated, effective July 15, 2005.

#### **V. Conduct contrary to the Act and the public interest**

17. Delage's trading in EAR shares on June 27 to 30, 2005 and July 8, 11 and 12, 2005, contributed to or created a misleading appearance of trading activity in, or an artificial price for EAR shares. Delage entered orders to purchase EAR shares at successively higher prices to effect a high closing price or maintain the trading price, and entered orders that could reasonably be expected to create an artificial appearance of investor participation in the market. These trades, accordingly, unduly interfered with the normal forces of demand for or supply of EAR shares and were abusive of the capital markets.
18. Delage knew or ought reasonably to have known that the trades would result in or contribute to a misleading appearance of trading activity in EAR shares, or an artificial price for those shares.
19. Delage's conduct was contrary to Ontario securities law, by virtue of section 3.1(1)(a) of NI 23-101, and was contrary to the public interest.

20. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 31st day of March, 2008