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3S8

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

**-and-**

**IN THE MATTER OF MING CHAO ZHAO**

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

Staff of the Ontario Securities Commission (“Staff”) allege the following:

**I. OVERVIEW**

**(a) General**

1. Between June 2010 and December 2011 (the “Relevant Period”), Ming Chao Zhao, also known as Michael Zhao (“Zhao”), engaged in insider trading. Zhao was an Investment Banking Analyst at BMO Nesbitt Burns (“BMO”). He was in possession of undisclosed material information about Menu Foods Income Fund, (“Menu Foods”), Consolidated Thompson Iron Mines Ltd. (“Consolidated Thompson”), Forzani Group Ltd. (“Forzani”), Pacific Northern Gas Ltd. (“Pacific Northern”) and Canmarc REIT (“Canmarc”) (the “Five Reporting Issuers”) as a result of his position at BMO.
2. The undisclosed material information about the Five Reporting Issuers was that they were involved in merger and acquisition (“M&A”) transactions. BMO was involved in these M&A transactions as a financial adviser.
3. Zhao directed the purchase of the securities of the Five Reporting Issuers in advance of the public announcement of the M&A transactions in an online discount brokerage account with TD Waterhouse (“Waterhouse”) held by a family member with a name other than Zhao

(the “Family Account”). After the public announcement of the M&A transactions, Zhao directed the sale of the securities of the Five Reporting Issuers to earn a profit in the Family Account of approximately \$416,000.

4. Zhao’s trading in the Family Account was not disclosed to BMO, contrary to its compliance policies.

**(b) Conduct contrary to the Act**

5. As a result of his position at BMO, Zhao was a person in a special relationship to the Five Reporting Issuers. While a person in a special relationship with the Five Reporting Issuers, Zhao purchased securities of the Five Reporting Issuers with knowledge of undisclosed material information about the Five Reporting Issuers and thereby engaged in insider trading contrary to subsection 76(1) of the Act.

**II. THE RESPONDENT**

6. Zhao is 28 years of age. He lives in Toronto. He was employed by BMO as an Investment Banking Analyst.

7. Zhao was hired on July 5, 2009, as an Investment Banking Analyst in the Media & Communication Group of the Investment & Corporate Banking division of BMO. His duties included the following:

- (a) conducting financial analyses of companies, including comparable trading analysis, precedent transaction analysis, and pro-forma financial modelling;
- (b) preparing proactive client pitches, including compiling data, assembling presentation materials, and conducting specific research to support valuation and rationale; and
- (c) participating in strategic alternatives reviews for clients by applying capital markets knowledge.

### **III. ZHAO'S CONDUCT**

#### **(a) Trading in the Family Account**

8. The trades in the Family Account occurred proximate to the merger announcements. For instance, the Family Account started accumulating the bulk of holdings in Consolidated Thompson on the day prior to the M&A announcements. The Family Account also bought Pacific Northern within a week, Canmarc within two weeks and accumulated Forzani shares within three weeks of the M&A announcements. The Family Account made its largest investment of \$814,400 in Canmarc in advance of the public announcement of the M&A deal on November 28, 2011, shortly before Zhao left BMO.

#### **(i) Menu Foods Income Fund**

9. At 2:15 a.m. on August 9, 2010, Menu Foods announced that Simmons Pet Food, an affiliate of Simmons Foods, Inc. had entered into a definitive agreement to acquire Menu Foods for approximately \$239 million, including assumption of existing debt. Immediately after the disposition of the Fund's assets, the units of the Fund would be redeemed for \$4.80 per unit in cash.

10. On August 6, 2010, Menu Foods' unit price closed at \$3.27.

11. On August 9, 2010, Menu Foods' unit price closed at \$4.72.

12. Prior to the public announcement of the agreement that Simmons Pet Food would acquire Menu Foods, Zhao accessed the shared network drive at BMO and was aware of the transaction before it was announced. Between June 16, 2010 and July 22, 2010, Zhao had 24,000 units of Menu Foods purchased at a total cost of \$86,549 in the Family Account at an average price of \$3.61.

13. On August 9, 2010, the day of the takeover announcement, Zhao had the Family Account sell its entire 24,000 share position at an average price of \$4.72 per unit.

14. The Family Account earned a profit of \$26,720.

**(ii) Consolidated Thompson Iron Mines Ltd.**

15. At 4:41 p.m. (after market close) on January 11, 2011, Cliffs Natural Resources publicly announced that it had entered into a definitive arrangement agreement with Consolidated Thompson to acquire all of its shares in an all cash transaction valued at approximately \$4.9 billion (including net debt), or \$17.25/share.
16. On January 11, 2011, Consolidated Thompson closed at \$13.38/share.
17. On January 12, 2011, Consolidated Thompson closed at \$17.35/share.
18. Prior to the public announcement of the acquisition of Consolidated Thompson by Cliffs Natural Resources, Zhao accessed BMO's shared network drive and was aware of the pending transaction prior to its public announcement.
19. Between January 10, 2011 and January 11, 2011, Zhao had the Family Account purchase 16,500 shares at a total cost of \$218,280 at an average price of \$13.23.
20. On January 18, 2011 and January 24, 2011, Zhao had the Family Account sell 16,500 shares in Consolidated Thompson at an average price of \$17.29/share.
21. The Family Account earned a profit of \$66,944.

**(iii) Forzani Group Limited**

22. At 6:35 a.m. on May 9, 2011, the Forzani Group publicly announced that it would be acquired by Canadian Tire for \$26.50/share in cash.
23. On May 6, 2011, Forzani's share price closed at \$17.61/share.
24. On May 9, 2011, Forzani's share price closed at \$26.25/share.
25. Prior to the public announcement of the acquisition of Forzani by Canadian Tire, Zhao accessed BMO's shared network drive and was aware of the pending acquisition before it was publicly announced. Between April 18, 2011, and May 6, 2011, Zhao had the Family Account purchase 11,500 shares at an average price of \$18.18 per share.

26. On May 9, 2011, Zhao had the Family Account sell 6,500 shares of Forzani at an average price of \$26.22/share.

27. On June 1, 2011, Zhao had the Family Account sell the remaining 5,000 shares of Forzani at an average price of \$26.41/share.

28. The Family Account earned a profit of \$93,339.

**(iv) Pacific Northern Gas Ltd**

29. At 7:30 a.m. on Monday, October 31, 2011, AltaGas publicly announced that it had entered into a definitive agreement with Pacific Northern pursuant to which AltaGas would indirectly acquire all of the issued and outstanding common shares of Pacific Northern for \$36.75 cash per share.

30. On October 28, 2011, Pacific Northern's stock price closed at \$30.50.

31. On October 31, 2011, Pacific Northern's stock price closed at \$36.67.

32. Prior to the public announcement of the acquisition of Pacific Northern by AltaGas, Zhao accessed BMO's shared network drive and was aware of the pending acquisition before it was publicly announced. Between October 25, 2011 and October 28, 2011, Zhao had the Family Account purchase 7,500 shares of Pacific Northern at a total cost of \$222,296 at an average price of \$29.64/share.

33. On November 4, 2011, Zhao had the Family Account sell 7,400 shares of Pacific Northern and sell its remaining 100 shares of Pacific Northern on November 7, 2011.

34. The Family Account earned a profit of \$52,935.

**(v) Canmarc Real Estate Investment Trust**

35. At 6:30 a.m. on November 28, 2011, Cominar publicly announced its intention to acquire all units of Canmarc in an all-cash offer of \$15.30/unit. Additionally, Cominar purchased by way of private placement, a total of 3,099,300 Canmarc units, representing 5.7% of the total issued and outstanding units.

36. On November 25, 2011, Canmarc's unit price closed at \$13.28/unit.

37. On November 28, 2011, Canmarc's unit price closed at \$15.80/unit.

38. Prior to the public announcement of the acquisition of Canmarc by Cominar, Zhao accessed BMO's shared network drive and was aware of the acquisition before it was publicly announced. Between November 11, 2011 and November 21, 2011, Zhao had the Family Account purchase 60,000 units of Canmarc at a total cost of \$814,400 at an average price of \$13.57/unit. On January 26, 2012, Zhao had the Family Account sell its total position of 60,000 Canmarc units at an average price of \$16.52.

39. The Family Account earned a profit of \$176,781.

**(b) Trading in the Family Account was directed by Zhao**

40. All the trades in the Family Account were made by Zhao or at the direction of Zhao.

**(c) Materiality of BMO information**

41. BMO was retained as financial advisers on each of the five M&A deals.

42. At the time that the securities of the Five Reporting Issuers were purchased in the Family Account, BMO was in possession of material information about the Five Reporting Issuers. The material information had not been generally disclosed. Indeed, it was highly confidential.

**(d) Zhao's access to undisclosed material information**

43. At the time that the securities of the Five Reporting Issuers were purchased in the Family Account, Zhao had access to material undisclosed information about the Five Reporting Issuers. As a result of his position, he had access to a shared computer network drive where confidential documents respecting the relevant M&A deals were stored. He accessed relevant documents on the shared network drive in advance of trading of the securities of Menu Foods, Consolidated Thompson, Forzani, Pacific Northern, and Canmarc.

**IV CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST**

44. By purchasing securities of the Five Reporting Issuers while possessed with knowledge of undisclosed material information about the Five Reporting Issuers and while in a special relationship with the Five Reporting Issuers, Zhao engaged in insider trading contrary to subsection 76(1) of the Act and thereby acted contrary to the public interest.

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

Dated at Toronto, this 2<sup>nd</sup> day of May, 2013