Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8
CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

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

- AND -

IN THE MATTER OF
ZUNGUI HAIXI CORPORATION, YANDA CAI AND FENGYI CAI

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Act)

Hearing:	April 18, 2012	
Decision:	August 28, 2012	
Panel:	Christopher Portner	- Commissioner
Appearances:	Johanna Superina Carlo Rossi	- For Staff of the Commission

No one appeared on behalf of the Respondents.

TABLE OF CONTENTS

REASONS AND DECISION ON SANCTIONS AND COSTS

I. BACKGROUND

A. Introduction

[1] This was a hearing (the "**Sanctions and Costs Hearing**") before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make an order with respect to sanctions and costs against Zungui Haixi Corporation ("**Zungui**"), Yanda Cai and Fengyi Cai (collectively, the "**Respondents**").

[2] Prior to the commencement of the hearing to consider the merits of the allegations against the Respondents (the "**Merits Hearing**"), and in response to a motion brought by Staff of the Commission ("**Staff**"), the Commission ordered that all or substantially all of the Merits Hearing be conducted in writing. Following Staff's filing of written submissions and evidence, the oral portion of the Merits Hearing was held on February 2, 2012. Although provided with notice, none of the Respondents participated in the Merits Hearing.

[3] At the conclusion of the Merits Hearing, the Commission issued its decision with respect to the allegations, which was subsequently published for the purpose of providing a public record of the decision as the Oral Reasons and Decision, *Re Zungui Haixi Corporation* (2012), 35 O.S.C.B. 2615 (the "**Merits Decision**").

[4] Staff appeared and made both oral and written submissions at the Sanctions and Costs Hearing which was held on April 18, 2012. The Panel reviewed the Affidavit of Maria Montalto sworn April 16, 2012, and found that the Respondents were provided with notice of the Sanctions and Costs Hearing and Staff's written submissions on sanctions and costs. However, none of the Respondents attended the Sanctions and Costs Hearing and no materials were filed on behalf of the Respondents. In accordance with subsection 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, the Panel was entitled to proceed with the Sanctions and Costs Hearing in the absence of the Respondents.

B. The Merits Decision

[5] In the Merits Decision, the Commission found, with respect to Staff's allegations against the Respondents, that:

(a) Zungui had failed to maintain an audit committee since at least September 22, 2011, contrary to section 2.1 of National Instrument 52-110 – *Audit Committees* and contrary to the public interest;

(b) Zungui had failed to file audited annual financial statements on or before the 120th day after the end of its most recently completed financial year, contrary to paragraph 4.2(b)(i) of National Instrument 51-102 – *Continuous Disclosure Obligations* and contrary to the public interest;

(c) Yanda Cai and Fengyi Cai (together, the "**Individual Respondents**") had authorized, permitted or acquiesced in the commission of the violations by Zungui, as set out in paragraphs (a) and (b) above, contrary to section 129.2 of the Act and contrary to the public interest;

(d) Yanda Cai had engaged in conduct contrary to the public interest by imposing limitations on the scope of the audit procedures of Zungui's auditor, Ernst & Young LLP ("**E&Y**"), during E&Y's audit of Zungui's financial statements for the year ended June 30, 2011;

(e) The Individual Respondents had engaged in conduct contrary to the public interest by (i) failing to cooperate with Zungui's audit committee and the special committee appointed by the board of directors in connection with E&Y's stated concerns; and (ii) obstructing an independent investigation of such concerns by the special committee and by KPMG Forensic, which had been retained by the special committee to assist in such investigation, notwithstanding their original assurance that they would do so; and (iii) failing to respond to Staff inquiries and to produce documents relevant to the business of Zungui that had been requested by Staff on numerous occasions; and

(f) Zungui had engaged in conduct contrary to the public interest by failing to produce documents required by Staff.

(Merits Decision at para. 3)

[6] In making its findings, the Commission noted:

> … the continuous and continuing failure by Zungui to respond in any manner to communications from Staff and the circumstances that preceded those communications involving the interaction of Zungui management and the principal securityholder, Fengyi Cai, with the audit process undertaken by Zungui's now former auditor, Ernst & Young LLP ...
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> (Merits Decision at para. 2)

II. ANALYSIS WITH RESPECT TO SANCTIONS

A. Sanctions requested by Staff

[7] Staff submits that the Respondents' conduct warrants significant sanctions commensurate with the Respondents' harmful conduct.

[8] Specifically, Staff requests that the Commission make an order against Zungui that:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Zungui permanently cease;

(b) Pursuant to paragraph 2 of subsection 127(1) of the Act, Zungui permanently cease trading in securities;

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

(d) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to Zungui.

[9] With respect to the Individual Respondents, Staff requests that the Commission issue an order that:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, the Individual Respondents permanently cease trading in securities;

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

(c) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to the Individual Respondents;

(d) Pursuant to paragraph 6 of subsection 127(1) of the Act, the Individual Respondents be reprimanded;

(e) Pursuant to paragraph 7 of subsection 127(1) of the Act, the Individual Respondents resign all positions that they may hold as a director or officer of an issuer;

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

(g) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Individual Respondents be permanently prohibited from becoming or acting as a registrant, as an investment fund manager and as a promoter.

[10] Staff submits that Zungui has failed to comply with its fundamental financial obligations. Its disclosure record is incomplete and investors are unable to access reliable information or make informed decisions with respect to Zungui securities, conduct that Staff submits requires a strong message from the Commission and that should result in significant sanctions.

[11] Staff submits that an order permanently removing the Respondents from the capital markets is proportionate to the Respondents' misconduct and will send a message of deterrence to other market participants that serious misconduct will result in serious sanctions. Staff further submits that the Respondents' conduct demonstrates that they failed in their core obligations under Ontario securities law and that the Individual Respondents as officers and directors of a reporting issuer showed complete disregard for Zungui's investors.

[12] Staff submits that the conduct of the Individual Respondents poses a serious and ongoing risk to investors and the integrity of the capital markets and requests an order permanently restricting their participation in Ontario's capital markets.

[13] Staff refers to the list of factors a panel may consider when determining sanctions set out in the frequently cited case of *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 ("***Belteco***"), and submits that the relevant factors in this case are, in particular: (i) the seriousness of the allegations proved; (ii) the respondents' experience in the marketplace; (iii) whether or not there has been recognition of the seriousness of the impropriety; and (iv) whether or not the sanctions may deter not only these individuals but also like-minded market participants from engaging in similar conduct that may be abusive to the capital markets.

[14] Staff submits that additional sanctioning factors set out in *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***"), such as the effect sanctions might have on the livelihood of the Respondents, reputation and prestige and the remorse of the Respondents, are not necessarily applicable in this case, given that the Respondents have not appeared before the Commission to make submissions in this respect.

B. Overview of the law on sanctions

[15] In imposing sanctions against a respondent, the Commission must act in accordance with its dual mandate of (i) investor protection; and (ii) fostering fair and efficient capital markets and confidence in capital markets. The Commission's role in making a sanctions order pursuant to section 127 of the Act is protective and preventative. As stated in *Re Mithras Management Ltd*.:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. And in so doing, we may well conclude that a person's past conduct has been so abusive of the capital markets as to warrant our apprehension and intervention, even if no particular breach of the Act has been made out.
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> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[16] Commission case law consistently refers to the following list of non-exhaustive factors which guide the Commission when determining appropriate sanctions:

(a) The seriousness of the allegations;

(b) The respondent's experience in the marketplace;

(c) The level of a respondent's activity in the marketplace;

(d) Whether or not there has been a recognition of the seriousness of the improprieties;

(e) The need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;

(f) Whether the violations are isolated or recurrent;

(g) The size of any profit or loss avoided resulting from the illegal conduct;

(h) Any mitigating factors, including the remorse of the respondent;

(i) The effect any sanction might have on the livelihood of the respondent;

(j) The effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) The reputation and prestige of the respondent;

(l) The size of any financial sanctions or voluntary payment when considering other factors; and

(m) The shame or financial pain that any sanction would reasonably cause to the respondent.

(*Belteco, supra* at 7746 and *M.C.J.C. Holdings, supra* at 1136)

[17] With respect to deterrence of the respondent and other like-minded individuals, the Supreme Court held in *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paragraph 60 that the Commission is not prevented from considering general deterrence in making an order with respect to sanctions. The Court further stated that "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[18] The Respondents in this case were market participants; Zungui was a reporting issuer in Ontario with its shares listed on the TSX Venture Exchange and the Individual Respondents were officers and directors of Zungui. We note that, as stated by the Divisional Court in the case of *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 at para. 55, "participation in the capital markets is a privilege and not a right". Further, the Commission's role in making orders pursuant to s. 127 was described by the Supreme Court as follows:

> … the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
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> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] S.C.J. No. 38 (S.C.C.) at para. 43)

[19] The sanctions imposed must ultimately be proportionate to the circumstances and conduct of each Respondent (*M.C.J.C. Holdings, supra* at 1134).

C. What sanctions are appropriate in this case?

The Seriousness of the Allegations

[20] Financial disclosure in accordance with the requirements of Ontario securities law is essential to the operation of Ontario's capital markets. As stated by the Commission in *Re Phillip Services Corp.* (2006), 29 O.S.C.B. 3941 at para. 7, "Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions". The directors of companies that are reporting issuers are responsible for ensuring that such companies meet these disclosure requirements:

> The responsibility of companies to make timely and accurate financial disclosure ultimately rests with the directors of those companies. In practice, the responsibility is shared by the directors, audit committees, chief executive officers, chief financial officers and other management.
>
> (*Re Standard Trustco Ltd.* (1992), 15 O.S.C.B. 4322 at 4364)

[21] As stated in the Merits Decision, the Individual Respondents as directors and management of Zungui, "[imposed] limitations on the scope of the audit procedures of Zungui's auditor, E&Y, during its audit of Zungui's financial statements" and "[failed] to cooperate with Zungui's audit committee and its Special Committee in addressing E&Y's concerns and [obstructed] an independent investigation of those concerns by the Special Committee and by KPMG Forensic" (Merits Decision at para. 3).

[22] Staff referred to the case of *Flag Resources (1985) Ltd.*, 2010 LNABASC 211 ("***Flag Resources***"), a sanctions decision of the Alberta Securities Commission relating to conduct by respondents who "contravened Alberta securities laws and engaged in conduct contrary to the public interest by filing deficient, or by failing to file, continuous disclosure", including annual audited financial statements and management's discussion and analysis, amongst other things (*Flag Resources, supra* at para. 1).

[23] Staff submits that the conduct of the respondents in *Flag Resources* is comparable to the conduct of the Respondents in this case, both of which centre around the failure of a reporting issuer to comply with financial disclosure requirements. In *Flag Resources*, as in this case, a director and officer of the corporate respondents, McLeod, failed to ensure the corporate respondents' adherence to their continuous disclosure requirements. The Alberta Securities Commission noted that "rather than attempting to provide timely, complete responses to Staff's concerns, McLeod displayed a disregard for Alberta securities laws, dismissing compliance with the continuous disclosure requirements …" (*Flag Resources, supra* at para. 19). The Alberta Securities Commission concluded that it was appropriate in the circumstances to permanently prohibit McLeod from acting as a director or officer of reporting issuers in the Alberta capital markets and further noted:

> Because McLeod's conduct here was conduct in his capacity as a director or officer of reporting issuers, we conclude that it would be appropriate and in the public interest to make orders that would bar him from acting in these roles in the Alberta capital markets in the future. …
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> (*Flag Resources, supra* at paras. 23-24)

[24] In *Flag Resources*, unlike in this case, the respondents' breaches took place over a number of years and their misconduct was repeated (see *Flag Resources, supra* at paras. 5, 14 and 19). Staff submits that, although *Flag Resources* dealt with repeated breaches of securities law over a longer period of time than is applicable in this case, the significance of the Respondents' breaches in this case and their overall conduct cannot be overemphasized and the public interest requires their permanent removal from participation in the Ontario capital markets.

[25] In this case, although the Respondents' conduct has not been repeated over a lengthy period of time, it is ongoing. As of the date of the Sanctions and Costs Hearing, Zungui was still without an audit committee and an auditor.

[26] At the core of the findings against the Respondents is their failure to comply with the financial disclosure requirements of reporting issuers in Ontario. It is essential that the shareholders of and potential investors in a reporting issuer have available to them complete information on which to base informed investment decisions. Further, public confidence in the capital markets requires that reporting issuers in Ontario comply with their obligations under Ontario securities law.

[27] Zungui and its management, the Individual Respondents, have failed to comply with basic requirements relating to the maintenance of an audit committee and public disclosure through the filing of audited financial statements. Their conduct is harmful to Ontario's capital markets and public confidence in the capital markets. Zungui shareholders are left with shares of a company for which complete financial information is not available, and without any current prospect that this information will be forthcoming.

The Respondents' Activity in the Marketplace

[28] Zungui became a reporting issuer in Ontario on December 11, 2009 and, on December 21, 2009, completed its initial public offering, raising gross proceeds of approximately $39.0 million. The Individual Respondents played a central role in the initial public offering and in the direction and management of Zungui thereafter.

[29] The fact that the Respondents are physically removed from the jurisdiction raises serious issues from the perspective of regulatory compliance and enforcement. Within two years of the completion of its initial public offering, Zungui simply ceased to comply with the audit committee and financial statement obligations under Ontario securities law, and left its investors in an untenable position.

The Respondents' Recognition of the Seriousness of their Improprieties

[30] The Respondents have demonstrated a total and continuing disregard for their obligations under Ontario securities law. They made no effort to attend the Merits Hearing or the Sanctions and Costs Hearing or arrange to have their Ontario counsel do so on their behalf and have failed to respond to communications from Staff.

[31] There is no evidence before me to indicate that Zungui has taken steps to replace E&Y as Zungui's auditor or the three independent directors and the Chief Financial Officer of Zungui, all of whom resigned following the refusal of the Individual Respondents to cooperate with the special committee. As noted by Staff in their submissions, Zungui currently has no corporate governance structure and the Individual Respondents, as the two principal officers of the Company, have failed to cooperate with the audit committee, the auditors, the special committee and Staff.

Deterrence of the Respondents and Like-Minded Market Participants

[32] The Respondents have totally absented themselves from this jurisdiction and have demonstrated by their conduct that they are fundamentally ungovernable. The sanctions imposed as a result of the conduct described in the Merits Decision should preclude them from similar activity in Ontario's capital markets in the future.

[33] As discussed above, compliance with financial reporting requirements is essential to the functioning of the capital markets. Failure to comply with these requirements will result in serious consequences for investors and for public confidence in the capital markets. Sanctioning of such conduct should send a clear message of deterrence to those who participate in the capital markets and should strongly discourage market participants from ignoring their obligations to maintain an audit committee and provide accurate and timely financial disclosure.

Findings with respect to Sanctions

[34] In light of the foregoing, I find that it is in the public interest to remove Zungui and its principals, the Individual Respondents, from Ontario's capital markets.

[35] After considering the factors relating to sanctions described above, I find that the conduct of the Individual Respondents, as determined in the Merits Decision, warrants the imposition of serious sanctions. As directors and officers of Zungui, the Individual Respondents have shown a complete disregard for Ontario securities law and demonstrated that they are effectively ungovernable. The protection of Ontario's capital markets and public confidence in its capital markets dictates sanctions that would permanently prohibit the Individual Respondents from future participation in Ontario's capital markets.

[36] At the Sanctions and Costs Hearing, I expressed the concern that it might be inimical to the interests of Zungui shareholders to issue a permanent ban on the trading of Zungui securities. As a regulator, it is not the Commission's objective to make orders that would impede or in any way adversely affect the interests of the stakeholders whose very interests it aims to protect. Staff noted in their oral submissions that no issue has been raised with them by any third party to

suggest that what Staff are requesting with respect to sanctions would impede investors or any civil proceeding.

[37] I note that, in *Flag Resources*, the Alberta Securities Commission did not issue an order permanently cease-trading securities of the corporate respondents, but found that their capital market participation should be restrained and their respective securities should be cease-traded "until such time, if ever, as each of the Corporate Respondents files and receives a receipt for a prospectus, which would provide investors with the information they need to make informed investment decisions …" (*Flag Resources, supra* at para. 17).

[38] With respect to the sanctions against Zungui, and keeping in mind the interests of the stakeholders of Zungui to which reference is made in paragraph [36] above, I find that it is in the public interest to make an order permanently prohibiting trading in Zungui securities until such time as Zungui becomes compliant with Ontario securities law, including the requirements relating to audit committees and continuous disclosure. Should Zungui become compliant with Ontario securities law, including the requirements relating to audit committees and continuous disclosure, it may bring an application to vary the order to which reference is made in paragraph [47] below pursuant to section 144 of the Act.

[39] As there may be unanticipated consequences that arise from ordering that the securities of a public company be permanently cease traded and as Zungui's future as an operating company is unknown as are the avenues that may be available to Zungui shareholders to realize on their investments, I should note that, in the event that the circumstances change or should additional information come to light, it is always open to a person or company affected by this sanctions order to bring an application for the variation of the order pursuant to section 144 of the Act.

III. ANALYSIS WITH RESPECT TO COSTS

[40] Staff requests that the Commission issue an order pursuant to section 127.1 of the Act that the Individual Respondents pay $63,667.50 on a joint and several basis, representing a portion of the costs incurred in this matter.

[41] Prior to the hearing, Staff filed a Bill of Costs and an affidavit setting out the number of hours spent by Staff in preparing for and attending hearings in this matter and Staff's disbursements. The total fees and disbursements incurred by Staff in this matter, including both investigation and litigation costs, is $110,293.96 according to Staff's Bill of Costs. Staff notes that the docket summary provided in evidence has been edited to remove time entries for Staff who are not involved in litigation issues as there is an ongoing investigation in this matter. Staff is seeking a portion of this total that represents the costs of preparation and attendance at the merits hearing by three members of Staff, a Litigation Counsel, an Attorney-at-Law involved in the investigation and a Senior Investigator who was the primary investigator in this matter.

[42] The Panel in *Re Ochnik* (2006), 29 O.S.C.B. 5917 ("***Ochnik***") identified a number of criteria that the Commission has considered in awarding costs. The criteria enumerated in *Ochnik* are:

> (a) Failure by staff to provide early notice of an intention to seek costs may result in a reduced costs award, as early notice may have facilitated early

settlement, thereby reducing overall costs (see *Re Tindall* (2000), 23 O.S.C.B. 6889 at para. 74);

(b) The seriousness of the charges and the conduct of the parties (see *Re YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285 at para. 608);

(c) Abuse of process by a respondent may be a factor in increasing the amount of costs (see *Re YBM Magnex International Inc.* cited above at para. 606);

(d) The greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case (see *YBM Magnex International Inc.* cited above at para. 606); and

(e) The reasonableness of the costs requested by staff (see *Re Lydia Diamond Exploration of Canada*, (2003), 26 O.S.C.B. 2511 at para. 217).

(*Ochnik, supra* at para. 29)

[43] Notice of a potential costs order was provided to the Respondents in the Notice of Hearing issued on the same day as the Statement of Allegations. The seriousness of the allegations in this matter have been addressed above in the analysis with respect to sanctions.

[44] Although Staff does not refer to it in their submissions, Rule 18.2 of the Commission's *Rules of Procedure* also sets out factors a Panel may consider when awarding costs. These factors include (i) whether the respondent participated in the proceeding in a way that helped the Commission understand the issues before it; (ii) whether the respondent co-operated with Staff and disclosed all relevant information; and (iii) any other factors the Panel considers relevant.

[45] I note that costs in this matter were reduced from what they would have otherwise been as a result of the Merits Hearing being conducted partially in writing and with the oral portion of the Merits Hearing being concluded in one day.

[46] In the circumstances, I am satisfied that the costs requested by Staff in this case are reasonable.

IV. CONCLUSION

[47] Based on my analysis above, I find that it is in the public interest to issue the following order with respect to Zungui, subject to the condition that, if Zungui becomes compliant with Ontario securities law, including the requirements relating to audit committees and continuous disclosure, Zungui or any other person or company affected by this order may bring an application to vary the order pursuant to section 144 of the Act:

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

(b) Pursuant to paragraph 2 of subsection 127(1) of the Act, Zungui shall permanently cease trading in securities;

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

(d) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to Zungui.

[48] With respect to the Individual Respondents, I find it is in the public interest to order the following:

(a) Pursuant to paragraph 2 of subsection 127(1) of the Act, the Individual Respondents shall permanently cease trading in securities;

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

(c) Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law permanently do not apply to the Individual Respondents;

(d) Pursuant to paragraph 7 of subsection 127(1) of the Act, the Individual Respondents shall resign all positions that they may hold as a director or officer of an issuer;

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

(f) Pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Individual Respondents are permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

(g) Pursuant to paragraph 6 of subsection 127(1) of the Act, the Individual Respondents are reprimanded; and

(h) Pursuant to section 127.1 of the Act, the Individual Respondents shall pay, on a joint and several basis, $63,667.50 in costs to the Commission.

Dated at Toronto this 28th day of August, 2012.

"Christopher Portner"

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Christopher Portner