**ALBERTA SECURITIES COMMISSION**

**DECISION**

**Citation: Euston Capital Corp., Re, 2007 ABASC 338** **Date: 20070531**

**Euston Capital Corp., George Schwartz, Harry Gray, Bill Tevruchte, Carlos Carvao, Brent Madinger, Peter Robinson and Jackie Thomas**

| | |
|---|---|
| **Panel:** | Glenda A. Campbell, QC, Vice-Chair<br>Dennis A. Anderson, FCA, Member<br>Allan L. Edgeworth, P. Eng., Member |
| **Appearing:** | Matthew Epp and Laura Burt<br>For Commission Staff |
| | Peter R. Jervis and Cynthia B. Kuehl<br>For Euston Capital Corp. and George Schwartz |
| **Date of Hearing:** | March 23, 2007 |
| **Date of Decision:** | May 31, 2007 |

## I. INTRODUCTION

[1] This proceeding is the conclusion of a hearing into allegations made by staff (Staff) of the Alberta Securities Commission (the Commission) in a notice of hearing dated March 18, 2005, as amended on November 28, 2005 and further amended on May 15, 2006 (the Amended Notice of Hearing), in which Staff indicated that they were seeking orders against Euston Capital Corp. (Euston Capital), George Schwartz (Schwartz), Harry Gray (Gray), Bill Tevruchte (Tevruchte), Carlos Carvao (Carvao), Brent Madinger (Madinger), Peter Robinson (Robinson) and Jackie Thomas (Thomas) (collectively, the Respondents; we refer to the latter six as the Individual Respondent Salespersons) under sections 198, 199 and 202 of the *Securities Act*, R.S.A. 2000, c. S-4 (the Act).

[2] On February 14, 2007, we issued our findings sustaining some of Staff's allegations against the Respondents – *Re Euston Capital Corp*., 2007 ABASC 75 (the February 2007 Decision and Reasons).

[3] In our February 2007 Decision and Reasons, we found that Euston Capital, an Ontario corporation, sold its securities through the sales efforts of Schwartz and Euston Capital salespersons, including the Individual Respondent Salespersons, to 314 Alberta-resident investors, realizing approximately $1.4 million. The sales of Euston Capital securities were purportedly made in reliance on the accredited investor exemption provided in what was then Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103) (now National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106)). We found that several Alberta-resident investors did not qualify as accredited investors. Further, we found that, prior to trading and distributing its securities, Euston Capital took no reasonable steps to ensure that the Alberta-resident investors met the income or financial asset thresholds to qualify as accredited investors under MI 45-103. Moreover, we found that, at the time of trading and distributing its securities, Euston Capital had no factual basis for believing that any Alberta-resident investor was an accredited investor. Therefore, we found that Euston Capital could not rely on the accredited investor exemption for the trades and distributions of its securities. No other exemption under Alberta securities laws was available. Euston Capital had never filed nor received a receipt for a prospectus. None of the Respondents was registered under the Act to trade in securities.

[4] We found that Schwartz was the guiding mind behind the distribution of Euston Capital securities to the public. We also found that Schwartz authorized the selling activities undertaken by the Euston Capital sales force, which included among its members the Individual Respondent Salespersons.

[5] We found that Schwartz and the Individual Respondent Salespersons, excepting Carvao, made prohibited representations that Euston Capital securities would be listed on

an exchange. Further, we found that Schwartz and Euston Capital filed untrue reports with the Commission.

[6] In our February 2007 Decision and Reasons, we concluded that:

> (a) each of the Respondents engaged in trading and distributing Euston Capital securities without registration, without a prospectus, with no reasonable ground for believing that the investors would qualify as accredited investors and with no other exemption available, contrary to sections 75(1)(a) and 110 of the Act and contrary to the public interest;
>
> (b) Schwartz and the Individual Respondent Salespersons, excepting Carvao, made prohibited representations, contrary to section 92(3)(b) of the Act and contrary to the public interest; and
>
> (c) Euston Capital and Schwartz acted contrary to the public interest by filing reports with the Commission that contained misrepresentations.

[7] After issuing our February 2007 Decision and Reasons, we held a separate hearing to consider submissions from the parties on sanction and costs. Staff and counsel for Euston Capital and Schwartz filed written submissions and, on March 23, 2007, made oral submissions. None of the other Respondents filed written submissions on sanction and costs or requested an opportunity to present oral submissions thereon.

[8] Following are our decision and reasons as to the sanctions that we consider to be in the public interest to make against the Respondents. The relevant facts set out in our February 2007 Decision and Reasons should be read in conjunction with this decision and reasons.

## II. ANALYSIS

### A. Sanctioning Principles

[9] This is a regulatory proceeding in which Staff have asked the Commission to sanction the Respondents for their contravention of Alberta securities laws and their conduct found to have been contrary to the public interest. In exercising our public interest jurisdiction to make orders under sections 198 and 199 of the Act, the Commission is to be forward-looking; our object is to protect the investing public from probable future harm by preventing the recurrence of misconduct, thereby preserving the integrity of the Alberta capital market (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). It is well understood that it is not for the Commission to punish or remediate capital market misconduct (see *Re Podorieszach*, 2004 ABASC 567 at para. 17).

[10] Like specific deterrence, general deterrence is an appropriate consideration in making public interest orders under sections 198 and 199 of the Act (see *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62). Therefore, in carrying out our protective and preventative mandate, we consider whether a sanction will serve to deter not only those whose conduct is the subject of the proceeding, but also individuals who are minded to engage in similar abuses of the capital market.

[11] In *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11, the Commission set out several factors that we may consider in making orders under sections 198 and 199 of the Act, of which the following are particularly relevant to this proceeding:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the capital market;

(c) the respondent's activity in the capital market;

(d) the respondent's acknowledgement of the seriousness of the misconduct;

(e) the harm suffered as a result of the respondent's misconduct;

(f) the benefit received by the respondent;

(g) the risk to investors and the capital market were the respondent to continue to operate in the capital market;

(h) the need to deter the respondent and other like-minded market participants;

(i) any mitigating factors; and

(j) previous decisions made in similar circumstances.

## B. Application of Sanctioning Principles

### 1. Schwartz

#### (a) Staff's Position

[12] Staff contended that the public interest demands that we remove Schwartz's access to the Alberta capital market for 15 years by ordering that he be prohibited from trading in securities and exchange contracts, that he be denied the use of the exemptions contained in Alberta securities laws and that he resign any position he holds as a director or officer of an issuer and be prohibited from acting as such for that period. Staff also contended that it would be appropriate in the circumstances to order that Schwartz pay an administrative penalty in the amount of $75,000.

[13] Staff argued that the orders issued by the Commission must provide specific and general deterrence. Staff noted that illegal distributions occurring in our capital market have ramifications beyond any personal benefits that may have been received by the perpetrators. Investors who purchase securities under an illegal distribution do so without the protection afforded by advice from competent registrants under the Act and the protection afforded by detailed disclosure about the issuer provided in a filed, receipted prospectus, and, as a result, investors' confidence in the integrity of our capital market is shaken.

[14] Staff submitted that their recommendations would achieve specific deterrence by providing the restraint necessary to prevent future misconduct by Schwartz that would be prejudicial to the public interest and would achieve general deterrence by dissuading others who might otherwise be tempted to abuse the exemptions provided to market participants who seek to raise capital without using a registrant or filing a prospectus.

**(b) Schwartz's Position**

[15] Counsel for Schwartz contended that the orders sought by Staff against Schwartz are so severe as to amount to a penalty, the purpose of which could only be to punish Schwartz for his actions. Counsel contended that the orders requested by Staff exceed that needed to provide the level of specific and general deterrence appropriate in the circumstances. Therefore, counsel submitted that, were the Commission to issue orders against Schwartz of the nature and duration recommended by Staff, it would exceed its jurisdiction as it would be venturing into the realm of punishment and remediation.

[16] Further, counsel for Schwartz argued that Schwartz made efforts to comply with the accredited investor exemption provided in MI 45-103 and that his efforts are relevant to the determination of the appropriate sanction in this case. Specifically, counsel argued that Schwartz, who was aware of abuses that had occurred in the use of the accredited investor exemption, had designed the Euston Capital sales program to ensure that Euston Capital securities were sold only to investors who had provided reliable written representations that they were accredited. It was counsel's contention that Euston Capital had taken reasonable steps to bring the accredited investor tests to the attention of investors through the use of bold, capitalized font on the first page of the Purchase Agreements.

[17] Counsel for Schwartz argued that the Commission, when considering the objective of general deterrence in this case, ought to give special consideration to the effect of the introduction in September 2005 of NI 45-106 and, in particular, its companion policy 45-106CP. He suggested that it was not until 45-106CP that the Commission or any other regulatory body had provided clear guidance as to the steps to be undertaken by sellers of securities relying on the accredited investor exemption, including the requirement to discuss orally with prospective investors the criteria for qualification as an accredited investor under NI 45-106. It was counsel's contention that sanctioning Schwartz for his

failure to undertake the due diligence steps that had been recently clarified by the Commission would not provide any measure of general deterrence and could only be punitive in nature.

[18] Moreover, counsel for Schwartz argued that we ought to take into consideration that, as a result of the Cease Trade Order, Schwartz has been effectively denied access to the Alberta capital market for a period in excess of two years. Counsel submitted that in the circumstances it would be appropriate to deny Schwartz access to the capital market for an additional brief period of time – one to two years – and that an administrative penalty in the range of $15,000 to $25,000 would provide the appropriate specific and general deterrent effect.

**(c) Discussion**

[19] We consider the following facts and circumstances relevant to our determination that the public interest requires us to issue regulatory sanctions against Schwartz.

[20] We were satisfied from his testimony that Schwartz played a significant role in Euston Capital's illegal capital raising activities. As we found in our February 2007 Decision and Reasons (at paras. 13, 71 and 126), Schwartz was "the architect of the Euston Capital sales program" and "the guiding mind behind the distribution of Euston Capital securities to the public". As we noted in our February 2007 Decision and Reasons, we were not convinced, despite the argument of his counsel, that Schwartz made serious efforts to comply with the requirements of the accredited investor exemption provided in MI 45-103. In our view, the failure on the part of Euston Capital, Schwartz and the Individual Respondent Salespersons to ensure that Euston Capital securities were sold only to accredited investors was not a mere technical (one of form not substance) contravention. Rather, we found that the sales program designed and implemented by Schwartz was an abuse of the accredited investor exemption, was inconsistent with the spirit and intent of the securities exemption regime and was contrary to the public interest. In our view, that inconsistency was neither inadvertent nor well intentioned.

[21] The evidence established that Schwartz hired other individuals as salespersons, including the Individual Respondent Salespersons, and authorized their selling activities that violated Alberta securities laws. We did not accept as a mitigating factor, as urged by counsel for Schwartz, that Schwartz had relied on Carlos Da Silva (Da Silva) to supervise the Euston Capital salespersons and to ensure their compliance with securities laws. As we noted in our February 2007 Decision and Reasons, Schwartz knew that inappropriate activity was occurring or at least was aware that a very real risk existed that the commissioned Euston Capital salespersons – with little or no training, situated in self-contained office spaces, subject to little if any direct supervision and motivated to sell as many shares as they could – would make representations or misrepresentations to prospective investors in violation of Alberta securities laws. Despite this, there was no

evidence that Schwartz, as a senior officer and director and the guiding mind of Euston Capital, made any serious attempt to supervise the selling activities of the Euston Capital salespersons.

[22] Schwartz's violations of Alberta securities laws were serious. Illegal distributions deprive investors of the key protections that the securities regulatory regime is intended to provide – by ensuring that investors receive advice from knowledgeable, trained registrants who know their clients, consider their clients' investment objectives and risk tolerances and recommend only suitable investment choices and that investors are provided, through a prospectus, with sufficient information about an issuer to make informed investment decisions. When we consider the circumstances surrounding the decisions of Alberta-resident investors to invest in Euston Capital, we believe that they would have benefited had they received the advice of a registrant and the information disclosed by a prospectus. Further, the evidence established that Schwartz provided misinformation to at least one Alberta-resident investor when he represented that the Euston Capital securities would be listed on an exchange. Schwartz also provided misinformation in documents filed with the Commission, serving to undermine investor confidence in the reliability of documents required to be filed with the Commission. This is not the type of conduct we expect of a senior officer and director of an issuer seeking the privilege of access to the capital market in order to raise funds for use by that issuer.

[23] Schwartz's testimony revealed that he was active in the capital market and had experience in the promotion and sales of securities to investors. He demonstrated a good knowledge about the requirements of securities laws in Canada. For example, he knew of the specific legal requirements and restrictions relating to the accredited investor exemption provided in MI 45-103 and the accompanying companion policy. He knew that the Act prohibited certain representations being made at a time when the seller's intent was to effect a trade in a security. He also knew that commissioned salespersons were prone to exaggerations and making misrepresentations in order to effect sales of securities. However, despite this experience and knowledge, he engaged in activities contrary to Alberta securities laws, as we found in our February 2007 Decision and Reasons.

[24] It is true, as counsel for Schwartz noted, that prior to the commencement of Staff's investigation into the sale of Euston Capital securities to Alberta-resident investors, Schwartz had never been sanctioned for securities laws violations. However, we note that, in *Re Euston Capital Corp.* (9 February 2006), the Saskatchewan Financial Services Commission (the SFSC), in considering the same distribution of Euston Capital securities that is the subject of this proceeding, sanctioned Euston Capital and Schwartz for trading and distributing Euston Capital securities to Saskatchewan-resident investors contrary to Saskatchewan securities laws.

[25] It appears that Euston Capital was not successful in its proposed joint venture with Tele-Find, although, according to Schwartz, Euston Capital had acquired a company called AccessMed. The evidence suggested, but did not establish, that the funds raised from the sale of the Euston Capital securities to Alberta residents, totalling approximately $1.4 million, had been expended. We did hear evidence from some of the investors that they had received shares of AccessMed from Euston Capital. Schwartz testified that he gifted the AccessMed shares to investors in an attempt to help them realize on their investment in Euston Capital. However, every investor who testified before us told us that they had received no return on their investment; as of May 2006, investors had nothing more than an unsaleable security. It may well be that the gift of the AccessMed shares to some of the investors was a genuine attempt by Schwartz to mitigate the losses occasioned by investors. However, there was no evidence to demonstrate that the AccessMed shares had any more value or prospect of value than the Euston Capital shares. Accordingly, we are not persuaded on the limited evidence before us that we should consider the gift of the AccessMed shares as mitigating Schwartz's misconduct.

[26] The integrity of our capital market demands that those who sell securities comply fully with Alberta securities laws. As noted, the registration and prospectus requirements of the Act provide certain protections for purchasers of securities. Exemptions from those requirements are permitted under limited circumstances, including the circumstance in which an investor has sufficient assets to tolerate potential loss and is deemed to be sufficiently experienced to understand any risks associated with an investment. When a person or company fails to comply with the registration and prospectus requirements, without an applicable exemption, as was the case here, investors, along with the integrity of the capital market, are put at risk. That is why every trade and distribution must comply with the registration and prospectus requirements or qualify for an exemption from those requirements.

[27] Euston Capital was successful in raising some $1.4 million from the sale of its securities to Alberta residents. Given this success, it would not be unreasonable to expect that the Respondents or others interested in raising funds from the public might be inclined to adopt a similar cavalier approach in their future activities in the exempt market. Therefore, it is imperative that we issue orders sending a clear and unambiguous message to those who enjoy access to our capital market that there are serious consequences should they fail to comply strictly with the rules that permit them the privilege of access to the market.

[28] While counsel for Schwartz stressed that Schwartz takes full responsibility for Euston Capital's failure to comply with the accredited investor exemption, we are not persuaded that, in the absence of meaningful sanctions, he would not engage in similar misconduct or would refrain from repeating similar errors in judgment. We were especially concerned by Schwartz's expression of disrespect for both the Commission and an investor in an e-mail that he sent to the investor who had sought a refund of his

investment monies. Schwartz's subsequent apology to the panel, while perhaps well-intended, did not dispel our concern that Schwartz does in fact continue to have a lack of respect for the Commission and for the protections provided to investors by Alberta securities laws.

[29] In reviewing the case law provided by the parties – *Re Del Bianco*, [2003] A.S.C.D. No. 239, aff'd 2004 ABCA 344; *Re InstaDial Technologies Corp.*, 2005 ABASC 965; *Re Park*, 2006 ABASC 1056; *Re 526053 B.C. Ltd.*, 2006 ABASC 1795; and *Re Euston Capital Corp.* (9 February 2006) (SFSC) – we note, as we have on other occasions, that such case law is often of limited assistance given that sanctions are circumstance-specific. That being said, we acknowledge that the sanctioning decision of the SFSC is a persuasive one, having been made in similar, verging on the same, circumstances.

[30] In the result, we are of the view that Schwartz ought to be subject to a director-and-officer ban and prevented from dealing with Alberta-resident investors and from accessing the Alberta capital market for a significant period – 10 years – to ensure that he and other like-minded market participants are deterred from engaging in similar misconduct. We are also of the view that Schwartz ought to be subject to a substantive administrative penalty – $50,000 – to send a clear message to him and others to refrain from similar misconduct. In arriving at a period of 10 years, we have taken into account the duration of the Cease Trade Order. As we do not believe that the public would be exposed to future potential harm were we to permit Schwartz limited access to the capital market to make trades and purchases for his own personal account through a registrant, we will include this exception in the orders we make. These orders, we note, will substantially accord with the sanctioning orders made against Schwartz by the SFSC in very similar circumstances.

### 2. Euston Capital

#### (a) Staff's Position

[31] Staff contended that the public interest requires that Euston Capital be ordered to cease trading and be denied the use of the exemptions contained in Alberta securities laws until a prospectus is filed with the Commission and a receipt issued therefor.

#### (b) Euston Capital's Position

[32] Counsel for Euston Capital contended that the orders sought by Staff against Euston Capital are so severe as to amount to a penalty, the purpose of which could only be to punish Euston Capital for its actions. Counsel argued that Euston Capital made efforts to comply with the accredited investor exemption provided in MI 45-103 and that its efforts are relevant to the determination of the appropriate sanction in this case. Counsel argued that the Commission, when considering the objective of general deterrence in this case, ought to give special consideration to the effect of the introduction in September 2005 of NI 45-106 and, in particular, its companion policy.

### (c) Discussion

[33] It appears that Euston Capital's primary business activity was raising capital. Euston Capital has been tainted by the actions of Schwartz and the Individual Respondent Salespersons. Euston Capital contravened the registration and prospectus requirements of the Act and in so doing acted contrary to the public interest. Euston Capital also acted contrary to the public interest by filing reports with the Commission that contained misrepresentations.

[34] In the circumstances, with emphasis on the seriousness of Euston Capital's violations, the harm suffered as a result, the risk to Alberta-resident investors and the Alberta capital market were Euston Capital to continue to engage in its misconduct and the need to deter Euston Capital and other like-minded market participants, much of which we earlier discussed when considering sanctioning orders against Schwartz, we are of the view that the orders sought by Staff against Euston Capital ought to be granted.

## 3. Individual Respondent Salespersons

[35] Staff contended that the public interest demands that we deny all of the Individual Respondent Salespersons, excepting Carvao, access to the Alberta capital market for 5 years by ordering that they be prohibited from trading in securities and exchange contracts and that they be denied the use of the exemptions contained in Alberta securities laws for that period. Staff also contended that it would be appropriate in the circumstances to order that each of the Individual Respondent Salespersons, excepting Carvao, pay an administrative penalty in the amount of $15,000.

[36] Further, Staff contended that the public interest demands that we deny Carvao access to the Alberta capital market for 3 years by ordering that he be prohibited from trading in securities and exchange contracts and that he be denied the use of the exemptions contained in Alberta securities laws for that period. Staff also contended that it would be appropriate in the circumstances to order that Carvao pay an administrative penalty in the amount of $10,000.

[37] The evidence established that the Individual Respondent Salespersons were engaged in selling activities whereby they directly or indirectly solicited, facilitated or negotiated Alberta-resident investors' purchases of Euston Capital securities. Any direction they may have taken from Da Silva or Schwartz did not excuse them from considering the legality of the sales operation in which they were engaged. As the Commission commented in *Re Hampton Court Resources Inc.*, 2006 ABASC 1345 at para. 155, "*everyone* trading or distributing securities has a responsibility to ensure, to a greater or lesser degree, that the activity is conducted in accordance with the Act and consistent with the public interest [emphasis in original]". Therefore, the Individual Respondent Salespersons illegally traded and distributed Euston Capital securities, contrary to the Act and the public interest. The evidence also established that the

Individual Respondent Salespersons, excepting Carvao, made prohibited representations, contrary to the Act and the public interest.

[38] Apparently these were the first securities laws violations of the Individual Respondent Salespersons. Nevertheless, their failure to consider the legality of the sales operation in which they were engaged, the seriousness of their violations, the harm suffered as a result, the risk to Alberta-resident investors and the Alberta capital market were they to continue to engage in their misconduct and the need to deter them and other like-minded market participants all compel us to the view that the orders sought by Staff against the Individual Respondent Salespersons ought to be granted.

## III. DECISIONS

### A. Sanctions

[39] For the foregoing reasons, we find that it is in the public interest to make orders under section 198 of the Act again Euston Capital and under sections 198 and 199 against Schwartz and the Individual Respondent Salespersons. In our view, the following orders are commensurate with the seriousness with which we view their violations of Alberta securities laws and will provide protection to the public from such misconduct by acting as specific and general deterrence:

**Euston Capital:**

(a) under sections 198(1)(b) and (c) of the Act, Euston Capital must cease trading in or purchasing securities and all of the exemptions contained in Alberta securities laws do not apply to Euston Capital until a prospectus is filed with the Commission and a receipt issued therefor;

**Schwartz:**

(b) under sections 198(1)(b) and (c) of the Act, Schwartz must cease trading in or purchasing securities or exchange contracts and all of the exemptions contained in Alberta securities laws do not apply to Schwartz for a period of 10 years, except that this order does not prevent Schwartz from trading in or purchasing securities or exchange contracts, as principal using his own funds for his own account with a registrant who is given a copy of this decision;

(c) under sections 198(1)(d) and (e) of the Act, Schwartz must resign any position that he holds as a director or officer of any issuer and he is prohibited from becoming or acting as a director or officer (or both) of any issuer for a period of 10 years;

(d) under section 199 of the Act, Schwartz must pay an administrative penalty in the amount of $50,000;

**Gray, Tevruchte, Madinger, Robinson and Thomas:**

(e) under sections 198(1)(b) and (c) of the Act, each of Gray, Tevruchte, Madinger, Robinson and Thomas must cease trading in or purchasing securities or exchange contracts and all of the exemptions contained in Alberta securities laws do not apply to each of them for a period of 5 years;

(f) under section 199 of the Act, each of Gray, Tevruchte, Madinger, Robinson and Thomas must pay an administrative penalty in the amount of $15,000;

**Carvao:**

(g) under sections 198(1)(b) and (c) of the Act, Carvao must cease trading in or purchasing securities or exchange contracts and all of the exemptions contained in Alberta securities laws do not apply to him for a period of 3 years; and

(h) under section 199 of the Act, Carvao must pay an administrative penalty in the amount of $10,000.

## B. Costs

[40] The Amended Notice of Hearing indicated that Staff was seeking costs against the Respondents pursuant to section 202 of the Act. Staff provided the panel with a two-page written summary of their costs in relation to the investigation and hearing of this matter totalling approximately $70,000. Staff seek an order for payment of these costs as follows:

(a) Euston Capital to pay a portion of the costs in the amount of $15,000;

(b) Schwartz to pay a portion of the costs in the amount of $35,000;

(c) each of Gray, Tevruchte, Madinger, Robinson and Thomas to pay a portion of the costs in the amount of $3,000; and

(d) Carvao to pay a portion of the costs in the amount of $1,500.

[41] Counsel for Schwartz argued that Schwartz ought not to be liable to pay what amounts to approximately one-half of the costs incurred by Staff to resolve this matter. He noted that Schwartz had cooperated with Staff throughout the conduct of this matter. He further reiterated many of reasons that he advanced as to why the Commission ought not to make the sanctioning orders recommended by Staff, on which we earlier made findings. He submitted that, in the circumstances, an order for payment of costs in the amount of $3,000 against Schwartz would be sufficient, with anything greater being punitive.

[42] The Commission is given the statutory authority under section 202 to order costs of an investigation and hearing. An order for costs is not made to punish but rather is in

the nature of an administrative function that seeks to provide recovery to Staff of fees and expenses incurred in bringing a public interest regulatory proceeding. More importantly, orders for costs provide us with a means of exercising control over and promoting the efficiency of the hearing process. In assessing costs, we take into account the seriousness of the allegations, the conduct of the parties during the course of the proceedings and the reasonableness of the costs sought given the nature of the allegations and the findings by the Commission.

[43] It appears to us that the quantum of costs claimed by Staff is reasonable for a case such as this. We heard no evidence to the contrary.

[44] We found that most of Staff's allegations, all serious, had merit and were sustained. However, we believe it reasonable to assume that some of costs claimed by Staff associated with the investigation and hearing would be reduced had Staff not pursued those allegations that ultimately were not sustained. We also note that during the hearing Staff withdrew their allegations against one individual who had been named as a respondent.

[45] We also consider the cooperative efforts made by Schwartz and Euston Capital, primarily through their very able counsel, whose professional conduct contributed to the efficiency and efficacy of the hearing.

[46] For the foregoing reasons, we consider that it is appropriate to order under section 202 of the Act that:

(a) **Euston Capital** pay, subject to the regulations, $10,000 of the costs of the investigation and hearing;

(b) **Schwartz** pay, subject to the regulations, $20,000 of the costs of the investigation and hearing;

(c) each of **Gray, Tevruchte, Madinger, Robinson and Thomas** pay, subject to the regulations, $3,000 of the costs of the investigation and hearing; and

(d) **Carvao** pay, subject to the regulations, $1,500 of the costs of the investigation and hearing.

## C. Proceeding Concluded

[47] The Cease Trade Order issued against the Respondents expires by its terms with the issuance of this decision.

[48] This proceeding is concluded.

May 31, 2007

**For the Commission:**

"original signed by"
Glenda A. Campbell, QC, Vice-Chair

"original signed by"
Dennis A. Anderson, FCA, Member

"original signed by"
Allan L. Edgeworth, P. Eng., Member