ALBERTA SECURITIES COMMISSION

DECISION

Citation: Oxford Investments Holdings Inc., Re, 2007 ABASC 150 Date: 20070326

Docket: E/00316

***Securities Act,* R.S.A. 2000, c. S-4**

Oxford Investments Holdings Inc., Michael Bernard Donaghy, Joseph Edward Allen, Mitchell O. Nwabuogu and Syed Kabir

Panel:	Glenda A. Campbell, QC, Vice-Chair James A. Millard, QC, Member
Appearing:	Allison M. Neapole Diane Volk For Commission Staff Gary Bouchard For Oxford Investments Holdings Inc. and Michael Bernard Donaghy
Dates of Hearing:	November 28 and 29 and December 15, 2005
Date of Decision:	March 26, 2007

I. OVERVIEW OF THE PROCEEDING

[1] This proceeding involved distributions of securities of Oxford Investments Holdings Inc. (Oxford), formerly known as Oxford Software Developers Inc., to Alberta-resident investors and certain activities related to those distributions alleged to have contravened the *Securities Act*, R.S.A. 2000, c. S-4 (the Act) and been contrary to the public interest.

[2] The allegations are set out in a notice of hearing originally issued on October 29, 2004 and subsequently twice amended, most recently on October 31, 2005. References in this decision to the Notice of Hearing are to that final version. Summarized briefly, staff (Staff) of the Alberta Securities Commission (the Commission) alleged the following:

(a) Oxford, Michael Bernard Donaghy (Donaghy), Joseph Edward Allen (Allen), Mitchell O. Nwabuogu (Nwabuogu) and Syed Kabir (Kabir) (collectively, the Respondents) traded in securities of Oxford without being registered to do so, without having filed and received a receipt for a prospectus, and without any applicable exemptions, and thereby engaged in illegal distributions of Oxford securities in Alberta contrary to sections 75(1)(a) and 110 of the Act;

(b) Allen, Nwabuogu and Kabir acted as advisors without being registered to do so contrary to paragraph 75(1)(b) of the Act;

(c) Allen made prohibited representations to investors with the intention of effecting a trade in a security contrary to paragraph 92(3)(b) of the Act;

(d) Allen, Nwabuogu and Kabir made misrepresentations to investors with the intention of effecting a trade in a security contrary to paragraph 92(3)(c) of the Act;

(e) Allen engaged in an unfair practice contrary to paragraph 92(3)(d) of the Act;

(f) Oxford and Donaghy made misrepresentations to the Commission in documents required to be filed under Alberta securities laws; and

(g) as a result of the foregoing, the Respondents acted contrary to the public interest.

[3] In consequence of this alleged misconduct, Staff sought orders in the public interest against each Respondent under sections 198 and 199 of the Act. They also asked

the Commission to order the Respondents to pay the costs of the investigation and hearing.

[4] On October 29, 2004, the Commission issued an interim order against the Respondents directing that all trading in securities of Oxford cease, that Donaghy, Allen, Nwabuogu and Syed Kebis cease trading in securities and that all exemptions under Alberta securities laws do not apply to Oxford, Donaghy, Allen, Nwabuogu and Syed Kebis (the Interim Cease Trade Order). The Interim Cease Trade Order was extended on November 12, 2004 until the hearing is concluded and a decision rendered (the Cease Trade Order). "Syed Kebis" was the name on the original Notice of Hearing. Later versions of the Notice of Hearing gave what Staff indicated was his correct name, "Syed Kabir".

II. THE HEARING

[5] The hearing into the allegations (the "Hearing") took place on November 28 and 29 and December 15, 2005.

A. No Appearance at the Hearing

[6] Allen, Nwabuogu and Kabir did not appear at the Hearing in person or through counsel.

[7] It is a fundamental principle of the rules of natural justice that respondents in proceedings such as this be given adequate, timely notice of the allegations against them and an opportunity to respond to the allegations. However, it is also important to the public interest that serious allegations of capital market misconduct be resolved so that the investing public is protected and confidence in the capital market maintained or restored.

[8] Section 217 of the Act provides that documents required to be served on a person or company under Alberta securities laws may be personally delivered, sent by prepaid mail or by electronic means (such as facsimile) at the latest address known for the person or company. Service is deemed effective on the seventh day from the sending to the person's latest known address by prepaid post, unless the contrary is shown. Section 217(4) provided that if a document sent by prepaid post "is returned on 3 successive occasions because the person or company cannot be found, then there is no further requirement to send any further documents to that person or company . . . ".

[9] We are satisfied that Allen was aware of the Hearing and Staff's allegations against him. Affidavits filed by Staff deposed to service of various documents in a variety of ways, including a copy of the Interim Cease Trade Order and the original version of the Notice of Hearing by prepaid mail and by facsimile sent to the individual they believed to be Allen's solicitor. Staff also sent the final version of the Notice of Hearing to Allen at what Staff stated they believed to be his home address in Toronto.

The material was not returned. There was no evidence that Allen did not receive the material. Under section 217 of the Act, Allen is deemed to have been served. Accordingly, we find that he had adequate notice of the Hearing.

[10] Oxford and Donaghy, who appeared at the Hearing, did not deny service or that they had not received notice of the allegations against them and the Hearing. We find that they were effectively served and had notice of the proceeding.

[11] Staff filed Affidavits that deposed that the Interim Cease Trade Order, the Cease Trade Order, all three versions of the Notice of Hearing (including the final version) and other documents relating to the Hearing were sent by prepaid mail to Nwabuogu and Kabir at their last known address, being 20 Bay Street, Suite 1205 in Toronto, Ontario (the Bay Street Premises), at which Staff believed from their investigation that Nwabuogu and Kabir (and Allen) carried on the misconduct alleged by Staff in the Notice of Hearing. All these documents were returned, unopened, to Staff. Although documents were sent to Nwabuogu and Kabir on six separate days, none of the documents was sent more than once. Some documents were sent to Nwabuogu and Kabir by facsimile to a number that Staff stated was for the Bay Street Premises. Those transmissions failed and thus were not received.

[12] Regarding the attempted service on Kabir, we note that the attempts began on October 28, 2004, with the last attempt on November 2, 2005. The amended version of the Notice of Hearing dated October 31, 2005 changed the name from "Syed Kebis" to "Syed Kabir". The only two service attempts made to Kabir under the latter name were that November 2, 2005 attempt and one on October 5, 2005. The other service attempts were all made to "Syed Kebis".

[13] Given that the impugned activities took place between April 15, 2003 and September 2004 (the Relevant Period) and that no service was attempted in what Staff indicated was Kabir's correct name until October 5, 2005 at the apparently long-unused Bay Street Premises, we are not satisfied that proper service was given to or even attempted on Kabir in accordance with section 217 of the Act.

[14] We are also not satisfied, in these circumstances, that the service attempts made on Nwabuogu were sufficient for the purposes of the Act.

[15] In the result, we do not believe that Nwabuogu and Kabir had proper notice of the Hearing and an opportunity to respond to the allegations against them. Therefore, we do not consider Staff's allegations against Nwabuogu and Kabir in this Hearing.

B. Agreed Statement of Facts and Joint Submission on Sanction

[16] At the commencement of the Hearing, Staff advised that they had reached an agreement as to facts with two of the Respondents, Oxford and Donaghy. Staff also

indicated that they would make a joint submission with counsel for Oxford and Donaghy as to the appropriate sanction in respect of those two parties.

[17] Donaghy and counsel for Oxford and Donaghy appeared by telephone for the first day of the Hearing for the purposes of confirming their agreement as to facts and their agreement to the sanction orders proposed by Staff. Staff entered the November 2005 document entitled "Agreed Facts of Staff and [Oxford and Donaghy]" (the Agreed Facts) that had been signed by Staff, Oxford and Donaghy. We also heard the parties' joint submissions as to the sanctions we ought to make against Oxford and Donaghy.

[18] In the course of the Hearing we also received documentary evidence and heard the testimony of two Staff investigators and two Alberta-resident investors, JM and WJ.

[19] Our decision and reasons follow.

III. THE FACTS

[20] The following summary of the facts was derived from the Agreed Facts as well as the testimony and documentary evidence.

[21] The allegations in the Notice of Hearing arise from the activities of the Respondents in connection with the offering of Oxford's common shares to the public. Oxford, an Ontario corporation, was seeking to raise $2 million from this private placement.

[22] Marketing material provided to at least some investors and contained on websites described Oxford as a "lifestyles consumables company that is involved in Internet gaming software licensing, reselling and development" as well as acquiring the rights to distribute bottled spring water and spray tanning booths in Canada. We heard no evidence as to the size of Oxford's business or its financial condition.

[23] Oxford has never been registered in any capacity with the Executive Director of the Commission (Executive Director). Oxford has never filed a preliminary prospectus or a prospectus with the Commission. In the Affidavit of Bryan Gourlie (Gourlie) sworn on October 27, 2004 (the Gourlie Affidavit) entered as an exhibit in the Hearing, Gourlie deposed that he was advised that Oxford was not a reporting issuer in British Columbia, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia. Gourlie testified that Oxford was not a reporting issuer in Alberta. In light of that evidence and the absence of evidence to the contrary, we find that Oxford was not a reporting issuer in any of the seven jurisdictions mentioned, including Alberta.

[24] The common shares of Oxford were quoted on the NASD OTC (over-the-counter) Bulletin Board. Documentary evidence established that Oxford had never been listed on the NASDAQ market.

[25] Donaghy is an Ontario resident and is the President, chief executive officer (CEO) and sole director of Oxford. Donaghy has never been registered in any capacity with the Executive Director.

[26] On April 4, 2003, Oxford retained Allen as a consultant under a "Consultant Agreement" between the two (the Agreement). The Agreement, which was entered into evidence, provided that Allen was retained "to identify and refer to Oxford potential purchasers of Securities under the Offering . . . ". Under the Agreement, Oxford agreed to pay Allen a finder's fee equal to 20% of the aggregate gross proceeds for securities purchased through Allen and reimbursement of expenses to a maximum of 40% of the aggregate gross proceeds received from Allen purchasers.

[27] Allen is an individual who apparently resides in Ontario. Allen has at no time been registered in any capacity under Alberta securities law. Documentary evidence indicated that Allen was at one time a registrant under Ontario securities laws with a company until he was "terminated for unauthorized trading" in June 2000. Allen's application the next month for a transfer of registration as a salesperson for another company under Ontario securities law was denied in early 2001 and the application was later withdrawn.

[28] It appears that Allen operated under the business name "J. Allen Capital". The Gourlie Affidavit deposed that Allen and J. Allen Capital were listed as the Investor and Shareholder Relations contacts on the website of Oxford in October 2003 and the e-mail address given was "investorrelations@jallencapital.com". Gourlie further noted that a search of the domain name "jallencapital.com" showed that it was registered to J. Allen Capital and the address given was presumably adjacent to the Bay Street Premises. The Gourlie Affidavit further deposed that Allen was listed as the "Investor and Shareholder Relations" contact on the Oxford website in October 2004.

[29] Pursuant to the Agreement, Allen and other individuals engaged in selling Oxford securities during the Relevant Period from the Bay Street Premises in Toronto.

[30] The sales program undertaken by Allen and his salespersons appears to have been standardized and is summarized as follows:

- From the Bay Street Premises, Allen, or salespersons hired by Allen, contacted a number of Alberta residents by telephone and solicited their interest in purchasing Oxford shares.

- These potential investors were invited to purchase Oxford shares at a price of C$1.00 per share. They were told that the shares were trading at a higher price – in most cases the price stated was between US$3.00 and US$3.40 per share – on an over-the-counter (OTC) bulletin board in the United States.

- Potential investors were told that the securities would be subject to a resale restriction or "hold period" of 12 months, after which the investor could resell the shares.

- If a potential investor expressed interest in purchasing the Oxford shares, Allen or one of his salespersons sent by facsimile to the investor an "invoice" for the purchase price, a partially completed subscription agreement and "Schedule 'E' – Certificate of Accredited Investor" (Schedule E). Investors were requested to return their cheques for the purchase price by prepaid courier or by mail to the Bay Street Premises.

- The subscription form was a two-page printed document with blank spaces for the number of shares purchased, total subscription price and the name and address of the purchaser. Although a number of schedules were referred to in the subscription form, many Alberta investors seemed to receive Schedule E that stated in bold or italicized print "PLEASE CHECK ONE" being a series of dashes, beside each of which appeared a description of one of four criteria for qualifying as an "accredited investor", as set out in section 1.1 of then Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103). Two of those four were based on income or financial asset levels.

- Some investors received promotional material, including a document entitled "Summary of Offering" and a quote from TD Waterhouse Research (dated "6/12/2003") indicating that the trading symbol for Oxford was "OXSDF:OTC" and that the 52 week high and low prices were $3.40 and $3.00, respectively. The currency was not specified.

- The testimony and documentary evidence also indicated that some investors were told that their investments in Oxford securities were eligible for holding inside a Registered Retirement Savings Plan (RRSP).

- Some time after payment of the purchase price, investors received a share certificate evidencing the investor as the owner of the stipulated number of Oxford common shares. The share certificate contained a statement referring to the restriction on reselling the securities – for example:

> Unless permitted under securities legislation, the holder of the securities shall not trade the securities before the earlier of (i) the date that is 12 months and a day after the date the issuer first became a reporting issuer in any of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec and Saskatchewan. [sic] If the issuer is a SEDAR filer , [sic] and (i) the date that is 12 months and a day after the later of (A) the distribution date, and (B) the date the issuer became a reporting issuer in the local jurisdiction of the purchaser of the securities that are the subject of the trade. [sic]

[31] The Agreed Facts stated, and we accept, that at least 283 Alberta-resident investors purchased securities of Oxford, apparently all as a result of the selling efforts of Allen and his salespersons. Those Alberta residents invested a total of $1,030,805.

[32] The Agreed Facts further stated, and we accept, that Oxford paid to Allen as finder's fees or commissions a total of $618,483 pursuant to the Agreement.

[33] We heard testimony from two investors relating to their particular situations. Investor JM testified that "Syed" telephoned him at least twice soliciting him to purchase shares in Oxford. JM told us that he eventually purchased 2,000 Oxford shares at a price of $1.00 per share for a total purchase price of $2,000. Allen later phoned JM seeking a further sale of 10,000 Oxford securities, but JM refused, as detailed below. WJ testified that Nwabuogu telephoned him on at least ten occasions soliciting him to purchase Oxford shares. WJ said that he eventually agreed to purchase 1,000 Oxford shares at $1.00 per share for a total purchase price of $1,000. However, after he had sent the cheque with the courier to Oxford, he "got cold feet" and put a stop payment on the cheque.

[34] Oxford, Donaghy and Allen relied on the "accredited investor" exemption, as set out in section 5 of Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103), to make the trades and distributions of the Oxford securities to the Alberta-resident investors. Oxford filed with the Commission the Form 20 (previous version) and Form 45-103F4 documents "Report of Exempt Distribution" (we refer to both Form 20s and Form 45-103F4s as Form 45-103F4s) that confirmed that all the sales of Oxford securities were made in reliance on the accredited investor exemption. Donaghy signed the Form 45-103F4s on behalf of Oxford.

[35] In several instances, the subscription agreements relied upon by Oxford and Donaghy contained a Schedule E that was not completed. Specifically, a number of the investors left blank the appropriate space on Schedule E that indicated which of the accredited investor income or financial asset qualification criteria applied to the investor.

[36] We heard some of the reasons for the incomplete subscription agreements. JM testified that when he received the subscription agreement with the accredited investor qualification tests set out in Schedule E, he realized that he did not qualify. He telephoned "Syed" and advised Syed that he did not meet the qualifications set out in Schedule E to be an accredited investor. Syed, JM told us, said that if JM and his wife initialled the bottom of Schedule E, Syed would waive the requirement. WJ testified that when he received the subscription agreement with Schedule E, he also realized that he did not qualify as an accredited investor. WJ told us that he had a telephone conversation with Nwabuogu's "boss" during which WJ told that individual that WJ did not fit within any of the categories set out in Schedule E. WJ said that Nwabuogu's boss told him that "we have positions or openings for people that don't fit that specific thing".

[37] Gus Gallucci (Gallucci), a Staff investigator, testified that he reviewed the qualifications to be an accredited investor under MI 45-103 with 23 Alberta investors whose names he obtained from the Form 45-103F4s filed by Oxford. He said that of the 23 investors he interviewed, 19 investors told him that they did not meet the net income or net financial asset thresholds set out in section 1.1 of MI 45-103 to qualify as an accredited investor.

[38] As noted, we also heard the testimony of JM and WJ, both of whom told us that they did not have the income or financial asset minimums required to qualify as an accredited investor.

IV. THE ISSUES

[39] We consider the following issues:

(a) Did Oxford, Donaghy and Allen trade in Oxford securities without being registered to do so and engage in a distribution of Oxford securities without a prospectus to investors who did not qualify as accredited investors and for whom no other exemption could be relied upon?
(b) Did Allen act as an advisor without being registered to do so under the Act?
(c) Did Allen make misrepresentations or prohibited representations to investors during the Oxford offering?
(d) Did Allen engage in unfair practices in selling Oxford securities to investors?
(e) Did Oxford and Donaghy file documents with the Commission that contained misrepresentations?
(f) Did Oxford, Donaghy and Allen act contrary to the public interest?

V. ANALYSIS AND FINDINGS

A. Sale of Oxford Securities

1. Illegal Distributions

[40] It is clear to us that the Oxford securities were "securities" and that their sales to Alberta-resident investors constituted "trades" in those securities; as those securities had not previously been issued, those trades were also "distributions" (all as defined in the Act). In addition to these findings, Oxford and Donaghy specifically admitted those points in the Agreed Facts.

[41] The evidence is clear that Oxford had not filed and received a receipt for a prospectus for its offering of securities to Alberta-resident investors (and Oxford and Donaghy admitted those points). Oxford and Donaghy also admitted that they have never been registered in any capacity in Alberta; it is clear that Allen was not registered to trade in securities in Alberta during the Relevant Period either. Therefore, the distributions would be illegal unless an exemption was available.

[42] Oxford, Donaghy and Allen relied only on the accredited investor exemption in MI 45-103 to sell the Oxford securities to Alberta investors. Oxford and Donaghy admitted that there were no other applicable exemptions available under Alberta securities laws.

[43] Part 5 of MI 45-103 provided that the prospectus and registration requirements of the Act did not apply to trades in securities if the purchaser were an accredited investor purchasing as principal. Section 1.1 set out the criteria to qualify an individual as an accredited investor:

> "accredited investor" means
>
> . . .
>
> (k) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000,
>
> (l) an individual whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the two most recent years and who, in either case, reasonably expects to exceed that net income level in the current year,
>
> . . .

[44] As discussed above, we heard evidence from JM and WJ as to their status as accredited investors. Based on their evidence, we conclude that neither JM nor WJ would qualify as an accredited investor; this exemption was not available to sell Oxford securities to JM and WJ. We also accept the evidence of Galluci that 19 Alberta-resident investors interviewed by him did not qualify as accredited investors.

[45] We find that Oxford, Donaghy and Allen traded and distributed the Oxford securities to Alberta-resident investors who were not accredited investors (although some investors were accredited, that does not cure the fact that others were not).

[46] The evidence also established that a number of the subscription agreements returned by Alberta-resident investors, although signed by the investor, contained an incomplete Schedule E which thus did not certify that the investor was accredited. In those cases there was no basis disclosed for Oxford, Donaghy and Allen to rely on the accredited investor exemption for the sale of the Oxford securities to the investor. As this Commission has noted in many similar proceedings, a party that wishes to avail itself of an exemption from the prospectus and registration requirements of the Act bears the obligation of satisfying itself that the exemption is available. See: *Re Euston Capital Corp.*, 2007 ABASC 75.

[47] We conclude that the accredited investor exemption was unavailable for a number of transactions. It was the only exemption sought to be relied upon for the offering. As Oxford, Donaghy and Allen were not registered, no prospectus was filed and receipted, and no exemption was available for at least some of the transactions, the Oxford securities were illegally traded and distributed to a number of Alberta-resident investors.

2. Responsibility

(a) Oxford and Donaghy

[48] Oxford and Donaghy understood that the Oxford securities could only be sold to accredited investors who met the income or financial asset minimums prescribed by MI 45-103. However, Donaghy stated in the Agreed Facts that he believed that exemptions under Alberta securities laws were available for the trades and distributions of Oxford securities to Alberta investors. He further stated that he believed that Allen was experienced in raising funds through the use of exemptions available under Alberta securities laws, and that he relied on Allen to do so properly.

[49] We have no hesitation in finding that the incomplete subscription agreements referred to earlier were such that neither Oxford nor Donaghy could rely on them to ensure that a prospectus exemption was available to offer the shares to investors. As noted above, the party claiming the exemption is obliged to satisfy itself – and this panel – that the exemption is available.

[50] Donaghy admitted in the Agreed Facts that that he had sole management and control of Oxford and was responsible for the activities engaged in by Oxford. Donaghy may not have been aware of all of the activities undertaken by Allen and his sales force in selling Oxford securities. But he did know that Oxford securities were sold and he received a number of incomplete subscription agreements that should have prompted further inquiry and steps to ensure that investors being sold Oxford securities were in fact accredited investors.

[51] Oxford, whose securities were traded and distributed, obviously must take responsibility for the illegal distribution of its securities. Oxford, through its director and officer (Donaghy), issued shares as evidenced by share certificates sent to purchasers of its shares, accepted subscription agreements and filed reports of exempt distributions of its securities with the Commission.

[52] We find that Donaghy and Oxford solicited and acted in furtherance of trades and distributions of Oxford's securities and, therefore, illegally traded and distributed Oxford's securities in contravention of sections 75(1)(a) and 110 of the Act.

(b) Allen

[53] We have no doubt that Allen was the guiding mind behind the illegal distributions of Oxford securities to Alberta investors.

[54] Donaghy and Oxford retained Allen to assist Oxford in selling its securities to potential purchasers. Allen held himself out as having the "knowledge, experience, reputation and contacts" to assist Oxford. Allen was the architect of the sales program for the Oxford offering and it was Allen who rented and operated the Bay Street Premises and who hired the salespersons**,** to sell the securities. Allen held himself out to at least one Alberta investor as the vice-president of Oxford and (on a website) as the "investor relations" contact for Oxford.

[55] Donaghy stated in the Agreed Facts that he thought Allen could be relied upon to conduct the offering in compliance with exemptions available under Alberta securities laws. Allen failed Oxford, Donaghy and Alberta investors. Allen intended to sell, and did sell, Oxford securities to Alberta-resident investors with complete disregard for the requirements of Alberta securities laws.

[56] We find that Allen solicited and illegally traded and distributed those securities in contravention of sections 75(1)(a) and 110 of the Act..

B. Acting as an Advisor without Registration

1. General Principles

[57] Advisors are responsible for determining the investment needs and objectives of client investors. The advisor registration requirements are intended to ensure that investors receive sound investment advice by setting education and conduct standards for registered advisors and by providing ongoing monitoring and compliance obligations.

[58] Under paragraph 75(1)(b)(i) of the Act, no person or company shall act as an advisor unless registered with the Executive Director as an advisor. "Advisor" is defined in section 1(a) of the Act as ". . . a person. . . engaging in or holding out the person. . . as engaging in the business of advising others with respect to investing in or the buying or selling of securities. . .".

[59] Thus, registration as an advisor under the Act is triggered by the individual engaging in the business of giving investment advice.

[60] As stated in D. Johnston and K.D. Rockwell, *Canadian Securities Regulation*, 4th ed. (Markham: LexisNexis, 2006) at 359:

> . . . there are two key considerations [in considering the definition]. First, did the purported [advisor] express an *opinion* or make a *recommendation*? Merely reciting facts does not make one an [advisor]; recommending an investment or opining on the investment merits of an issuer or securities is advising. Second, did the purported [advisor] offer the recommendation in a way which reflected a business purpose? Some activities reflecting a business purpose are: expecting remuneration for the activities,

> even if no investor ever follows the recommendation, pays a commission or invests with the purported [advisor];. . . [original emphasis]

2. Was Allen Acting as an Advisor?

[61] In support of this allegation, Staff referred to documents in evidence describing the activities of J. Allen Capital Inc., including its statement that successful investing in companies requires "the judicious selection of small and medium sized companies, whose product, services and managerial skills combine to offer excellent growth potential. . ." Staff pointed to the evidence that established that Allen solicited investors to invest in Oxford. Staff argued that such evidence established that Allen was holding himself out as being in the business of advising others with respect to buying and selling securities.

[62] In our view, that evidence and Staff's accompanying submissions were insufficient to establish that Allen was in the business of advising. The evidence does establish that Allen was in the business of selling securities and, in furtherance of the quest of persuading potential investors to purchase Oxford securities, answered investors' questions, provided them with information about Oxford and its activities and actively encouraged them to purchase. Allen received compensation that appeared to be related to those selling activities, and not to any advisory activities. In the result, we are not satisfied that the evidence established that Allen's selling activities could fairly be characterized as being in the business of advising.

[63] We therefore do not sustain the allegation that Allen acted as an advisor without being registered to do so.

C. Misrepresentations or Prohibited Representations

1. General Principles

[64] Staff alleged that Allen had made a number of prohibited representations and misrepresentations during the distribution and sale of the Oxford securities to Alberta investors. Oxford and Donaghy stated in the Agreed Facts that they were unaware of any misrepresentations or prohibited representations to Alberta-resident investors by Allen or by others acting on his behalf.

[65] Paragraphs 92(3)(b) and (c) of the Act stated:

> Subject to the regulations, no person or company, with the intention of effecting a trade in a security or exchange contract, shall
>
> . . .
>
> (b) except with the written permission of the Executive Director, make any representation
>
> (i) that the security will be listed on any exchange or quoted on any quotation and trade reporting system, or

(ii) that application has been or will be made to list the security on any exchange or quote the security on any quotation and trade reporting system,

(A) unless

(I) the securities being traded, and

(II) securities of the same issuer,

are currently listed on an exchange or quoted on a quotation and trade reporting system, or

(B) unless the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation,

(c) make a statement that the person or company knows or ought reasonably to know is a misrepresentation,

[66] A "misrepresentation" was defined by subsection 1(ii) of the Act as either an untrue statement of a "material fact" or omission to state a "material fact" required to be stated or necessary to make a statement not misleading. "Material fact" was defined in subsection 1(gg) of the Act as "a fact that significantly affects or would reasonably be expected to have a significant effect on the market price or value of the securities".

[67] We next examine the circumstances underlying Staff allegations regarding Allen contravening subsection 92(3) of the Act.

2. Exchange Listing and Market Prices

(a) Evidence

[68] Staff alleged that Allen contravened paragraphs 92(3)(b) and (c) of the Act when he told JM that the securities of Oxford would be listed on an exchange in Spokane, Washington and in New York and were trading at prices ranging from US$2.50 to US$5.00.

[69] JM testified that both Kabir and Allen had told him that Oxford was trading on an exchange in Spokane, and that Kabir stated that the Oxford securities were trading in US funds on the New York Stock Exchange. JM further told us that Kabir and Allen identified one exchange as the NASDAQ (although JM referred to "NASDEX", we are satisfied that he meant NASDAQ). Documentary evidence included a memo from "Syed" to JM dated September 23, 2003 that stated:

> Oxford (Stock Symbol:OXSDF) is non trading at $3.40 U.S. in NASDAQ Stock Market in New York. Company is offering the same shares to you at $1.00 Canadian. Tradeoff is that you have to hold the shares for one year prior to reselling.

[70] Although JM appeared slightly confused as to the names and locations of the exchanges referred to by Kabir and Allen, his evidence was clear and convincing that they both told him that the Oxford securities were trading on the NASDAQ stock exchange in the US.

[71] One investor, LG told Gallucci that Allen had told her that the price for the Oxford securities "would double". Gallucci also testified as to four other investors who had told him that Allen had told them when they purchased their Oxford securities for $1.00 per share in 2003 that the Oxford securities were traded at between US$3.00 per share and US$5.00 per share on the over-the-counter bulletin board. There is documentary evidence to establish that salespersons represented in writing to investors that the Oxford shares were trading at US$3.40 or approximately Cdn$5.00. However, there is no documentary evidence showing such representations from Allen himself.

[72] Gallucci entered into evidence November 25, 2005 correspondence he received from the NASDAQ Stock Market stating that the securities of Oxford had never been listed on the NASDAQ Stock Market. Gallucci also entered into evidence a letter from the NASD dated November 22, 2005 that stated that the Oxford securities were not quoted on the OTC Bulletin Board until May 5, 2004 – far into the Relevant Period – under OXIHF, but not under OXSDF (at least not between January 1, 2002 and November 22, 2005).

[73] However, some investors provided to the Commission copies of a report from TDWaterhouse Research that indicated that on December 12, 2003 and January 1, 2003 Oxford Software Developers Inc. was trading on the OTC Bulletin Board under the symbol "OXSDF" and the current price stated was $3.40. The TD Waterhouse statement also indicated that the "52 Wk High" was $3.40 and the "52 Wk Low" was $3.00 (all amounts were based on the then-current date of "04-02-03"). Thus, while the evidence is clear that Oxford securities were not listed on the NASDAQ, the evidence is contradictory as to when the Oxford securities were listed on the OTC Bulletin Board.

(b) Conclusions

(i) Future Listing Representation

[74] There is no conclusive evidence that Allen, in contravention of section 92(3)(b) of the Act, told investors that an application would be made to list the Oxford securities on an exchange or quotation and trade reporting system. We therefore do not find that Allen made representations prohibited by paragraph 92(3)(b) of the Act.

(ii) Price Representation

[75] While we have no reason to doubt Gallucci's testimony and the information he received from investors, we have no corroborative evidence to support his hearsay evidence regarding price representations allegedly made by Allen, not even a single document or the oral testimony of one investor. The evidence is also unclear as to whether the representations were that the shares were trading between US$3.40 and US$5.00 or that the shares were trading or had traded at US$3.40 or the equivalent of Cdn$5.00, which may have been true.

[76] In the circumstances, we have insufficient evidence to satisfy us that Staff's allegation against Allen regarding market price has been proven. This allegation fails.

(iii) Current Listing Representation

[77] We do however find that at least one investor (JM) believed, as a result of representations made by Allen, that the Oxford securities were listed and trading on the NASDAQ. That was not true. We believe that had investors known the truth that the Oxford securities were quoted on the OTC Bulletin Board, not on NASDAQ and that trading in those securities was illiquid and sporadic at best, that fact would have been reflected in the price or value of the Oxford securities. That is, the fact that the Oxford securities were quoted on the OTC Bulletin Board and not the NASDAQ in New York would "significantly affect or would reasonably be expected to have a significant effect on the market price or value of the securities". We therefore find that these were misrepresentations made by Allen contrary to paragraph 92(3)(c) of the Act. This allegation is proved.

3. Restrictions on Resales

[78] As noted earlier, Oxford was not a reporting issuer under the Act and there is no evidence to suggest when, if ever, it would obtain that status. Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102) set out the restrictions that applied to resales of securities that had been distributed under the accredited investor exemption. MI 45-102 clearly provided that until the issuer of the securities became a reporting issuer, resales of its securities would be subject to certain restrictions – they could not be freely traded by the purchaser for an indefinite time. Thus, at the time of the sales to Alberta residents, Oxford securities sold under the accredited investor exemption were subject to an indefinite resale restriction.

[79] Further, share certificates issued to purchasers of Oxford securities after they had bought did contain a legend on their face that stating that the securities were subject to a resale restriction until Oxford became a reporting issuer, which was and remains, an indefinite period. We have no evidence as to whether Allen or any of his salespersons were aware of the legend on the share certificate.

[80] Despite this, Gourlie's evidence was that a number of Alberta-resident investors told him that Allen represented to them prior to and at the time of sale that they would be able to resell their Oxford securities after 12 months had expired. While we heard the testimony of JM and WJ that Kabir and Nwabuogu, respectively, had told them that they would be able to resell the Oxford securities after the 12-month period had expired, we heard no such corroboration in respect of Allen.

[81] However, we are not satisfied based on the evidence presented to us that investors' incorrect understanding as to the duration of the resale restriction resulted from their conversations with Allen. We therefore find that there is insufficient evidence to establish that Allen misrepresented the duration of the resale restriction that applied to the Oxford securities, contrary to paragraph 92(3)(c) of the Act. This allegation is not proved.

4. RRSP Eligibility

[82] Staff alleged that Allen's advice to investors that the Oxford securities were eligible investments for RRSPs was a misrepresentation that contravened paragraph 92(3)(c) of the Act.

[83] We heard testimony and saw documentary evidence that indicated that Allen's salespeople advised some investors that the Oxford securities they purchased were eligible for deposit into RRSP trading accounts. For example, a fax sent to one of the investors, TG, stated:

> (1) RRSP will issue you a tax receipt for $10,000 (2,000 x $5) – the stock is trading today at $3.40 U.S. [approximately] $5.00 Cad. The RRSP person will punch up the stock symbol and see the stock is trading at $3.40 U.S. That is why he will issue a tax receipt for $10,000.
>
> (2) [Oxford] is a publicly traded company. This makes it RRSP eligible.

[84] JM and WJ testified that Kabir and Nwabuogu, respectively, had told them that the Oxford shares they purchased could be deposited into their RRSP accounts. JM did not try to deposit the securities in an RRSP account. WJ cancelled his purchase, so of course did not have any securities to so deposit.

[85] Gallucci referred to his discussions with the investor GK and documentary evidence she had provided him. GK told Gallucci that Kabir advised her in writing that the Oxford shares were RRSP eligible as stated in a one-page fax she had received from him. GK also told Gallucci that the reason the Oxford shares were attractive to her was because Kabir had told her that after purchasing the shares at Cdn $1.00 per share, she could transfer the shares into an RRSP account at US$3.40 per share. She advised Gallucci that when she sent the Oxford share certificate to TDWaterhouse for deposit into an RRSP account in August 2003, she was informed that the Oxford shares "were not eligible" investments. GK then contacted Allen. On September 30, 2003 Allen sent her a

partially completed RRSP application for Heritage Trust Company. Subsequently GK received (with a letter bearing Oxford's name but the address of the Bay Street Premises) two new application forms for ScotiaMcLeod Direct Investing and a copy of a business card for a relations representative with ScotiaMcLeod. GK contacted that representative, who informed GK that Oxford was not a registered public corporation and therefore its shares were not, as GK put it, "eligible to transfer." GK wrote that she passed this information on to Allen. On February 25, 2004, GK received a fax from Allen attaching a letter from the Canada Customs and Revenue Agency dated February 24, 2004 stating that Oxford was "considered to be a public corporation as of February 12, 2004".

[86] While it appears to have been part of the sales pitch, there is no evidence that Allen himself made any representations to GK or any other investor as to the eligibility of the Oxford Shares as an RRSP investment at the time of purchase of the Oxford shares. It is unclear as to what exactly Allen told GK about the Oxford shares' RRSP eligibility, beyond providing her with forms and a letter. As she did not testify, we were unable to inquire. In any event, we heard no evidence as to the requirements for an entity's securities to qualify as an eligible investment for an RRSP.

[87] We therefore find that there is an insufficient evidentiary basis for us to conclude that Allen made a misrepresentation about RRSP eligibility, as prohibited by paragraph 92(3)(c). We find that this allegation is not proved.

D. Unfair Practice

[88] As of June 2003, paragraph 92(3)(d) of the Act prohibited a person or company, with the intention of effecting a trade in a security or exchange contract from engaging in an unfair practice. Paragraph 92(5)(a) explained "unfair practice" as including "putting unreasonable pressure on a person to purchase, hold or sell a security or an exchange contract".

[89] Staff alleged that Allen engaged in an unfair practice when he attempted to coerce JM into purchasing a further 10,000 shares in Oxford in the late fall of 2003.

[90] JM testified that although he advised Allen that he was not going to purchase any more Oxford shares, Allen became aggressive and told him that it was too late as the share certificate for a further 10,000 shares had issued in JM's wife's name and that he was sending a courier to pick up JM's cheque for $10,000. JM said, based on what Allen told him, that if he did not pay for the shares, Heritage Trust would seize his assets or remove the money from his bank account. JM said that he did not believe Allen and did not send any further funds to him. JM said that he was not contacted by Heritage Trust and he never spoke to Allen again.

[91] We find that Allen attempted to put unreasonable pressure on JM to purchase additional Oxford shares by means of threats and falsehoods. The allegation is sustained.

E. Misrepresentations in Commission Filings?

[92] Donaghy admitted in the Agreed Facts that he should have been more diligent in reviewing Oxford's Form 45-103F4s and supporting documentation to ensure that exemptions under the Alberta securities laws were available for the trades and distributions of the securities of Oxford to Alberta investors. As discussed above, those incomplete subscriptions agreements provided no basis on which Oxford or Donaghy could certify on the Form 45-103F4 filings that the accredited investor exemption could properly be relied upon for the distributions. It also appears that neither Oxford nor Donaghy made any further inquiries to determine whether in fact the accredited investor exemption was available for those sales.

[93] Form 45-103F4 required a certificate be signed. Donaghy signed as CEO of Oxford. Some certificates stated: "The undersigned hereby certifies that the statements made in this report are true and correct". The later versions stated: "On behalf of the issuer (or vendor), I certify that the statements made in this report and in each schedule to this report are true".

[94] As all the statements in the reports and schedules (identifying investors as accredited investors) were admittedly not true, the certificates were untrue. We find that this was a misrepresentation for which both Oxford and Donaghy were responsible.

F. Public Interest

[95] In light of our findings above, we also find that Oxford, Donaghy and Allen acted contrary to the public interest. Illegal distributions and abuse of prospectus and registration exemptions are a serious matter. They harm investors – both the specific investors targeted and investors in general who may lose confidence in the Alberta capital market. Unfair practices and misrepresentations made to investors are likewise harmful, not only to the investor's interest but to the fairness and integrity of the capital market.

[96] We find that the conduct of Oxford and Donaghy in filing Form 45-103F4s that contained misrepresentations, although not a specific violation of Alberta securities laws, was contrary to the public interest. Inaccurate or false filings of documents with the Commission result in misinformation to the Commission and the market, thereby impairing the integrity of and public confidence in the capital market.

VI. SANCTION

A. General Principles

[97] The purpose of the Hearing is to determine whether it is in the public interest to issue orders against Oxford, Donaghy and Allen under sections 198 and 199 of the Act as a result of our findings that they contravened Alberta securities laws and acted contrary to the public interest. In considering appropriate sanction orders, the Commission is guided by the over-arching principle that a primary objective of securities regulation is the

protection of the public interest. In furtherance of that general principle, the Commission has commented that our public interest orders are neither remedial nor punitive, but are protective, preventive and intended to prevent probable future harm to the Alberta capital market – see *Re InstaDial Technologies Corp.*, 2005 ABASC 965 at para. 220.

[98] In addition, the sanction orders we make should be crafted by taking into account the specific circumstances of the particular case. In *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11, the Commission set out a number of factors that may be relevant in a determination of the nature and duration of the orders, including:

(a) seriousness of the allegations proved;

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

(c) the respondent's capital market activity;

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

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

(f) benefit received by the respondent;

(g) deterrent effect of the orders made on the individual respondent and other market participants; and

(h) mitigating factors.

[99] We apply these principles in our determination of the orders we believe appropriate to issue against Oxford, Donaghy and Allen in this case.

B. Consideration of Sanctions against the Respondents

1. Oxford and Donaghy

(a) Joint Submissions

[100] Staff and counsel for Oxford and Donaghy jointly proposed the following sanctions for Oxford and Donaghy:

Oxford

(a) under paragraph 198(1)(c) of the Act, that all of the exemptions under Alberta securities laws do not apply to Oxford for a period of two years; and

(b) under section 199 of the Act, that Oxford pay an administrative penalty of $20,000.

Donaghy

(a) under paragraph 198(1)(c) of the Act, that all of the exemptions under Alberta securities laws do not apply to Donaghy for a period of two years except trades in any securities made through an account or accounts with a registered dealer; and

(b) under section 199 of the Act, that Donaghy pay an administrative penalty of $20,000.

[101] Staff and counsel for Oxford and Donaghy also asked the panel that, as part of the order, the Cease Trade Order be revoked against Oxford and Donaghy.

[102] The parties jointly proposed that Oxford and Donaghy each pay $1,000 towards the costs of the investigation and Hearing of this matter.

[103] Staff and counsel for Oxford and Donaghy stressed that although the contraventions admitted to by Oxford and Donaghy are serious misconduct, Oxford and Donaghy relied on Allen as an individual who held himself out as experienced in raising capital and they were unaware of Allen's misrepresentations or wrongful representations made to investors. They acknowledged that Donaghy admittedly ought to have been more diligent in reviewing the documentation filed with the Commission. Other relevant considerations included: Oxford and Donaghy had no past history of regulatory misconduct; they acknowledged and took responsibility for their misconduct; and they cooperated with Staff in resolving Staff's allegations against them. The parties submitted that the orders jointly recommended provide meaningful deterrent value.

(b) Sanction Considerations

[104] In determining the appropriate sanction order we considered seriously the joint proposal made by Staff and counsel for Oxford and Donaghy. In making our determination we were mindful that the parties had agreed on what they believed to be the appropriate sanction and that their agreement facilitated resolution of Staff's allegations against Oxford and Donaghy. The sanctions proposed by the parties are based on the Agreed Facts. In such circumstances we review the proposed sanctions to determine whether we believe the orders suggested are within an acceptable range and accomplish our public interest mandate.

[105] We are of the view that the sanctions proposed by the parties are fair and satisfy our mandate to protect the public. We believe that in the circumstances of Oxford and Donaghy, the orders proposed by the parties reflect a measured response to the misconduct admitted to and provide the appropriate deterrent message to Oxford and Donaghy and to others who might be tempted to misuse the accredited investor

exemption or fail to be diligent in ensuring strict compliance with any of the capital-raising exemptions.

2. Allen

(a) Staff Position

[106] Staff contended that the public interest demanded that we make substantial orders against Allen – an order prohibiting Allen from trading in securities and removing the use by him of the exemptions for at least 15 years or possibly barring Allen from the Alberta capital markets permanently. Staff also submitted that it would be appropriate in the circumstances to order that Allen pay an administrative penalty in the amount of $60,000.

[107] Staff argued that the orders issued by the Commission must provide specific and general deterrence. Here, Staff claimed that its proposals would achieve specific deterrence by providing the restraint necessary to prohibit future conduct by Allen that is prejudicial to the public interest and achieve general deterrence by deterring others who might otherwise be tempted to lead exempt capital-raising activities in contravention of Alberta securities laws.

[108] Staff indicated that the costs of the investigation and Hearing were approximately $18,000. Staff said that they had apportioned Allen's share of the costs to be $7,500, which they asked us to order against him under section 202 of the Act.

(b) Sanction Considerations

[109] We considered the following facts and circumstances applicable to Allen.

[110] Allen's misconduct was serious. Illegal distributions offend core investor protective measures of securities regulation – the prospectus and registration requirements. We found that Allen was the guiding mind behind the sales program designed to sell the Oxford securities and he was solely responsible for hiring the salespersons to assist him in the selling of the securities. The evidence is clear that Allen made no attempt to ensure that the Oxford securities, which were being sold under the accredited investor exemption, were only sold to accredited investors and in strict compliance with the terms of that exemption. Allen also made misrepresentations to potential investors and engaged in an unfair practice, all to persuade them to purchase the Oxford securities. Fabricating facts and presenting untruths to potential investors to induce them to purchase securities is a serious matter and damages investor confidence in the market.

[111] Allen, a former registrant under Ontario securities laws, was experienced in selling securities. He well knew or ought to have known by reason of his registration history that securities laws required that securities only be sold by a registrant and under a prospectus unless an available exemption existed. His past experiences with other regulators should have impressed upon him the need to diligently ensure that he

scrupulously complied with Alberta securities law requirements. He would have known that the ramifications for non-compliance would be significant.

[112] Allen and his sales force were extremely active in the Canadian capital markets. This is evident from the evidence before us and two other decisions — *InstaDial*, a decision of this Commission, and *Re Allen* (2005), 28 O.S.C.B. 8541, a decision of the Ontario Securities Commission (OSC).

[113] Both *InstaDial* and *Re Allen* demonstrated that Allen's capital marketing activities extended to securities of other issuers, involving illegal distributions sold under similar sales programs and involving similar contraventions of Alberta and Ontario securities laws. In the former, this Commission sanctioned Allen by ordering that he be cease traded and denied the use of all the exemptions under Alberta securities laws for 10 years and pay an administrative penalty of $30,000. The OSC in *Re Allen* also issued sanction orders against Allen ((2006), 29 O.S.C.B. 3944): that he permanently cease trading and be denied the use of any of the exemptions contained in Ontario securities laws except that he was permitted to trade in securities for his own account under certain specified conditions; that he was reprimanded; and that he disgorge to the OSC the amount of $600,624, being the amount obtained as a result of his non-compliance with Ontario securities laws.

[114] Allen's participation in the illegal distribution of Oxford securities, corresponding contraventions of sections 75(1)(a) and 110 of the Act, and other misconduct, has directly led to investor harm. While the full extent of investor loss has not been ascertained, we do know that the investors' funds used to purchase the Oxford securities remain inaccessible to them as they cannot presently sell their Oxford shares and there is no certainty as to whether the principal amount invested will ever be returned to them, let alone any potential increase in the value of their initial investment. This loss naturally has negative consequences for some investors.

[115] We found earlier that Allen had notice of this Hearing. Despite that knowledge, Allen chose not to appear before this Commission to answer Staff's serious allegations against him. In our view, Allen's non-appearance demonstrates to us that he has not acknowledged his egregious misconduct nor demonstrated any remorse. His flagrant disregard for Alberta securities laws and this Commission proceeding continues.

[116] Allen profited substantially from his participation in the illegal distribution of the Oxford securities. The evidence demonstrated that he earned commissions in excess of $618,000, although arguably some of those commission monies were paid to other salespersons and for expenses associated with the sales of the securities.

[117] Allen's contraventions of Alberta securities laws damaged the integrity of our capital market. Significant and substantial sanctions are required to protect the public

and maintain confidence in the Alberta capital market. Our sanctioning orders must be proportionate to the respondent and the circumstances of his misconduct and designed to ensure that the likelihood of Allen participating in any similar conduct in the future is minimized. Our sanctions must also be effective enough to deter Allen and others from engaging in the same or similar conduct in the future.

[118] We found no mitigating factors in the evidence that we ought to consider when fashioning our sanction orders against Allen.

[119] In our view Staff's sanction proposal is not as severe as is necessary to meet our duty to protect the public investors and at the same time foster investor confidence in the integrity of the Alberta capital market. Allen's repeated disregard for securities laws leads us to believe that there is a real threat that he would attempt to participate in the capital market at some time in the future, placing future potential investors at risk. We need to act to prevent such re-occurrence.

[120] We have no doubt that the investors who purchased Oxford securities as a result of their dealings with Allen and his salespersons have been harmed and are wary of future investments in the exempt market. Allen's misconduct has harmed investors directly through their own personal loss of use of their capital and has indirectly harmed the good reputation of our capital market as a whole. With the increasing use of the accredited investor exemption to raise capital for issuers, we believe it imperative that we remind those wishing to raise funds from the public by using the capital raising exemptions that the Commission demands strict compliance with Alberta securities laws and that there are harsh consequences for non-compliance with our laws.

C. Sanction Decisions

[121] As noted, we believe that it is essential in this case that we impose effective sanctions that not only deter Oxford, Donaghy and Allen but also send the right message to those who may be of a similar mind and considering engaging in future contraventions of Alberta securities laws. We must act to protect the integrity of the Alberta capital market and foster investor confidence in our market.

[122] For the foregoing reasons, we are of the opinion that it is in the public interest to make the following orders.

Against Oxford, we order:

(a) under paragraph 198(1)(c) of the Act, that all of the exemptions contained in the Alberta securities laws do not apply to it for two years from December 15, 2005; and

(b) under section 199 of the Act, that it pay an administrative penalty in the amount of $20,000.

Against Donaghy, we order:

(a) under paragraph 198(1)(c) of the Act, that all of the exemptions contained in the Alberta securities laws do not apply to him for two years from December 15, 2005, except that this order does not prohibit him from using exemptions for trading in securities as principal in an account or accounts held with a registered investment dealer to whom he has first provided a copy of this decision; and

(b) under section 199 of the Act, that he pay an administrative penalty in the amount of $20,000.

[123] Our orders against Oxford and Donaghy recognize that they have been cease traded and denied the use of the exemptions under Alberta securities laws since the imposition of the Cease Trade Order in 2003 and recognize the length of time that has elapsed since the parties agreed on the appropriate sanction orders they would seek from the Commission.

Against Allen, we order:

(a) under paragraph 198(1)(b) of the Act, that he cease trading in any security permanently, except that this order does not prohibit him from trading in securities as principal in an account or accounts held with a registered investment dealer to whom he has first provided a copy of this decision;

(b) under paragraph 198(1)(c) of the Act, that all of the exemptions contained in the Alberta securities laws do not apply to him permanently, except for those exemptions necessary to permit him to trade in securities as permitted by paragraph (a) above; and

(c) under section 199 of the Act, that he pay an administrative penalty in the amount of $100,000.

[124] We are of the view that as Staff have proved some of their allegations against Oxford, Donaghy and Allen, that they each should make a contribution to the costs incurred from Staff's investigation and Hearing of the matters. We have no reason to question Staff's recommended apportionment of the costs.

[125] We therefore order, under section 202 of the Act and subject to the regulations, that:

(a) Oxford pay the sum of $1,000;

(b) Donaghy pay the sum of $1,000; and

(c) Allen pay the sum of $7,500

toward the costs of the investigation and Hearing in this matter.

[126] We note that upon the issuance of this decision, the outstanding Cease Trade Order expires in accordance with its terms.

[127] These proceedings are concluded.

March 26, 2007.

For the Commission:

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

"original signed by"
James A. Millard, QC, Member