



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)**

ORDER

(Rule 3 of the Ontario Securities Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071)

WHEREAS on September 22, 2010, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Securities Act**"), accompanied by a Statement of Allegations of Staff of the Commission ("**Staff**") with respect to the respondents Howard Jeffrey Miller ("**Miller**") and Man Kin Cheng ("**Cheng**") for a hearing to commence on October 18, 2010;

AND WHEREAS Miller and Cheng were served with the Notice of Hearing and Statement of Allegations dated September 22, 2010 on September 22, 2010;

AND WHEREAS at a hearing on October 18, 2010, counsel for Staff, counsel for Cheng, and Miller, appearing on his own behalf, consented to the scheduling of a confidential pre-hearing conference on January 11, 2011 at 3:00 p.m.;

AND WHEREAS on November 11, 2010, the Commission issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, accompanied by an Amended Statement of Allegations of Staff which added the respondents Paul Azeff ("**Azeff**"), Korin Bobrow ("**Bobrow**") and Mitchell Finkelstein ("**Finkelstein**"), for a hearing to commence on January 11, 2011;

AND WHEREAS Miller, Cheng, Azeff, Bobrow and Finkelstein (together, the "**Respondents**") were served with the Notice of Hearing and Amended Statement of Allegations dated November 11, 2010 on November 11, 2010;

AND WHEREAS following a hearing on January 11, 2011, counsel for Staff, counsel for Azeff, Bobrow, Finkelstein and Cheng, and Miller, appearing on his own behalf, attended a confidential pre-hearing conference;

AND WHEREAS at the confidential pre-hearing conference on January 11, 2011, all parties made submissions regarding the disclosure made by Staff and it was ordered by the Commission, on the consent of all parties, that Staff and the Respondents would exchange written proposals concerning outstanding disclosure issues and that a motion date would be set for February 22, 2011 regarding disclosure issues, if necessary;

AND WHEREAS at the request of the Respondents, and on the consent of Staff, it was agreed that the February 22, 2011 motion date would be adjourned to April 8, 2011;

AND WHEREAS a disclosure motion was held on April 8, 2011 and, after submissions by the parties, the Panel issued a Confidentiality Order and Adjournment Order dated April 8, 2011, adjourning the Respondents' disclosure motion and the hearing in this matter to a pre-hearing conference, the date of which was to be agreed to by the parties and provided to the Office of the Secretary;

AND WHEREAS on April 18, 2011, Staff filed an Amended Amended Statement of Allegations;

AND WHEREAS the Panel issued an amended Confidentiality Order and Adjournment Order dated April 19, 2011 scheduling, on consent of all parties, a confidential pre-hearing conference on June 2, 2011 at 10:00 a.m.;

AND WHEREAS all parties consented to an adjournment of the confidential pre-hearing conference from June 2, 2011 at 10:00 a.m. to August 17, 2011 at 10:00 a.m. to allow Staff to provide the Respondents with further disclosure in this matter;

AND WHEREAS on July 6, 2011, counsel for Finkelstein served Staff with motion materials seeking a stay of the proceeding against him (the "**Stay Motion**") and Staff indicated that: a) it intended to bring a motion that the Stay Motion is premature and should be heard at the hearing on the merits (the "**Prematurity Motion**"); and b) it intended to bring a motion to seek leave to put before the Panel at the hearing of the Stay Motion certain "without prejudice" communications (the "**Privilege Motion**");

AND WHEREAS counsel for Azeff and Bobrow indicated that they intend to bring a motion to compel records from a third party (the "**Third Party**" and the "**Third Party Records Motion**");

AND WHEREAS the Respondents advised that they may seek to continue the hearing of the previous disclosure motion, which had been held on April 8, 2011 and had been adjourned on April 8, 2011 and June 1, 2011, or may bring other motions relating to disclosure issues (the "**Disclosure Motion**");

AND WHEREAS a pre-hearing conference was held on August 17, 2011 and Staff and the Respondents made submissions regarding the scheduling of the various motions, including the Stay Motion, the Prematurity Motion, the Privilege Motion, the Third Party Records Motion and the Disclosure Motion;

AND WHEREAS on August 30, 2011, the Commission ordered that the Privilege Motion be heard on September 26, 2011; the Prematurity Motion and the Stay Motion be heard together commencing on November 9, 2011; the Third Party Records Motion be scheduled to be heard on a date after the Prematurity Motion and the Stay Motion have been heard and decided; the Disclosure Motion be adjourned to a date that will be fixed after the four motions have been heard and decided; and dates for the hearing on the merits of the matter be set after the five motions have been heard and decided (the “**Scheduling Order**”);

AND WHEREAS the Privilege Motion, the Prematurity Motion and the Stay Motion have been heard and decided in accordance with the Scheduling Order;

AND WHEREAS Staff requested a pre-hearing conference to request, among other things, that the Scheduling Order be amended to schedule the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

AND WHEREAS a pre-hearing conference was held on October 2, 2012 at which time Staff and counsel for the Respondents attended and made submissions;

AND WHEREAS on October 2, 2012, the Commission ordered that the request for a summons to compel the production of certain records of a third party and any motion to quash such summons proceed in accordance with Rule 4.7, and that a pre-hearing conference be held on January 16, 2013 at which time the Commission would consider scheduling the Disclosure Motion and the hearing on the merits;

AND WHEREAS a pre-hearing conference was held on January 16, 2013, and Staff and the Respondents made submissions regarding the scheduling of the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

AND WHEREAS on January 16, 2013, the Commission ordered that: (i) the Third Party Records Motion to review the issuance of a summons shall be heard on April 8, 2013 at 10:00 a.m.; (ii) the Disclosure Motion shall be heard on July 17, 2013 at 10:00 a.m.; and (iii) the hearing on the merits shall commence on May 5, 2014, and continue up to and including June 20, 2014, save and except for Monday, May 19 (Victoria Day), and the alternate Tuesdays each month when meetings of the Commission are scheduled, the dates of which are unknown at this time;

AND WHEREAS on February 28, 2013, counsel for Bobrow, on notice to counsel for Azeff and Staff, requested an adjournment of the Third Party Records Motion, and Staff did not oppose the adjournment request, provided that the dates for the Disclosure Motion and the hearing on the merits are preserved;

AND WHEREAS on April 4, 2013, the Commission ordered that the date of April 8, 2013 for the hearing of the Third Party Records Motion be vacated and that the Third Party Records Motion be adjourned to July 9, 2013 at 10:00 a.m.;

AND WHEREAS on May 6, 2013, at the request of Bobrow and Azeff, the Commission issued a summons for documents from the Third Party (the “**Third Party Summons**”);

AND WHEREAS on June 28, 2013, the Third Party filed its motion record for the Third Party Records Motion to quash part of the Third Party Summons;

AND WHEREAS the Third Party indicated that it asserts solicitor-client privilege over all documents protected by its privilege;

AND WHEREAS the Third Party Records Motion was scheduled to be argued on July 9, 2013;

AND WHEREAS on July 9, 2013, Staff, counsel for the Third Party and counsel for Bobrow, who also appeared as agent for counsel for Azeff, attended before the Commission and advised that the Third Party Records Motion had been settled on consent of Azeff, Bobrow and the Third Party on the terms of this Order;

AND WHEREAS this Order is without prejudice to Azeff and/or Bobrow seeking a further summons to obtain the preparation notes that the Third Party’s counsel used to interview Azeff and Bobrow on November 25, 2010 and is also without prejudice to the Third Party moving to quash such summons provided any further summons and/or motion to quash is brought within a reasonable period of time of the Third Party Documents (defined below) being provided or a further summons being issued;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT the Third Party Summons is quashed, on consent, without adjudication, on the following terms:

- A. That all documents produced by the Third Party to Bobrow pursuant to the Order shall be redacted to remove any information that may identify CIBC’s clients and agents, and any information for employees other than Azeff and Bobrow (the “**Confidentiality Terms**”);
- B. That the Third Party will not produce any documents that do not relate to Azeff and Bobrow. If a document relates to Azeff and Bobrow and other Third Party employees or agents, the

Third Party will produce those parts of the document that relate to Azeff and Bobrow, redacted pursuant to the Confidentiality Terms;

That Azeff and Bobrow shall pay to the Third Party reasonable copying costs actually incurred by or for the Third Party in producing documents pursuant to this Order, as specified below;

- C. Subject to the Confidentiality Terms, the Third Party shall produce to Bobrow: (collectively, the “**Third Party Documents**”)
- 1) Two Compliance Reports of the Third Party dated October 6, 2010 and November 5, 2010, concerning the trading activity of Azeff and/or Bobrow;
 - 2) All factual data and documents provided by the Third Party to its counsel that relate to Azeff and Bobrow only;
 - 3) All emails still in possession of the Third Party from the work accounts of Azeff and Bobrow between January 1, 2002 and May 31, 2004, subject to (a) reasonable search terms being provided to the Third Party by Azeff and Bobrow, and (b) Azeff and Bobrow reimbursing the Third Party for costs incurred in reviewing and producing the emails in accordance with the Confidentiality Terms, such costs to be set at (i) \$3000, if the search terms return less than 3001 emails, or (ii) such reasonable costs that are actually incurred by the Third Party, if the search terms return more than 3000 emails. If emails are no longer in possession of the Third Party, the Third Party shall promptly advise Bobrow of this fact;
 - 4) The reasonable basis files that were kept by Azeff and Bobrow between January 1, 2002 and December 31, 2010 still in the possession of the Third Party, subject to Azeff and Bobrow reimbursing the Third Party for any costs greater than \$1000 incurred in reviewing and producing these reasonable basis files in accordance with the Confidentiality Terms;
 - 5) Information still in possession of the Third Party for all trades executed under the IA codes registered to Azeff and/or Bobrow between January 1, 2002 and December 31, 2009 in an electronic spreadsheet format; and
- D. The two Compliance Reports specified above are to be produced on or before July 26, 2013. The Third Party shall make best efforts to produce, on a rolling productions basis, the remainder of the Third Party Documents to Bobrow before October 31, 2013, and in any event, no later than December 31, 2013.

DATED at Toronto this 16th day of July, 2013.

“Edward P. Kerwin”

Edward P. Kerwin