



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Ontario

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)**

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

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

I. OVERVIEW

Finkelstein, Azeff and Bobrow

1. The Respondents, Mitchell Finkelstein (“Finkelstein”), Paul Azeff (“Azeff”) and Korin Bobrow (“Bobrow”) engaged in an illegal insider tipping and trading scheme over the course of a four year period from November 2004 to May 2007 (the “Relevant Period”).
2. During the Relevant Period, Finkelstein, who practices corporate law in Toronto, sought out and acquired material, non-public information concerning pending corporate transactions that he would communicate to Azeff, in breach of section 76(2) of the Securities Act, R.S.O. 1990, c.S.5, as amended (the “Act”).
3. Azeff shared the material, non-public information with his co-worker, Bobrow. They would then:

- (a) trade in securities of the reporting issuers with knowledge of material facts with respect to the reporting issuers that had not generally been disclosed, contrary to subsection 76(1) of the Act; and/or
- (b) inform, not in the necessary course of business, other persons of material facts with respect to the reporting issuers before the material facts were generally disclosed, contrary to subsection 76(2) of the Act; and/or
- (c) recommend investing in the reporting issuers to family members, friends and clients, contrary to the public interest.

Miller and Cheng

4. In or about November and December of 2004, the Respondents, Howard Jeffrey Miller (“Miller”) and Man Kin Cheng a.k.a. Francis Cheng (“Cheng”) engaged in illegal insider trading and tipping in securities of a reporting issuer, in breach of sections 76(1) and (2) of the Securities Act, R.S.O. 1990, c.S.5, as amended (the “Act”), and in a manner that was contrary to the public interest. Miller learned of the material, non-disclosed information from one of Azeff’s clients who had been tipped by Azeff.

II. THE RESPONDENTS

5. Finkelstein is a resident of Toronto, Ontario and during the Relevant Period was a member of the Law Society of Upper Canada and a partner in the Corporate Finance & Securities and Mergers & Acquisitions practice at the Toronto office of Davies Ward Phillips & Vineberg LLP (“Davies”), a law firm with offices in Toronto, Montreal and New York. Finkelstein has never been registered with the Commission in any capacity.

6. Azeff is a resident of Montreal, Quebec. During the Relevant Period, Azeff was employed by CIBC World Markets Inc. (“CIBC”) in Quebec. Azeff was registered with the Commission as a trading officer with CIBC from September 18, 2003 to September 28, 2009 and has been registered as a dealing representative with CIBC since September 28, 2009 to date.

7. Finkelstein and Azeff met and became friends and fraternity brothers at the University of Western Ontario and remained close personal friends thereafter. Throughout the Relevant Period, Finkelstein and Azeff were in regular and frequent contact.

8. Bobrow is also a resident of Montreal, Quebec and during the Relevant Period, Bobrow was also employed by CIBC in the same Montreal office as Azeff. At the material time, Bobrow was registered with the Commission as a salesperson with CIBC from May 14, 2003 to September 28, 2009 and has been registered as a dealing representative with CIBC since September 28, 2009 to date.

9. Bobrow and Azeff met in high school and are business partners at CIBC. Bobrow works exclusively with Azeff and all the trading done by Bobrow's clients are processed through Azeff's accounts. Azeff and Bobrow have a private compensation arrangement to reflect their respective client split of the group's annual trading activity.

10. Miller is a resident of Toronto, Ontario. During the Relevant Period, from July 1, 2002 until September 22, 2008, Miller was employed by TD Waterhouse Canada Inc. ("TD") and was registered with the Commission as a trading officer under the dealer category of investment dealer. Miller was registered as a dealing representative with Raymond James Ltd., from January 5, 2009 until October 9, 2010. Miller is not currently registered with the Commission.

11. Cheng was a resident of Toronto, Ontario during the Relevant Period. During the Relevant Period, Cheng was also employed by TD, and was registered with the Commission as a salesperson under the dealer category of investment dealer. Cheng is not currently registered with the Commission.

12. During the Relevant Period, Cheng and Miller worked from the same office. In early 2007, Miller and Cheng formed the "Miller/Cheng Advisory Group". Miller and Cheng had a private compensation arrangement to reflect their respective client split of the group's annual trading activity and other factors.

II. TIPPING, INSIDER TRADING, AND CONDUCT CONTRARY BY FINKELSTEIN, AZEFF AND BOBROW

Tipping – Finkelstein

13. During the Relevant Period, Finkelstein actively sought out and acquired material, non-public information about potential corporate transactions through his role as a lawyer at Davies either by:

- (a) acting as counsel to reporting issuers on pending corporate transactions; and/or
- (b) by conducting searches on the documents management system at Davies for material, non-public information related to pending transactions for which he did not personally serve as counsel.

14. For each of the following acquisitions listed below (the “Acquisitions”), Finkelstein informed Azeff of material information related to the following reporting issuers (the “Reporting Issuers”) prior to that information having been generally disclosed. In particular,

- (a) Kohlberg Kravis Roberts & Co. (“KKR”) acquisition of Masonite International Corporation (“Masonite”), announced December 22, 2004 (the “Masonite Transaction”) – Davies acted on behalf of Masonite and Finkelstein was counsel on the matter. On the evening of November 16, 2004, Davies’ lawyers, including Finkelstein, met with management of Masonite to discuss the Masonite Transaction. In the following three days, there were several telephone contacts between Azeff and Finkelstein, the last one occurring approximately two hours before the first buy order was placed on November 19, 2005 by Azeff and/or Bobrow.

On January 26, 2005, Azeff met with Finkelstein in Toronto. In the two days following the meeting, Finkelstein made two cash deposits in \$50 and \$100 bills to his two bank accounts.

- (b) Vista Equity Partners (“Vista”) acquisition of MDSI Mobile Data Solutions Inc. (“MDSI”), announced July 29, 2005 (the “MDSI Transaction”) – Davies acted on behalf of Vista and Finkelstein accessed documents with material, non disclosed information, notwithstanding that he was not counsel on the matter. Throughout June and July 2005, Finkelstein accessed documents relating to the MDSI Transaction, and had several telephone contacts with Azeff. On July 28, 2005, one day after Finkelstein’s accessing of the last MDSI documents, (one of which indicated that the MDSI Transaction would be announced on July 29, 2005), three clients of Azeff commence buying shares of MDSI.

Between September 8 and 9, 2005, Finkelstein and Azeff had several telephone contacts. Finkelstein was in Montreal for part of each of those days, returning to Toronto on September 9, 2005. On that same day, Finkelstein made a cash deposit in \$100 bills to his bank account.

- (c) Barrick Gold Corporation (“Barrick”) acquisition of Placer Dome Inc. (“Placer Dome”), initial offer announced October 31, 2005 and revised offer announced on December 21, 2005 (the “Placer Dome Transaction”) – Davies acted on behalf of Barrick and Finkelstein accessed documents with material, non disclosed information, notwithstanding that he was not counsel on the matter. Between September 14, 2005 and October 18, 2005, Finkelstein accessed documents relating to the Place Dome Transaction. Between September 25, 2005 to October 25, 2005, there were several telephone contacts between Finkelstein and Azeff. On October 26, 2005, the first trading occurred in both Barrick and Placer Dome shares by Azeff and/or Bobrow.

On November 30, 2005, Azeff and Finkelstein met in downtown Toronto. On December 2, 2005, Finkelstein made two cash deposits, in \$100 bills, in two of his bank accounts.

- (d) Sherritt International Corporation acquisition of Dynatec Corporation (“Dynatec”) announced April 20, 2007 (the “Dynatec Transaction”) – Davies acted on behalf of Dynatec and Finkelstein accessed documents with material, non disclosed information, notwithstanding that he was not counsel on the matter. On April 18, 2007, Finkelstein accessed documents relating to the Dynatec Transaction. Within minutes of doing so, there was telephone contact between Finkelstein and Azeff. The first trading occurred in Dynatec shares by Azeff and/or Bobrow clients within minutes of that contact. Between April 20 and April 27, 2007, there were several telephone contacts between Finkelstein and Azeff.

Between April 29 and April 30, 2007, Finkelstein was in Montreal and Sherbrooke, Quebec. Between May 1 and 7, 2007, Finkelstein made a series of cash deposits to his two bank accounts consisting primarily of \$100 bills.

Pursuant to subsections 76(5)(b) and (e) of the Act, Finkelstein became a person in a special relationship with the Reporting Issuers involved in the Acquisitions.

15. Finkelstein owed a fiduciary duty and a strict duty of confidentiality and loyalty to the clients of Davies. Pursuant to subsection 76(2) of the Act, Finkelstein was also prohibited from tipping others with material information related to any of the Reporting Issuers prior to that information having been generally disclosed.

Insider Trading, Tipping and Conduct Contrary - Azeff

16. Throughout the Relevant Period, Azeff obtained material information related to the pending Acquisitions from Finkelstein prior to the information having been generally disclosed. Azeff knew or ought to have known that Finkelstein obtained the information in his capacity as a lawyer and that Finkelstein stood in a special relationship to each of the Reporting Issuers.

17. By virtue of subsection 76(5)(e) of the Act, Azeff became a person in a special relationship with each of the Reporting Issuers and was accordingly prohibited from trading securities of the Reporting Issuers while in possession of material non-public information involving those Reporting Issuers.

18. With knowledge of material, non-public information supplied by Finkelstein, Azeff traded securities on behalf of himself and his wife in advance of the following Acquisitions, contrary to subsection 76(1) of the Act as follows:

- (a) **Masonite Transaction:** Between November 19 and December 6, 2004, Azeff purchased 7,550 Masonite shares valued at approximately \$255,000 in four of his CIBC accounts. Azeff sold these shares after the Press Release between December 23 and 29, 2004, for a realized profit of approximately \$51,500.
- (b) **Placer Dome Transaction:** Between October 26 and 28, 2005, Azeff purchased 2,500 Placer Dome shares valued at approximately \$48,700 in two of his CIBC accounts. Azeff sold these shares after the Press Release between October 31, 2005 and January 10, 2006, for a realized profit of approximately \$13,800. On October 28, 2005, Azeff purchased 800 Placer Dome shares for his wife's CIBC account valued at approximately \$15,000. Azeff sold these shares after the Press Release on October 31, 2005 for a realized profit of approximately \$3,300.

19. In addition, Azeff recommended investing in the securities of the following Reporting

Issuers to several of his family members, contrary to the public interest. In particular,

- (a) **Masonite Transaction:** Between November 19 and December 20, 2004, four of Azeff's relatives' CIBC accounts purchased 10,125 Masonite shares valued at approximately \$345,000.
- (b) **Placer Dome Transaction:** Between October 26 and 28, 2005, four of Azeff's relatives' CIBC accounts purchased 5,500 Placer Dome shares valued at approximately \$105,000.

20. Azeff also informed Bobrow of the material, non-public information relating to the Masonite Transaction, Placer Dome Transaction and Dynatec Transaction prior to the information having been generally disclosed. In addition, Azeff informed at least one client ("Client A") of material, non-public information relating to the Masonite Transaction and the Dynatec Transaction prior to the information having been generally disclosed, contrary to subsection 76(2) of the Act.

Insider Trading, Tipping and Conduct Contrary - Bobrow

21. Throughout the Relevant Period, Bobrow obtained material information related to one or more of the pending Acquisitions from Azeff prior to the information having been generally disclosed.

22. By virtue of subsection 76(5)(e) of the Act, Bobrow became a person in a special relationship with one or more of the Reporting Issuers when he learned of material non-public information with respect to the Reporting Issuers from Azeff, who was a person who he knew or ought reasonably to have known was a person in such a relationship. Bobrow was accordingly prohibited from trading securities of the Reporting Issuers while in possession of material non-public information involving those Reporting Issuers.

23. With knowledge of material, non-public information supplied by Azeff (who obtained it from Finkelstein), Bobrow traded securities in advance of the following Acquisitions, contrary to subsection 76(1) of the Act as follows:

- (a) **Masonite Transaction:** Between November 19 and December 6, 2004, Bobrow purchased 2,900 Masonite shares valued at approximately \$99,000 in two of his

CIBC accounts. Bobrow sold these shares after the Press Release between December 23 and 29, 2004, for a realized profit of approximately \$18,000.

- (b) **Placer Dome Transaction:** Between October 26 and 28, 2005, Bobrow purchased 2,800 Placer Dome shares valued at approximately \$54,600 in two of his CIBC accounts. Bobrow sold these shares after the Press Release between October 31 and November 22, 2005, for a realized profit of approximately \$12,400.

24. In addition, Bobrow recommended investing in securities of the Reporting Issuers to several of his family members, contrary to the public interest. In particular,

- (a) **Masonite Transaction:** Between November 19 and December 21, 2004, two of Bobrow's relatives' CIBC accounts purchased 1,950 Masonite shares valued at approximately \$66,500.
- (b) **Placer Dome Transaction:** Between October 26 and 28, 2005, two of Bobrow's relatives' CIBC accounts purchased 3,500 Placer Dome shares valued at approximately \$68,000.

25. Bobrow also informed at least one client ("Client B") of the material, non-public information relating to the Masonite Transaction prior to the information having been generally disclosed, contrary to subsection 76(2) of the Act. Client B advised Bobrow by e-mail not to tell his girlfriend the name of the stock being purchased for her as it is "confidential", and "We don't want this info in the public domain."

Recommendations by Azeff and Bobrow to clients/friends

26. In addition, Azeff and/or Bobrow recommended investing in securities of the Reporting Issuers to several of their clients/friends, contrary to the public interest. In particular,

- (a) **Masonite Transaction:** Between November 19 and December 22, 2004 (prior to the issuance of the Press Release), more than 100 accounts of Azeff/Bobrow friends (with accounts at and/or outside of CIBC) and CIBC clients purchased 290,000 Masonite shares, valued at approximately \$9.8 million.
- (b) **MDSI Transaction:** On July 28, 2005, five accounts of Azeff/Bobrow friends (with accounts at or outside of CIBC) purchased 24,000 MDSI shares, valued at approximately \$122,000.
- (c) **Placer Dome Transaction:** Between October 26 and 28, 2005, 29 accounts of Azeff/Bobrow friends (with accounts at and/or outside of CIBC) and CIBC clients

purchased 67,700 Placer Dome shares, valued at approximately \$1.29 million.

- (d) Dynatec Transaction: On April 18 and 19, 2007, 16 accounts of Azeff/Bobrow friends (with accounts at and/or outside of CIBC) and CIBC clients purchased 427,500 Dynatec shares, valued at approximately \$1.6 million.

Summary of Trading

27. Following the public announcements, the securities of the Reporting Issuers involved in the Acquisitions increased in value. Shortly thereafter, Azeff and Bobrow sold most of the securities they had purchased in Masonite and Placer Dome to realize a profit and obtained an unrealized profit for the remaining securities which they held, for a total gross profit over the Relevant Period of approximately \$65,500 and \$30,600, respectively. In addition, Azeff and Bobrow would have earned commission income on the trading conducted by their CIBC clients in Masonite, Placer Dome and Dynatec.

28. With respect to Masonite, in aggregate, as at December 22, 2004, prior to the Press Release, Azeff and Bobrow, their families and friends (at and/or outside of CIBC), and clients at CIBC owned approximately 310,000 shares of Masonite with a book value of approximately \$10.6 million. Assuming that all shares were sold at the original announcement price of \$40.20, these shares would have generated profit of approximately \$2 million, or 19%.

29. With respect to MDSI, as at July 29, 2005, prior to the Press Release, friends of Azeff and Bobrow owned 24,000 MDSI shares with a book value of approximately \$122,000. The shares were subsequently sold on July 29, 2005, after the Press Release, for a realized profit of approximately \$69,000, or 56%.

30. With respect to Placer Dome, in aggregate, as at October 31, 2005, prior to the Press Release, Azeff and Bobrow, their families and friends (at and/or outside of CIBC), and clients at CIBC owned 82,800 shares of Placer Dome with a book value of approximately \$1.58 million. Assuming that all shares were sold at the October 31, 2005 opening trading price of \$22.99, these shares would have generated profit of approximately \$320,000, or 20%.

31. With respect to Dynatec, in aggregate, as of April 20, 2007, prior to the Press Release, Azeff and Bobrow friends (at and/or outside of CIBC) and clients owned 427,500 Dynatec shares

with a book value of approximately \$1.6 million. Assuming that all shares were sold on April 20, 2007, after the Press Release, at an average price of \$4.42, these shares would have generated profit of approximately \$265,000, or 16%.

III. INSIDER TRADING, TIPPING AND CONDUCT CONTRARY BY MILLER

32. In or about November 2004, by virtue of subsection 76(5)(e) of the Act, Miller became a person in a special relationship with Masonite when he learned of a material fact with respect to Masonite from Client A (the client tipped by Azeff), who was a person who Miller knew or ought reasonably to have known was a person in such a relationship. In particular, Miller learned that a transaction (the “Transaction”) was pending which would involve a takeover of Masonite (the “Material Fact”), prior to this information having been generally disclosed.

33. On November 24, 2004, Miller sent the following e-mails to a client in reference to Masonite:

“Call me I have a tip

...

*“Stock trades on TSX at around \$34 - cash takeover of \$40
Timing should be before xmas but you never know with
lawyers ... I'm long*

34. The e-mails demonstrate that Miller was aware of the following specific details relating to the Transaction, prior to the information having been generally disclosed:

- (a) **The Transaction contemplated a takeover price of \$40.00 (or a 20% premium on the price of Masonite’s stock, which was trading around \$34.00):** The Press Release announced that the Masonite’s shareholders would receive \$40.20 per share;
- (b) **The Transaction would be structured as an all cash deal:** The Press Release announced that the offeror was KKR, a private equity organization, and the arrangement would be an all cash transaction;

- (c) **The timing of the Transaction would be before Christmas 2004:** Masonite issued the Press Release before Christmas, on December 22, 2004; and
- (d) **Lawyers had been retained in connection with the Transaction:** Lawyers retained by Masonite were actively involved in the matter commencing in and around November 16, 2004.

35. While in a special relationship with Masonite, and with knowledge of the Material Fact that had not been generally disclosed, beginning on November 22, 2004, Miller made the following purchases of Masonite securities, on behalf of himself and his wife, contrary to subsection 76(1) of the Act:

- (a) On November 22, 23 and 29, 2004, Miller purchased 3,000 Masonite shares for his TD account. Miller disposed of these shares pursuant to the Transaction on or around April 6, 2005 (the effective date of the sale of Masonite to KKR), for a realized profit of approximately \$24,500; and
- (b) On December 1, 3, 7, 8, and 20, 2004, Miller purchased 4,300 Masonite shares for his wife's TD account. Miller sold these shares after the Press Release, on January 4, February 16 and 18, 2005, for a realized profit of approximately \$29,000.

36. With knowledge of the Material Fact that had not been generally disclosed, Miller also recommended investing in Masonite to several of his family members, friends and TD Waterhouse clients, contrary to the public interest. In particular,

- (a) On November 29, and December 7, 2004, four of Miller's relatives' TD accounts purchased 3,300 Masonite shares. The account holders sold these shares after the Press Release, on January 5, February 15, 16 and 18, 2005, for a realized profit of approximately \$20,000;
- (b) Between November 23 and December 22, 2004, two of Miller's friends purchased 15,100 Masonite shares valued at approximately \$520,000 for 5 accounts held outside of TD; and
- (c) Between November 23 and December 22, 2004, a total of 21 client accounts at TD

purchased 30,000 Masonite shares, valued at approximately \$1,020,000.

37. Miller also informed Cheng, and at least one client, of the Material Fact and of specific details regarding the Transaction, prior to the information having been generally disclosed, contrary to subsection 76(2) of the Act.

IV. INSIDER TRADING, TIPPING AND CONDUCT CONTRARY BY CHENG

38. By virtue of subsection 76(5)(e) of the Act, Cheng became a person in a special relationship with Masonite when he learned of the Material Fact with respect to Masonite from Miller, who was a person who he knew or ought reasonably to have known was a person in such a relationship, prior to the information having been generally disclosed.

39. While in a special relationship with Masonite, and with knowledge of the Material Fact that had not been generally disclosed, beginning on November 29, 2004, Cheng made the following purchase of Masonite securities, contrary to subsection 76(1) of the Act:

- (a) On November 29, 2004, Cheng purchased 900 Masonite shares for his wife's account outside of TD. Cheng sold these shares after the Press Release, on January 4, 2005, for a realized profit of approximately \$6,300; and
- (b) On November 30, December 7, 8 and 10, 2004, Cheng purchased 6,000 Masonite shares for his brother's TD account (the "Man Leung Cheng Account"). Cheng's brother, Man Leung Cheng, is a resident of Hong Kong. Cheng sold these shares February 7 and 9, 2005, after the Press Release, for a realized profit of approximately \$37,000. Cheng ultimately received much of the proceeds from this sale.

40. With knowledge of the Material Fact that had not been generally disclosed, Cheng also recommended investing in Masonite to several of his family members and TD clients, contrary to the public interest. In particular,

- (a) On December 7 and 10, 2004, three of Cheng's relatives' TD accounts purchased 2,200 Masonite shares. The account holders sold the shares on January 4, 26 and February 9, 2005, after the Press Release, for a realized profit of approximately

\$15,000.

- (b) On December 7 and 8, 2004, four client accounts at TD purchased 4,000 Masonite shares valued at approximately \$135,000; and
- (c) On December 13, 2004, one of Cheng's clients purchased 100 Masonite shares valued at approximately \$3,400 in one account outside of TD.

41. In addition, Cheng informed persons of the Material Fact and of specific details regarding the Transaction, prior to the information having been generally disclosed, contrary to subsection 76(2) of the Act. In particular, on December 7, 2004, Cheng sent the following email to a client:

"I'm back in town and would like to talk to you about your account. Kindly contact me at your convenience. I'm buying MHM on Toronto Exchange for clients and 20% return is expected before Christmas. I'm looking forward to seeing you soon."

42. In addition, on December 8, 2004, Cheng sent the following email to a prospective client:

"Take a look at MHM (<http://www.masonite.com/>), listed on the Toronto Stock Exchange. It's a takeover target and I was told that it'll be done at Cdn\$40.00 before Christmas. It's currently trading at Cdn\$34.00 and I don't see much downside from here even if the deal ended up falling through."

V. SUMMARY OF TRADING – MILLER AND CHENG

43. In aggregate, as at December 22, 2004, the date of the Press Release, Miller, Cheng and their families and clients owned 68,900 shares of Masonite with a book value of approximately \$2.35 million.

44. Following the Press Release, Miller, Cheng and their family members sold most of their Masonite securities to realize a profit. In particular:

- (a) Miller and his family purchased 10,600 Masonite shares valued at approximately \$360,000, and realized profit of approximately \$73,500 (or 20%); and

- (b) Cheng and his family purchased 9,100 Masonite shares valued at approximately \$300,000, and realized profit of approximately \$58,300 (or 19%).
45. Staff alleges that the flow of material, undisclosed information with respect to the Masonite Transaction is set out in Schedule 1 attached to the within Amended Statement of Allegations.
- III. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST**
46. By trading securities of one or more reporting issuers with knowledge of the material facts obtained from persons who Azeff and Bobrow knew or ought to have known were in a special relationship with a reporting issuer, that had not generally been disclosed, Azeff and Bobrow engaged in illegal insider trading, contrary to subsection 76(1) of the Act, and engaged in conduct contrary to the public interest.
47. By recommending the purchase of securities of one or more reporting issuers with knowledge of the material facts obtained from persons who Azeff and Bobrow knew or ought to have known were in a special relationship with one or more reporting issuers, that had not generally been disclosed, Azeff and Bobrow engaged in conduct contrary to the public interest.
48. By informing other persons of materials facts with respect to one or more reporting issuers, prior to that information being generally disclosed, Finkelstein, Azeff and Bobrow engaged in tipping, contrary subsection 76(2) of the Act, and engaged in conduct contrary to the public interest.
49. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 11th day of November, 2010.

Schedule 1
Masonite Transaction

