



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
DAVID CHARLES PHILLIPS and JOHN RUSSELL WILSON**

ORDER

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

WHEREAS on June 4, 2012, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") against David Charles Phillips ("**Phillips**") and John Russell Wilson ("**Wilson**") (together, the "**Respondents**");

AND WHEREAS pursuant to the Notice of Hearing an attendance in this matter was held on June 25, 2012 at which time the Commission adjourned the matter to Tuesday, August 28, 2012;

AND WHEREAS on August 28, 2012, the Commission ordered that the hearing on the merits shall commence on February 11, 2013 and continue, if necessary, until March 6, 2013, except for February 12, 18 and 26, 2013;

AND WHEREAS at a Pre-Hearing Conference held on October 12, 2012, the Commission heard submissions from Staff and from counsel for the Respondents;

AND WHEREAS counsel for the Respondents advised that the Respondents would bring a motion for further disclosure from Staff (the "**Disclosure Motion**") pursuant to Rule 4.3 of the Commission's *Rules of Procedure* (2012), 35 O.S.C.B. 10071 (the "**Rules**") and might bring a motion for adjournment of the hearing on the merits pursuant to Rule 9 of the Rules (the "**Adjournment Motion**");

AND WHEREAS the Disclosure Motion was heard on November 26, 2012 and the Reasons and Decision on the Motion were issued on November 30, 2012;

AND WHEREAS on January 23, 2013, the Respondents sought an adjournment of the hearing on the merits pursuant to Rule 9 of the Rules, and Staff consented to the request;

AND WHEREAS on January 25, 2013, the Commission granted the request and ordered that the hearing on the merits would commence on Monday, June 3, 2013 and continue, if necessary, until June 25, 2013, except for June 4 and June 18, 2013 (the “**Merits Hearing**”);

AND WHEREAS on April 25, 2013, Staff filed an Amended Statement of Allegations in the matter;

AND WHEREAS the Merits Hearing commenced on June 5, 2013 and continued on June 6, 7, 10, 11, 12, 13, 17, 19, 20 and 24, 2013;

AND WHEREAS on June 24, 2013, following the completion of the evidence phase of the Merits Hearing, Staff and the Respondents (the “**Parties**”) agreed and the Commission ordered that closing arguments would be heard on September 9, 2013;

AND WHEREAS Staff filed and served its written submissions on August 2, 2013, the Respondents’ written submissions are to be filed and served by August 21, 2013, and Staff’s written reply submissions are to be filed and served by August 29, 2013;

AND WHEREAS on August 6, 2013, the Respondents filed and served a Notice of Motion, seeking leave to tender new evidence (“**New Evidence**”) in the Merits Hearing in the form of the affidavit of Dr. Douglas Hyatt (“**Hyatt**”), sworn July 30, 2013 (the “**Hyatt Affidavit**”) with respect to a meeting of the Independent Committee of the Board of Directors of First Leaside Wealth Management Inc. (“**FLWM**”) on November 13, 2011 (the “**November 13, 2011 Meeting**”), and the unredacted minutes of that meeting, or, in the alternative, leave to recall Hyatt to provide oral evidence in the Merits Hearing, and such further and other relief as to the Commission may seem just (the “**Motion**”);

AND WHEREAS the Respondents submitted that there is no suggestion that the admission of the New Evidence would require calling or recalling further witnesses to respond to or to contest the New Evidence;

AND WHEREAS the Respondents' Motion Record included the Hyatt Affidavit and the affidavit of Clarke Tedesco, sworn August 6, 2013;

AND WHEREAS the Respondents requested that the Motion be heard in writing, pursuant to Rules 3.3 and 11.4 of the Rules, or, if the Commission directs that the Motion proceed by way of an oral hearing, on a date to be set by the Commission;

AND WHEREAS on August 8, 2013, in response to the Motion, Staff filed and served a Memorandum of Fact and Law, a Brief of Authorities, the affidavit of Stephanie Collins, sworn August 8, 2013, and the affidavit of Sharon Nicolaides, sworn August 9, 2013;

AND WHEREAS Staff submitted that the Motion should be dismissed, and, in the event the Motion is allowed, that the evidence should be in the form of the Hyatt Affidavit only and the Respondents should not be permitted to recall Hyatt to give oral evidence, and that the Hyatt Affidavit should be given very little weight;

AND WHEREAS on August 14, 2013, the Respondents filed and served a Reply Memorandum of Fact and Law, a Brief of Authorities, and a Supplemental Motion Record, including the affidavit of Clarke Tedesco, sworn August 14, 2013;

AND WHEREAS on August 16, 2013, having considered the written materials filed by the Parties, the Commission ordered that it would hear the Parties' oral submissions concerning the Motion on September 9, 2013, the date previously set aside for closing argument in the Merits Hearing, and that the Parties' closing arguments in the Merits Hearing would be adjourned to a date to be agreed by the Parties and fixed by the Office of the Secretary;

AND WHEREAS on September 9, 2013, the Commission heard the Parties' oral submissions in respect of the Motion, and in particular with respect to: (i) whether the New Evidence is relevant; (ii) whether the New Evidence could have been obtained earlier with reasonable diligence; and (iii) whether, if the New Evidence is admitted, it would be necessary or appropriate to recall Hyatt or Peter Dunne ("**Dunne**"), former counsel to FLWM, to give further oral evidence;

AND WHEREAS, having considered the Parties' written and oral submissions, we have determined that: (i) the New Evidence may be relevant to the issues in dispute, although it would be premature, at this time, to determine what weight, if any, it should be given; (ii) the New Evidence could not have been obtained earlier with reasonable diligence, considering, amongst

other factors, that neither the Respondents nor Staff had access to the unredacted minutes of the November 13, 2011 Meeting until July 24, 2013; and (iii) it is not necessary or appropriate, in the circumstances of this case, for Hyatt or Dunne to be recalled to give further oral evidence;

AND WHEREAS we have determined that admitting the New Evidence, on the basis set out above, will not prejudice Staff or disrupt the orderly conduct of the Merits Hearing;

AND WHEREAS on September 9, 2013, after the Commission's oral ruling on the Motion, the Commission heard the Parties' submissions on the timeline for the Respondents' written closing submissions and Staff's written reply submissions, and the date for oral closing submissions in the Merits Hearing;

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

IT IS ORDERED THAT:

1. the Motion is allowed, and the Hyatt Affidavit is admitted into evidence in the Merits Hearing;
2. the Respondents shall file and serve written closing submissions in the Merits Hearing by noon on Monday, September 16, 2013;
3. Staff shall file and serve written reply submissions, if any, in the Merits Hearing by noon on Friday, September 20, 2013; and
4. the hearing of the Parties' closing arguments in the Merits Hearing will take place on Wednesday, September 25, 2013, at 10:00 a.m., or such other date and time as is agreed by the Parties and fixed by the Office of the Secretary.

DATED at Toronto this 9th day of September, 2013.

"Edward P. Kerwin"

Edward P. Kerwin

"C. Wesley M. Scott"

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