



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
HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)**

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

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

I. OVERVIEW

1. In or about November and December of 2004 (the “Relevant Period”), Howard Jeffrey Miller (“Miller”) and Man Kin Cheng a.k.a. Francis Cheng (“Cheng”) (collectively the “Respondents”) engaged in illegal insider trading and tipping in securities of a reporting issuer, Masonite International Corporation (“Masonite”), 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.

II. THE RESPONDENTS

2. Miller is a resident of Toronto, Ontario. During the Relevant Period, Miller was employed by TD Waterhouse Canada Inc. (“TD”) and was registered with the Ontario Securities Commission (the “Commission”) as a trading officer under the dealer category of investment dealer. Miller is currently registered with the Commission as a dealing representative with Raymond James Ltd., subject to terms and conditions.

3. 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.

4. During the Relevant Period, Cheng and Miller worked from the same office. In early 2007, Miller and Cheng formed the “Miller/Cheng Advisory Group”.

II. MASONITE INTERNATIONAL CORPORATION

5. Masonite International Corporation (“Masonite”) was, during the Relevant Period, a reporting issuer in Ontario (among other provinces) trading on the TSX and NYSE under the symbol MHM, with its head office in Ontario.

6. On December 22, 2004, trading in Masonite was halted and Masonite issued a press release (the “Press Release”). The Press Release announced that Masonite had entered into a definitive agreement to be acquired by a wholly-owned subsidiary of Kohlberg Kravis Roberts & Co. (“KKR”), at a price of \$40.20 per share.

7. Between November 16, 2004 and December 22, 2004, Masonite traded on the TSX between the range of \$32.51 and \$35.50. Just prior to the halt, Masonite traded at a high of, and closed at, \$35.50. After trading resumed on December 23, 2004, Masonite opened at \$40.26, and closed that day at \$41.15.

III. INSIDER TRADING, TIPPING AND CONDUCT CONTRARY BY MILLER

8. 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 a person who he 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.

9. 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*

10. 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.

11. 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.

12. 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.

13. 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

14. 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.

15. 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.

16. 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.

17. 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."

18. 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."

IV. SUMMARY OF TRADING

19. 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.

20. 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%).

V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

21. By trading securities of Masonite with knowledge of the Material Fact obtained from persons who Miller and Cheng knew or ought to have known were in a special relationship with Masonite, that had not generally been disclosed, Miller and Cheng engaged in illegal insider trading, contrary to subsection 76(1) of the Act, and engaged in conduct contrary to the public interest.

22. By recommending the purchase of securities of Masonite with knowledge of the Material Fact obtained from persons who Miller and Cheng knew or ought to have known were in a special relationship with Masonite, that had not generally been disclosed, Miller and Cheng engaged in conduct contrary to the public interest.

23. By informing other persons of the Material Fact, prior to that information being generally disclosed, Miller and Cheng engaged in unlawful tipping, contrary subsection 76(2) of the Act, and engaged in conduct contrary to the public interest.

24. Such additional allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 22nd day of September, 2010.