



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 JOE DWEK

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

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

A. Background

1. During the period between 2002 and 2010, Joe Dwek (“Dwek”) was registered with the Ontario Securities Commission (the “Commission”) as the Ultimate Responsible Person of Pathway Investment Counsel Inc. (“Pathway”). During the period between 2010 and October 12, 2012, Dwek was registered with the Commission as the Ultimate Designated Person (“UDP”) of MineralFields Management Inc. (“MFMI”), Limited Market Dealer Inc. (“LMDI”) and Pathway which comprised a group of companies (the “MineralFields Group”). Between the period between 2002 and October 12, 2012, Dwek was also registered as the Chief Compliance Officer (“CCO”) of MFMI and Pathway.

2. The MineralFields Group was involved in the distribution and management of flow-through limited partnerships. These limited partnerships invested primarily in flow-through shares of junior Canadian resource issuers through private placement issues.

3. MFMI was registered in the category of investment fund manager. It acted as the investment fund manager for flow-through limited partnerships the units of which were sold to investors through prospectuses and offering memoranda under the branding of “MineralFields”, “Pathway”, and “EnergyFields LPs” (the “MineralFields LPs”).

4. LMDI was registered as a dealer in the category of exempt market dealer. LMDI sourced private placement issues of resource companies for the MineralFields LPs to invest in, and received a finder's fee (in cash and/or warrants) from these resource issuers for its services as an agent/finder. LMDI was also involved in negotiating the terms of the private placement issues with management of the resource issuers in connection with the purchase of securities by the MineralFields LPs.

5. Pathway was registered as an adviser in the category of portfolio manager. It was retained to provide portfolio management services to the MineralFields LPs.

6. Between April 28, 2011 and August 31, 2011, Staff conducted reviews of MFMI, LMDI and Pathway (the "Compliance Reviews") for the period between April 1, 2010 and March 31, 2011 (the "Review Period"). Compliance Staff of the OSC noted a number of deficiencies following its review. During the Compliance Reviews, certain matters came to the attention of Staff respecting Dwek.

7. In particular, during the Compliance Reviews, it was revealed that commencing in 2002 and continuing until 2011, it was consistently disclosed in regulatory filings with the Commission that Dwek was the 100% owner of the registered firms within the MineralFields Group. Dwek is and has been the legal owner of 100% of the voting shares of MFMI and LMDI. Another person (the "Undisclosed Partner") had a beneficial interest in 49.9% of the non-voting shares of MFMI and LMDI since inception of these firms in 2002 and 2004 respectively until after the Compliance Reviews. Dwek had an understanding with the Undisclosed Partner that the Undisclosed Partner would have a 49.9% interest and Dwek would have a 50.1% interest in the companies from the date each company was incorporated. Between 2002 and 2010:

- (a) a document dated March 25, 2002 and signed by Dwek was filed with the Commission certifying that Dwek was the only shareholder of LMDI owning 100% of the shares of LMDI;
- (b) in 2005, a limited market dealer survey questionnaire was signed by Dwek as president of LMDI and submitted to the Commission. It stated that Dwek was the sole director, officer and shareholder of LMDI;
- (c) during a compliance field review conducted by Staff in November 2005 of LMDI, Staff were told by LMDI's CCO that Dwek was the sole shareholder of LMDI;

- (d) in 2010, the Commission was provided with an ownership chart of MFMI signed by Dwek which stated that “Joe Dwek owns 100% of the shares of MineralFields Fund Management Inc.”; and
- (e) during the Compliance Review of MFMI that commenced on April 28, 2011, Staff sent a books and records request that included a request “for a copy of the Registrant’s current organization chart and employee list with telephone numbers.” In response to this request, Staff received from the CCO and Chief Financial Officer of LMDI an organizational chart showing Dwek (directly and through his companies) as the 100% owner of MFMI and LMDI.

8. The Undisclosed Partner was not registered under the Act in any capacity and was not disclosed as a “permitted individual” within the meaning of National Instrument 33-109-*Registration Information*.

B. Inadequate Supervision of Personal Trading and Inappropriate Personal Trading

9. As the UDP of MFMI, LMDI and Pathway, Dwek was responsible for the compliance functions for the registered firms in the MineralFields Group. This included responsibility for the monitoring of compliance with the MineralFields Group trade pre-clearance policy which required trades to be pre-approved by Dwek or the CCO of LMDI.

10. During the Review Period, Dwek did not monitor and ensure that all trades made by access persons to the MineralFields Group firms were pre-approved and complied with Ontario securities law including provisions related to self-dealing and other conflicts of interest. The UDP was required to ensure that policies and procedures were established, maintained and applied that establish a system of controls and supervision to ensure that trades made by access persons were made in compliance with Ontario securities law. This was not done.

11. During the Review Period, Dwek did not ensure that certain personal trades were pre-cleared with the CCO of LMDI. Dwek sold shares of an issuer at a price more favourable than the price at which the MineralFields LPs sold the shares of the same issuer. Between March 11, 2011 and March 28, 2011, Dwek sold a total of 629,500 shares of an issuer at prices ranging from \$0.657 to \$0.520 per share. On March 28, 2011, Dwek sold 1000 shares at a price of \$0.520. On the same day, one of the MineralFields LPs sold 333,500 shares of the same issuer at an average price of \$0.5077, a price lower than Dwek received.

12. During the Review Period, the CCO of LMDI sold 7,500 shares of an issuer at a price of \$2.57 two days prior to one of the MineralFields LPs selling 100,000 shares of the same issuer at a price of \$2.51. The CCO's trade was not monitored or pre-approved by Dwek.

C. Inadequate Supervision of Compliance Activities

13. During the Review Period, Dwek failed to meet his UDP and CCO responsibilities to supervise and ensure compliance by the MineralFields Group firms. During the Compliance Review, Staff identified significant deficiencies respecting the MineralFields Group firms. Dwek informed Staff that he had delegated all compliance duties of MFMI, LMDI, and Pathway to the CCO of LMDI and did not perform any compliance function other than cheque review and signing and review of financial information. Dwek acknowledges that the UDP was obliged to ensure that the MineralFields Group firms were in compliance with Ontario securities law but failed to do so. In particular, no one ensured that:

- (a) individuals conducting registerable activities and acting on behalf of the MineralFields Group were properly registered, approved and/or disclosed to the Commission;
- (b) adequate portfolio management was performed for clients, including ensuring that a registered adviser was determining the investment terms of private placement transactions entered into by the MineralFields LPs and performing adequate due diligence for all investments;
- (c) sufficient know your client ("KYC") information was collected for all clients and that MineralFields Group properly discharged their suitability obligations;
- (d) the net asset value ("NAV") of the funds managed by MFMI was computed correctly;
- (e) the impact of the NAV errors were assessed, documented and rectified in a timely manner;
- (f) reliance on prospectus exemptions was appropriate for all clients;
- (g) conflicts of interest among the MineralFields Group were identified and were adequately managed;
- (h) claims and representations made to clients were accurate and could be substantiated;

- (i) the National Registrant Database was updated regarding the business locations and trade names used by the MineralFields Group;
- (j) appropriate steps were taken to protect the confidentiality of clients' information;
- (k) adequate insurance coverage was maintained by the MineralFields Group; and
- (l) written policies and procedures were complete and adequately addressed key areas related to each of the MineralFields Group's obligations under Ontario securities law.

14. Staff allege that by engaging in the conduct described above, Dwek acted contrary to the public interest.

15. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto, this 26th day of February, 2014.