



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- and -

IN THE MATTER OF ANDREI MIGUEL POSTRADO

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

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

(a) Overview

1. Between June 9, 2015 and September 2, 2015 (the “Relevant Period”), Andrei Miguel Postrado (“Andrei”) engaged in tipping and insider trading contrary to subsections 76(2) and 76(1) of the *Securities Act*, RSO 1990, c S.5, (the “Act”) respectively.
2. Andrei was employed in the real estate and construction tax department at KPMG LLP (Canada) (“KPMG”). Andrei obtained confidential undisclosed material information at KPMG respecting three reporting issuers: Company “A”, Company “B”, and Company “C” (the “Reporting Issuers”). Andrei purchased securities of the Reporting Issuers while possessed of undisclosed material information.
3. The undisclosed material information respecting the Reporting Issuers was that each of the Reporting Issuers was going to be bought by another entity.
4. Andrei was a person in a special relationship to the Reporting Issuers as a result of his employment with KPMG.
5. Andrei purchased securities of the Reporting Issuers in advance of the public announcement of certain merger and acquisition (“M&A”) transactions respecting the Reporting Issuers in online discount brokerage accounts with BMO InvestorLine (“BMO”) and Questrade Inc. (“Questrade”). After the public announcement of the M&A transactions, Andrei sold the securities of the Reporting Issuers to earn a profit in his accounts of \$200,375.

6. Andrei also conveyed the undisclosed material information to his father, Fernando Postrado (“Fernando”).

(b) The Respondent

7. Andrei is 28 years of age. He lives in Toronto. He was hired by KPMG in August 2014 in the real estate and construction industry tax department. He started at the entry-level position referred to as the technician level. His responsibilities were to prepare simple tax returns for corporate clients.

(c) KPMG

8. The KPMG real estate and construction industry tax department provides tax advice to clients in the real estate and construction industry. This includes providing advice to clients involved in M&A transactions. When a client retains KPMG’s tax department to provide tax advice on an M&A transaction, the department opens an electronic file respecting the client. The file may be accessed by employees of the tax department unless access to the file is restricted because of potential conflicts. When the tax department is retained by a client on an M & A transaction, a deal team is formed to work on the transaction.

9. During the Relevant Period, the KPMG tax department was retained by clients respecting the M&A transactions involving the Reporting Issuers. Electronic files were opened. Deal teams were formed to work on the transactions.

10. Andrei was not assigned to any of the deal teams involving the transactions respecting the Reporting Issuers.

(d) Trading in Reporting Issuers

(i) Trading in Company A

11. In June 2015, Andrei overheard a conversation between a manager and a partner in the tax department at KPMG. During this conversation, they were discussing the due diligence being done on Company “A”. As a result of overhearing the conversation, Andrei believed that Company “A” was about to be acquired.

12. On June 9, 2015, Andrei opened his BMO account. On June 16 and June 17, he purchased 2,500 shares of Company “A” at a cost of \$23,750. Between June 11 and June 15,

Andrei deposited \$10,750 in cash into his BMO account and funded the remainder of his Company “A” share purchase on margin.

13. Andrei possessed undisclosed material information at the time he purchased the Company “A” shares in his BMO account.

14. Shortly after Andrei purchased the shares of Company “A” in his BMO account, Company “A” announced that it had entered into an arrangement to be acquired for approximately \$12 per share, an increase of approximately \$2.50 per share from its closing price on June 17, 2015. KPMG was first aware of the transaction on or about May 15, 2015.

15. Andrei sold his entire position on June 19, 2015 at \$12.50 per share. He earned a profit of \$6,375.

(ii) Trading in Company “B”

16. In late June or early July, 2015, Andrei accessed the electronic client file respecting the acquisition of Company “B”. Andrei reviewed documents contained in the electronic file which made him believe that Company “B” was about to be acquired.

17. On July 10, 2015, Andrei opened his Questrade account. Between July 17, 2015 and July 29, 2015, Andrei purchased and sold units of Company “B” in his BMO and Questrade accounts. Andrei obtained cash advances on three TD Visa cards totalling \$11,900 which he deposited into his Questrade account. In total, Andrei purchased 21,945 Company “B” shares at a cost of \$176,472 in his Questrade and BMO accounts.

18. Andrei purchased the shares of Company “B” in his BMO and Questrade accounts with knowledge of the undisclosed material fact that Company “B” was about to be acquired.

19. In early August, 2015, Company “B” announced that it had entered into an arrangement to be acquired. On August 7, 2015, Company “B” closed at approximately \$7.75. On the day of the announcement, Company “B” closed at approximately \$8.10 per unit. Andrei sold 500 shares of Company “B” from his Questrade Account in July, prior to the public announcement.

20. Following the announcement in early August, 2015, Andrei sold his entire position for \$168,550. He lost approximately \$4,000.

(iii) Trading in Company “C”

21. In July, 2015, Andrei overheard a conversation between a manager and partner about the due diligence being done on Company “C”. As a result of the conversation he overheard, Andrei believed Company “C” was about to be acquired.

22. Between August 17, 2015 and August 19, 2015, Andrei acquired 19,000 shares for approximately \$159,000 at an average price of \$8.36 per share. These purchases were made in his Questrade and BMO accounts on margin.

23. Andrei purchased the shares of Company “C” in his BMO and Questrade accounts with knowledge of the undisclosed material fact that Company “C” was about to be acquired.

24. In early September, 2015, Company “C” announced that it had agreed to be acquired at approximately \$18.75 per share. The Company “C” share price rose from approximately \$8.80 to approximately \$18.50 per share, following the early September 2015 takeover announcement.

25. On the day of the takeover announcement in early September 2015, Andrei sold his position in Company “C” in both his BMO and Questrade accounts for approximately \$353,000. He earned a profit of approximately \$194,000.

(e) Andrei tipped Fernando

26. Andrei conveyed the information he had obtained with respect to Company “B” and Company “C” to Fernando. He told Fernando that he believed that Company “B” and Company “C” were about to be acquired based on what he heard at work.

27. Andrei was aware that Fernando purchased securities of Company “B” and Company “C” while possessed of the undisclosed material information that Company “B” and Company “C” were about to be acquired which Andrei had conveyed to him.

(f) Conduct contrary to Ontario securities law and contrary to the public interest

28. By purchasing securities of the Reporting Issuers while possessed with knowledge of undisclosed material information respecting the Reporting Issuers while in a special relationship with the Reporting Issuers, Andrei engaged in insider trading contrary to subsection 76(1) of the Act. By conveying the knowledge that Company “B” and Company “C” were about to be

acquired, Andrei tipped Fernando contrary to subsection 76(2) of the Act. By engaging in insider trading and tipping, Andrei acted contrary to the public interest.

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

Dated at Toronto, this 3rd day of June, 2016