Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF 2196768 ONTARIO LTD
Carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI
and EVGUENI TODOROV

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the *Securities Act*)

Hearing:	August 28, 2014 and November 4, 2014	
Decision:	March 6, 2015	
Panel:	Edward P. Kerwin	**-** Commissioner and Chair of the Panel
Appearances:	Donna Campbell	**-** For Staff of the Commission
	Robert Lepore	**-** For Ramadhar Dookhie
	Evgueni Todorov	**-** Self-represented
		- No one appeared for 2196768 Ontario Ltd, carrying on business as RARE Investments

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

A. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), to consider whether it is in the public interest to make an order with respect to sanctions and costs against 2196768 Ontario Ltd, carrying on business as RARE Investments ("**RARE**"), Ramadhar Dookhie ("**Dookhie**") and Evgueni Todorov ("**Todorov**") (together, the "**Respondents**"). I will refer to Dookhie and Todorov, collectively, as the "**Individual Respondents**".

[2] The hearing on the merits in this matter took place on May 22, 23, 24, 27 and September 5, 2013 (the "**Merits Hearing**"). All of the Respondents appeared and participated in the Merits Hearing. The Reasons and Decision on the merits was issued on June 27, 2014 (*Re 2196768 Ontario Ltd et al.* (2014), 37 O.S.C.B. 6281 (the "**Merits Decision**")). On that date, the Commission ordered that the hearing with respect to sanctions and costs be held on August 28, 2014 (the "**Sanctions and Costs Hearing**"), and the Order included notice that "upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding" (*Re 2196768 Ontario Ltd et al.* (2014), 37 O.S.C.B. 6729). A further appearance with respect to sanctions and costs was held on November 4, 2014 for Todorov to make oral submissions (the "**November 4, 2014 Appearance**").

[3] Prior to the Merits Hearing, on March 15, 2013, the Commission approved a settlement agreement between Staff and Adil Sunderji ("**Sunderji**"), a named respondent in this matter (*Re 2196768 Ontario Ltd et al.* (2013), 36 O.S.C.B. 2934 (the "**Sunderji Settlement**"); *Re 2196768 Ontario Ltd et al.* (2013), O.S.C.B. 2909 (the "**Sunderji Settlement Order**")).

B. The Sanctions and Costs Hearing

[4] On July 18, 2014, Staff filed its written submissions dated July 17, 2014, a Brief of Authorities and a Bill of Costs, which includes an Affidavit of Julia Ho sworn July 17, 2014. On July 24, 2014, Staff filed the Affidavit of Laura Filice sworn July 23, 2014 evidencing service of Staff's written submissions, Brief of Authorities and Bill of Costs on the Respondents (the "**Filice Affidavit**"). At the Sanctions and Costs Hearing, the Filice Affidavit was entered as Exhibit 1.

[5] On June 30, 2014, Robert Lepore ("**Lepore**") filed a Notice of Change of Lawyer to inform the Commission that he had been appointed as the lawyer of record for Dookhie. On August 6, 2014, Lepore requested a brief adjournment for the Sanctions and Costs Hearing, scheduled to be held on August 28, 2014, to which Staff did not object. Following email correspondence with the parties, I suggested to the parties that the hearing be adjourned to August 29, 2014. However, before this date was confirmed by all the parties, on August 8, 2014,

Lepore informed the Commission and the other parties that he was able to conduct the hearing as originally planned.

[6] On August 15, 2014, Lepore filed Dookhie's written submissions dated August 11, 2014 and, on August 20, 2014, Lepore filed the Affidavit of Ramadhar Dookhie sworn August 19, 2014 detailing the financial circumstances of Dookhie (the "**Dookhie Affidavit**"). At the Sanctions and Costs Hearing, the Dookhie Affidavit was entered as Exhibit 2.

[7] On August 28, 2014, the Commission held the Sanctions and Costs Hearing. Staff and Lepore appeared and made submissions. Dookhie also appeared in person, but neither Todorov nor RARE appeared.

[8] At the Sanctions and Costs Hearing, Staff made submissions on its efforts to serve all the Respondents with its written submissions, Brief of Authorities and Bill of Costs. I was satisfied, based on Staff's submissions and the Filice Affidavit, that RARE and Todorov received notice of the Sanctions and Costs Hearing and that I could proceed in the absence of these respondents, in accordance with section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "***Rules of Procedure***"). I note that the Merits Decision and the orders in this matter have been posted and made available to the public on the Commission's website.

[9] On August 28, 2014, after the Sanctions and Costs Hearing had ended, Staff was contacted by Todorov who advised Staff that he understood that the hearing had been adjourned to August 29, 2014 and that he intended to attend the hearing and make submissions on his own behalf. On August 29, 2014, the Registrar sent an email to Todorov, copied to all the other parties, and informed the parties that I was aware of Todorov's misunderstanding as to the date of the Sanctions and Costs Hearing and would accord Todorov an opportunity to present his oral submissions, but not introduce new evidence nor provide written submissions. The Registrar canvassed various dates with the parties to hear oral submissions on sanctions and costs. However, due to conflicting schedules of the parties and the Panel, there was not a workable date to hold a further appearance until November 4, 2014. On September 17, 2014, the Registrar sent an email to all parties and informed them that a hearing would be held November 4, 2014 for the purpose of hearing oral submissions from Todorov. Counsel for Dookhie advised the parties and the Panel to proceed on this date in his absence, with the opportunity to file submissions in reply within two weeks of the transcript of the November 4, 2014 Appearance becoming available.

[10] On November 4, 2014, Staff and Todorov appeared. Staff relied on its oral submissions made August 28, 2014, and directed the Panel to its written submissions dated July 17, 2014 and filed July 18, 2014. Todorov made oral submissions and Staff made brief oral submissions. Counsel for Dookhie did not file any reply submissions following the November 4, 2014 Appearance.

II. THE MERITS DECISION

[11] Between January 1, 2009 and March 31, 2010 (the "**Material Time**"), the Respondents solicited funds from the public for the purpose of engaging in trading of foreign currencies ("**Forex**"). The evidence presented at the Merits Hearing demonstrated that, during the Material

Time, the Respondents raised $1,226,832 (the "**RARE Investor Funds**") from 16 investors of RARE (the "**RARE Investors**").

[12] In return for their investment in RARE, RARE Investors received promissory notes that carried a monthly interest rate of 1% to 2%. In the Merits Decision, I found that the promissory notes were securities that were sold to the public and had not been previously issued (Merits Decision, *supra* at paras. 94 and 130). RARE Investors were led to believe that the Respondents had developed a leveraged Forex trading strategy that could produce an attractive potential return on investment, and that half of their investment would be secured in guaranteed investment certificates. These investors were not informed by the Individual Respondents of the extent of the trading losses suffered by RARE, or that their investments would be used to make payments and loans to third parties, who were not investors with RARE (Merits Decision, *supra* at para. 44).

[13] Dookhie was the only respondent that was registered with the Commission. He was registered as a Dealing Representative in the category of "Scholarship Plan Dealer" with a company called Children's Education Funds Inc. (Merits Decision, *supra* at paras. 46 and 104). Todorov and RARE were not registered in any capacity with the Commission (Merits Decision, *supra* at paras. 99 and 109).

[14] Prior to the incorporation of RARE, Dookhie and Todorov solicited individuals to invest in Forex trading ("**Pre-RARE Investors**"). The Pre-RARE Investors invested funds with Dookhie and his company, 6322239 Canada Limited ("**632 Company**"), operating as RANN Financial Services. 632 Company is not a respondent in this matter. All the funds raised from Pre-RARE Investors (the "**Pre-RARE Investor Funds**") were turned over by Dookhie to Todorov for the purpose of trading in the Forex market. Although Dookhie could not repay Pre-RARE Investors their principal investments, he chose to continue doing business with Todorov and formed RARE. Three of the six Pre-RARE Investors invested funds into RARE. However, all six Pre-RARE Investors received interest payments from the funds in the main bank account of RARE and a Pre-RARE Investor, who never deposited funds in RARE, received a payment from RARE's account of the $50,000 that he had invested with the 632 Company (Merits Decision, *supra* at paras. 52 and 156).

[15] Dookhie incorporated RARE on January 30, 2009. Dookhie was the directing mind, a director, a shareholder and the President of RARE. He was found to be the architect of the fraudulent scheme (Merits Decision, *supra* at paras. 202 and 203). Todorov was a shareholder and an actual and *de facto* director of RARE (Merits Decision, *supra* at para. 207). He was also the primary trader of RARE until May, 2009 (Merits Decision, *supra* at para. 62). As a result of an aggressive trade made by Todorov on April 22, 2009, ODL Securities Limited ("**ODL**") closed all of RARE's open positions in its Canadian-dollar Forex trading account on May 13, 2009 (Merits Decision, *supra* at para. 63). By March, 2010, RARE was out of money, all of its ODL trading accounts were closed and RARE consequently could not complete any trades in the Forex market and most RARE Investors were not repaid any of their principal investments (Merits Decision, *supra* at paras. 68 and 76).

[16] In the Merits Decision, I concluded that during the Material Time:

(a) RARE, Dookhie and Todorov breached subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010;

(b) RARE, Dookhie and Todorov breached subsection 53(1) of the Act;

(c) there were no exemptions available to RARE, Dookhie or Todorov from the registration or prospectus requirements of the Act;

(d) RARE, Dookhie and Todorov breached subsection 126.1(b) of the Act;

(e) pursuant to section 129.2 of the Act, each of Dookhie, as a director and officer of RARE, and Todorov, as an actual and *de facto* director of RARE, is deemed to have not complied with Ontario securities law, having authorized, permitted or acquiesced in RARE's breaches of subsection 25(1)(a) during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, subsection 53(1) and subsection 126.1(b) of the Act; and

(f) RARE, Dookhie and Todorov acted contrary to the public interest.

(Merits Decision, *supra* at para. 210)

III. THE POSITION OF THE PARTIES

A. Staff's Submissions

[17] Staff requests the following sanctions for the Respondents and submits that these sanctions are appropriate in view of the gravity of their misconduct:

(a) an order pursuant to clause 2 of section 127(1) of the Act that trading in any securities by each of RARE, Dookhie and Todorov shall cease permanently;

(b) an order pursuant to clause 2.1 of section 127(1) of the Act that the acquisition of any securities by each of RARE, Dookhie and Todorov is prohibited permanently;

(c) an order pursuant to clause 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to each of RARE, Dookhie or Todorov permanently;

(d) an order pursuant to clause 7 section 127(1) of the Act that each of Dookhie and Todorov resign all positions they hold as a director or officer of any issuer;

(e) pursuant to clause 8, 8.2 and 8.4 of section 127(1) of the Act that each of Dookhie and Todorov is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(f) pursuant to clause 8.5 of section 127(1) of the Act that each of Dookhie and Todorov is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(g) an order pursuant to clause 9 of section 127(1) of the Act requiring Dookhie to pay an administrative penalty of $350,000, and Todorov to pay an administrative penalty of $250,000, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(h) an order pursuant to clause 10 of subsection 127(1) of the Act that RARE and Dookhie shall jointly and severally disgorge to the Commission the sum of $645,507.88 to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(i) an order pursuant to clause 10 of subsection 127(1) of the Act that Todorov disgorge to the Commission the sum of $438,410.56 to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(j) an order pursuant to section 127.1 that RARE and Dookhie shall pay $160,434.30 for the costs of the hearing, for which they are jointly and severally liable; and

(k) an order pursuant to section 127.1 that Todorov shall pay $106,956.20 for the costs of the hearing.

B. The Respondents' Submissions

1. Dookhie's Submissions

[18] Dookhie submits that the following sanctions are appropriate:

(a) an order pursuant to paragraph 2 of section 127(1) of the Act that trading by the respondent shall cease for a period of 5 years;

(b) an order pursuant to paragraph 2.1 of section 127(1) of the Act that the acquisition of any securities is prohibited for a period of 5 years;

(c) an order pursuant to paragraph 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to the respondent for a period of 5 years;

(d) an order pursuant to paragraph 7 of section 127(1) of the Act that the respondent shall resign any position he holds as a director or officer of any issuer;

(e) pursuant to paragraph 8, 8.2 and 8.4 of section 127(1) of the Act that the respondent be prohibited for a period of 5 years from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(f) pursuant to paragraph 8.5 of section 127(1) of the Act that the respondent be prohibited for a period of 5 years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(g) an order pursuant to paragraph 9 of section 127(1) of the Act requiring that the respondent pay an administrative penalty of an amount that the Commission may find reasonable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(h) an order pursuant to paragraph 10 of section 127(1) of the Act requiring that the respondent disgorge to the Commission an amount that the Commission may find reasonable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(i) an order pursuant to section 127.1 that no costs of the hearing be payable by the Respondent.

[19] Dookhie agrees that the allegations, as proven, are serious and that his conduct merits sanctions (Dookhie's Submissions, para. 9). Dookhie submits that the sanctions sought by Staff are excessive go well beyond the preventative and protective jurisdiction of the Commission, pursuant to section 127 of the Act (Dookhie's Submissions, para. 12). He submits that the sanctions sought by Staff are so severe that they are punitive and retributive in nature (Dookhie's Submissions, para. 12).

[20] Dookhie submits that he has limited experience in the marketplace (Dookhie's Submissions, para. 10). He submits that the Respondents had no prior history of misconduct with the Commission, which was not disputed by Staff (Dookhie's Submissions, para. 14). Dookhie provided the Dookhie Affidavit to provide information regarding his financial circumstances to demonstrate that this proceeding has had a devastating effect on his employment, finances and savings (Dookhie's Affidavit, para. 2).

[21] Dookhie submits that the consequences of his conduct have led to personal embarrassment, family conflict and turmoil that will continue well after the imposition of any sanctions (Dookhie's Submissions, para. 23). He states that he is extremely sorry for his conduct and the consequences for those who had placed their trust in him. He submits that he wishes to apologize to all investors whom he has harmed, many of which were family and friends, and he hopes to one day make whole those whom he harmed (Dookhie's Submissions, para. 15). Dookhie further submits that it is very unlikely that he, even without further sanction, will ever find himself in contravention of the Act (Dookhie's Submissions, para. 7). He submits that he has no immediate or long-term intentions of returning to the capital markets, and he submits that barring him permanently is excessive and completely unnecessary (Dookhie's Submissions, para. 20).

[22] Dookhie submits that he was denied effective representation of counsel and this resulted in this matter proceeding to a hearing wherein little or no evidence was introduced that contested the allegations of Staff (Dookhie's Submissions, para. 2). He submits that, if he had the benefit of effective legal representation, this matter could have been dealt with by way of an agreed

statement of fact or, at a minimum, evidence could have been adduced and arguments could have been advanced that may have afforded Dookhie answers to at least some of the allegations against him. As I stated at the Sanctions and Costs Hearing, the choice of counsel is the respondent's choice (Transcript, Sanctions and Costs Hearing, August 28, 2014, p. 65, lines 23-25).

2. Todorov's Submissions

[23] Todorov submits that his trading strategy was not failing, and that he did not present a fraudulent scheme (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 6, lines 4-10). Rather, Todorov submits that he was hired by, and agreed to work for, RARE upon checking with the company's corporate lawyer whom he trusted (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 6, lines 19-25). Throughout the November 4, 2014 Appearance, Todorov maintained that he did not deceive anyone, disputing the findings in the Merits Decision. Todorov submitted that he has made 150% profit over two years in over 35,000 transactions (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 8, lines 16-20). It is Todorov's position that there is no fraud at all since even Dookhie, as Todorov submits, did not gain any financial profit.

[24] Todorov submits that he has made arrangement to repay investors that he brought into the company, in full, by the end November, 2014. Dookhie submits that he will bring a copy for proof of payment once they are paid (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 10, lines 14-22). However, I reminded Todorov during the November 4, 2014 Appearance that he made similar statements for repayment of investors during closing submission on September 5, 2013. I noted that no investors have been repaid between September 5, 2013 and the release of the Merits Decision on June 27, 2014. There was also no payment made, or evidence thereof, between June 27, 2014 and the November 4, 2014 Appearance (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 15, lines 22-25; p. 16, lines 3-8).

[25] Todorov submits that he learned a lesson that he should not be trading unless he is registered with the Commission (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 19, lines 10-12). Todorov submits that is not remorseful because he is proud of inventing the trading strategy, and that he will make sure that investors are restored (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 27, lines 4-9). He also submits that he did not have a chance to have proper legal representation (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 24, lines 9-13). Nevertheless, Todorov also submits that he is capable of bringing in a lawyer but chose not to (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 26, lines 7-11).

[26] Todorov submits that none of the actions or events that happened were affected by his involvement, as he never signed any documents and that all transactions, banking and operations were done by the directors of RARE (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 24, lines 17-21). Todorov submits that he recognizes the events that occurred were not according to the laws in Ontario; however, he submits, they were done by the directors of RARE and not him (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 26, lines 19-25).

IV. ANALYSIS

A. The Applicable Law on Sanctions

[27] The Commission's mandate, set out in section 1.1 of the *Act*, is to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets.

[28] In making an order in the public interest under section 127 of the *Act*, the Commission's jurisdiction should be exercised in a protective and preventative manner. As expressed in the oft-cited decision of *Re Mithras Management Ltd.*:

> …the role of this Commission is to protect the public interest be removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts...We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[29] This view was endorsed by the Supreme Court of Canada in the following terms:

> …the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the [Commission] under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Re Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 ("***Asbestos***") at para. 43)

[30] The Supreme Court of Canada has also recognized that general deterrence is an important factor in imposing sanctions by stating that "…it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[31] In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations proved;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

(g) whether the violations are isolated or recurrent;

(h) the size of any profit (or loss) avoided from the illegal conduct;

(i) the size of any financial sanctions or voluntary payment when considering other factors;

(j) the effect any sanction might have on the livelihood of the respondent;

(k) the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;

(l) the reputation and prestige of the respondent;

(m) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and

(n) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746-7747; *Erikson v. Ontario (Securities Commission),* [2003] O.J. No. 593 (Div. Ct.) ("***Erikson***"); *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at 1136)

[32] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra* at 1134).

[33] The Commission has held that the overall financial sanctions imposed on each respondent is a relevant consideration in imposing administrative penalties and disgorgement (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin***") at para. 59). Further, the Commission held in *Sabourin* that in imposing financial sanctions, overall financial sanctions imposed on each respondent is a relevant consideration (*Ibid*).

B. Relevant Sanctioning Factors

[34] In considering the factors set out in paragraphs [31] to [33] above, I find the factors summarized in the following paragraphs to be relevant to the circumstances of the Respondents.

1. Seriousness of the Allegations Proved

[35] The findings in the Merits Decision involved egregious, fraudulent conduct and significant contraventions of the Act, which caused significant harm to the RARE Investors by way of financial loss of their entire investment and which undermined confidence in the capital markets. I have found that the Respondents breached subsection 126.1(b) of the *Act* during the Material Time. The Commission has previously held that fraud is "one of the most egregious securities regulatory violations" and is both an "affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 214, citing *Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308, citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

[36] There were also findings in the Merits Decision that the Individual Respondents, in their respective roles as a director or officer of RARE, were deemed to have not complied with Ontario securities law. I also found that all the Respondents engaged in unregistered trading and the illegal distribution of securities. The Commission has stated that "[s]ection 25 of the Act, requiring the registration of market intermediaries, is a key element of the scheme of the Act in protecting investors and the capital markets, and maintaining public confidence in those markets" (*Re Fortuna-St. John* (1998), 21 O.S.C.B. 3851 at 3867).

[37] The Respondents acted contrary to the public interest. Their conduct undermined public confidence in the capital markets and showed blatant disregard for the rule of law and Ontario's securities regime.

2. Experience and Level of Activity in the Marketplace

[38] Through their involvement with Pre-RARE Investors, both Todorov and Dookhie, the directing minds of RARE, had prior experience in the Forex market. They were not successful in their trading activity using Pre-RARE Investor Funds. Their purpose in forming RARE was actually to service and pay off debts that were incurred prior to the incorporation of RARE (Merits Decision, *supra* at paras. 52 and 156). Given their prior experience in the Forex market, Dookhie and Todorov ought to have known to disclose the risks in Forex trading to RARE Investors. I note that the Forex market was described by Staff's senior forensic accountant as "highly leveraged" and "really only for experienced investors" (Merits Decision, *supra* at para. 45).

[39] Dookhie is an accountant who had many years of experience in providing financial services to the public through Liberty Tax Services, which he owned from 1999 to 2012 (Merits Decision, paras. 101 and 167; Dookhie's Submissions, para. 18). During the Material Time, Dookhie was also registered with the Commission as a Dealing Representative with Children's Education Funds Inc. (Merits Decision, *supra* at para. 17). Although there was no evidence to show that Dookhie was registered to trade in the securities of RARE, as a registrant with the Commission, Dookhie had a higher level of awareness than non-registrants of securities law requirements and the importance of those requirements to the capital markets (Merits Decision, *supra* at para. 103).

[40] Todorov and RARE were not registered with the Commission in any capacity. I note that RARE Investors were misled to believe that Todorov was a specialist in Forex trading and a "mathematical whiz" (Merits Decision, *supra* at para. 167). The evidence showed that Todorov is an engineer by profession, had never worked in the securities industry in any formal capacity and had not obtained any formal training in Forex trading or other securities (Merits Decision, *supra* at paras. 19 and 194).

[41] In terms of the level of activity of the Respondents, the fraudulent scheme spanned a total of 15 months from January 1, 2009 until March 31, 2010 and involved the misconduct of all Respondents in this matter. A total of $1,226,832 was raised from 16 RARE Investors.

3. Size of Any Profit or Loss Avoided from Illegal Conduct

[42] Dookhie solicited 13 of the 16 RARE Investors, whose invested funds represented $851,800, or approximately 69%, of the total funds invested in RARE (Merits Decision, *supra* at para. 106). Todorov solicited three RARE Investors, whose invested funds represented $375,000, or approximately 31%, of the total funds invested in RARE (Merits Decision, *supra* at para. 109).

4. The Effect Any Sanction Might Have on the Livelihood of the Respondent

[43] Dookhie filed the Dookhie Affidavit to provide information regarding his financial circumstances. He submits that he is no longer the owner of Liberty Tax Services, given the financial difficulties he experienced during his involvement in this proceeding (Dookhie's Submissions, para. 18). He submits that his finances have been devastated and he has no savings, no registered retirement savings plans or tax-free savings accounts.

5. Mitigating Factors and Remorse

[44] I find that there are no mitigating factors in this case, and I have considered the remorse of the Individual Respondents in my assessment as to the appropriate sanctions to impose on each of the Respondents. I note that the Respondents do not have prior history of misconduct with the Commission.

[45] In his written submissions, Dookhie submitted that he is extremely sorry for his conduct and the consequences for those who had placed their trust in him (Dookhie's Submissions, para. 15). At the Merits Hearing, Dookhie stated that, "I would have done everything to prevent this from happening …this is a very expensive lesson for me" (Merits Decision, *supra* at para. 107; Transcript, Merits Hearing, May 27, 2013, Testimony of Dookhie, p. 34, lines 16-21). Dookhie also stated at the Merits Hearing that he takes responsibility for the consequences of his misconduct (Merits Decision, *supra* at para. 164). I note that Dookhie made submissions that he was "too trusting" by way of explaining his actions and their consequences (Dookhie's Submissions, para. 17). At the Merits Hearing, Dookhie made the same submissions that he relied on the directions and expertise of others, which I find not to be persuasive and I find to be an attempt to not take responsibility for his misdeeds and the consequences thereof to others (Merits Decision, *supra* at para. 202).

[46] At the Merits Hearing, Todorov tendered a summary statement and trading statements of an account he set up with GCI Financial. One of his express intentions in tendering these statements was to demonstrate that he would be able to repay his obligations to RARE Investors, particularly with respect to five RARE Investors to whom he submitted that he is responsible for returning funds (Merits Decision, *supra* at paras. 182, 183 and 186). I stated in the Merits Decision that Todorov's efforts may be of assistance in the consideration of any sanctions that may be imposed on him. Then, in the November 4, 2014 Appearance, Todorov again submitted that he will have made arrangements to repay investors that he brought into RARE, in full, by the end of November, 2014. I noted in the November 4, 2014 Appearance that these efforts from Todorov remain at best, a future possibility, as Todorov did not provide any evidence that he has made any payment to investors from September, 2013 to November, 2014.

[47] At the November 4, 2014 Appearance, Todorov said that he is not remorseful because he is proud of inventing the trading strategy, and that he will make sure that investors are restored (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 27, lines 4-9). Todorov also maintained, in the November 4, 2014 Appearance, that none of the actions or events that happened were affected by his involvement, as he never signed any documents and that all the transactions, banking and operations were done by the directors of RARE (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 24, lines 17-21). I find that Todorov's submission that he is not remorseful, his promise of repayment of investors in full coupled with a lack of evidence thereof as of November 4, 2014, and the fact that Todorov attributes what happened to actions taken by others not by himself, show on balance that he has not recognized the seriousness of his improprieties or that he has any remorse for the consequences of his actions.

6. Specific and General Deterrence

[48] A message must be sent to the Respondents and like-minded individuals that fraudulent schemes similar to the one involved in this case will result in severe sanctions. I find that orders permanently removing the Respondents from the capital markets, imposing significant administrative penalties and requiring disgorgement of funds not returned to investors are proportionate to the Respondents' misconduct, and will send a message to like-minded individuals that involvement in this type of misconduct will result in severe sanctions.

7. Sanctions and Costs of the Sunderji Settlement

[49] The Sunderji Settlement dealt with the same misconduct and fraudulent scheme as was the subject of the Merits Hearing. In the Sunderji Settlement, Sunderji agreed to the following sanctions: 7-year trading, acquisition and exemption application bans; a reprimand; resignation orders for all positions he held as director or officer of any issuer, registrant or investment fund manager; 7-year bans on serving as a director or officer of any issuer, registrant or investment fund manager; a 7-year ban from becoming or acting as a registrant, as an investment fund manager or as a promoter; an administrative penalty of $5,000; a disgorgement order of $6,000; and a costs order of $5,000. Sunderji was also permitted a personal carve-out from his trading, acquisition and exemption bans once he has paid his administrative penalty, disgorgement order and costs order in full. However, the Sunderji Settlement Order provided that until the amounts of his administrative penalty, disgorgement order and costs order are paid in full, Sunderji's trading, acquisition and exemption application bans would "continue in force without any

limitation as to time". He agreed to make a payment on account of his disgorgement order by certified cheque or bank draft within 30 days of the approval of the settlement agreement.

C. Appropriate Sanctions in this Matter

1. Prohibitions on Participation in the Capital Markets

[50] The conduct of the Respondents caused significant harm to the integrity of the capital markets and deprived RARE Investors of their funds. Given the seriousness of the misconduct of the Respondents, sanctions in this case should send a strong message to both the Respondents and the public at large. As the Divisional Court has stated, "[p]articipation in the capital markets is a privilege, not a right" (*Erikson*, *supra* at para. 55).

[51] Although Dookhie submits that has no immediate or long-term intentions of returning to the capital markets, I find that the Respondents should be subject to permanent market participation bans with no exception, given the manipulative and underhanded misconduct of the Respondents (Dookhie's Submissions, para. 20). The Commission has previously ordered permanent cease trade, acquisition and exemption application bans, without exception, in circumstances where respondents were found by the Panel to have engaged in fraud (*Re Rezwealth Financial Services Inc.* (2013), 37 O.S.C.B. 6731 ("***Rezwealth***"); *Re Empire Consulting Inc.* (2013), 36 O.S.C.B. 2327 ("***Empire Consulting***"); *Re Lyndz Pharmaceuticals Inc.* (2012), 35 O.S.C.B. 7357 ("***Lyndz Pharmaceuticals***"); *Re Richvale Resource Corp.* (2012), 35 O.S.C.B. 10699 ("***Richvale***")). In this matter, the Respondents engaged in fraudulent conduct, which included providing misleading documents to investors, not informing investors of the extent of the trading losses suffered by RARE, and intentionally engaging in unauthorized diversion of investor funds. The Respondents cannot be trusted to participate in the capital markets in the future and their conduct demonstrates a serious risk to the public.

[52] I therefore find that it is appropriate that the Respondents be subject to permanent trading, acquisition and exemption application bans, without exception, pursuant to paragraphs 2, 2.1 and 3 of subsection 127(1) of the Act. Todorov and Dookhie shall also be subject to the following orders: resignation orders for any positions they hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act; permanent director or officer bans for any position they hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act; and permanent bans from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act. These orders will remove the Respondents from Ontario's capital markets and protect the investing public.

[53] I also find it appropriate to reprimand the Respondents pursuant to paragraph 6 of subsection 127(1) of the Act, as sought in the Notice of Hearing issued November 22, 2011, in order to reaffirm that the Commission will not tolerate conduct such as occurred in this case.

2. Administrative Penalties

[54] The Commission's public interest jurisdiction allows it to impose sanctions under section 127 of the *Act*. Under paragraph 9 of subsection 127(1) of the *Act*, I am entitled to impose an administrative penalty of not more than $1 million in connection with each failure of the

Respondents to comply with Ontario securities law. In the Merits Decision, I found that the Respondents engaged in unregistered trading, illegal distribution of securities, fraud, and acted contrary to the public interest. Dookhie, as a director and officer of RARE, and Todorov, as an actual and *de facto* director of RARE, were also deemed to have not complied with Ontario securities law. In the Merits Decision, I found that the "investment scheme arranged by RARE was an underhanded design that placed a substantial amount of risk on the financial situation of its investors, most of whom suffered a complete loss of their principal investments" (Merits Decision, *supra* at para. 141).

[55] Staff seeks an administrative penalty in the amount of $350,000 against Dookhie and an administrative penalty in the amount of $250,000 against Todorov. Dookhie submits that he be ordered to pay an administrative penalty of an amount that the Commission may find reasonable.

[56] The goals of specific and general deterrence are most effectively met by administrative penalties that are proportional to each respondent's culpability in the matter, taking all circumstances into account, considering administrative penalties imposed in similar cases and have regard to any aggravating and mitigating factors (*Lyndz Pharmaceuticals*, *supra* at para. 95). I have considered the Commission's prior case-law in determining administrative penalties that are proportionate to the circumstances in this matter. Staff relied on *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar Sanctions***") in which the respondents raised over $650,000 from the sale of shares from a fraudulent scheme. The Commission ordered administrative penalties ranging from $200,000 to $750,000. However, the Respondents in *Al-Tar* breached various cease trade orders and were repeat offenders of Ontario securities law, which is not seen in the circumstances in this matter. Another case reference by Staff is *Lyndz Pharmaceuticals*, in which two administrative penalties of $500,000 and $600,000 were imposed on two respondents, but these respondents were involved in a scheme that raised more than $1.7 million from over 70 investors over a period of three years. Staff also relied on the following cases: *Empire Consulting*; *Rezwealth*; *Re Merax Resource Management Ltd.* (2012), 35 O.S.C.B. 11545; *Re Lehman Cohort Global Group Inc.* (2011), 34 O.S.C.B. 2999; *Re Global Partners Capital et al.* (2011), 34 O.S.C.B. 10023; and *Re Maple Leaf Investment Fund Corp.* (2012), 35 O.S.C.B. 3075. All of these cases involved respondents who were found to have committed a fraud and had administrative penalties imposed on them ranging from $100,000 to $500,000. I note that the respondents in these matters engaged in fraudulent schemes that raised more funds and/or involved more investors than the scheme perpetrated by the Respondents in this case.

[57] In this case, a total of $1,226,832 was raised from 16 RARE Investors as a result of the Respondents' non-compliance with the Act. Dookhie was a directing mind and the main orchestrator of the fraudulent scheme of RARE (Merits Decision, *supra* at para. 170). He incorporated RARE, established its banking and trading accounts, and he was responsible for all banking activity of the company. He had primary communication with investors and was solely responsible for the trading activity of RARE from March, 2010 onwards (Merits Decision, *supra* at para. 106). The promotional documents that he drafted and distributed were provided to investors to encourage them to invest in RARE (Merits Decision, *supra* at paras. 106 and 143). RARE Investors knew Dookhie well and invested in the company based on the strength of their relationships with him and their trust in him, and yet Dookhie exploited these relationships of trust and confidence to his benefit and placed investors' funds at risk by doing so (Merits Decision, *supra* at para. 166). In his written submissions, Dookhie admits that most RARE

Investors were his clients, family and friends (Dookhie's Submissions, para. 23). Throughout the Material Time, Dookhie solicited 13 of the 16 RARE Investors, whose invested funds represented $851,800, or approximately 69%, of the total funds invested in RARE (Merits Decision, *supra* at para. 106).

[58] Todorov was the chief trading strategist of RARE and was the primary trader of RARE until May, 2009. He solicited three RARE Investors, whose invested funds represented $375,000, or approximately 31%, of the total funds invested in RARE (Merits Decision, *supra* at para. 109). In the Merits Decision, I found that Todorov actively made representations to RARE Investors, though on a lesser scale than that of Dookhie (Merits Decision, *supra* at para. 188).

[59] Dookhie and Todorov's actions caused significant harm to investors and the capital markets generally. Accordingly, I find that it is appropriate and proportionate to the circumstances of each respondent to make an order against Dookhie pursuant to paragraph 9 of subsection 127(1) of the Act, to pay an administrative penalty of $250,000 and a separate order against Todorov pursuant to paragraph 9 of subsection 127(1) of the Act, to pay an administrative penalty of $150,000. The amounts paid to the Commission in satisfaction of the administrative penalties are designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

3. Disgorgement

(a) The Law on Disgorgement

[60] Pursuant to paragraph 10 of subsection 127(1) of the *Act*, if a person or company has not complied with Ontario securities law, the Commission may order the person or company to disgorge to the Commission "any amounts obtained as a result of the non-compliance". The Commission has described the purpose of the disgorgement remedy as follows:

> [T]he objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits…
>
> …
>
> [T]he legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the *Act* to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity…
>
> (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight***") at paras. 47 and 49)

[61] In *Limelight*, the Commission held that it should consider the following non-exhaustive list of factors when contemplating a disgorgement order, in addition to the general factors for sanctioning:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the *Act*;

(b) the seriousness of the misconduct and the breaches of the *Act* and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the *Act* is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

(*Limelight*, *supra* at para. 52)

[62] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of its non-compliance with the *Act.*

(b) The Staff's Submissions on Disgorgement

[63] In its written submissions, Staff took the position that the Respondents should be ordered to disgorge $1,226,846.47 and submitted that this value represents the amounts obtained by the Respondents as a result of their non-compliance with Ontario securities law (Staff's Submissions, para. 40). Given their respective roles in the fraudulent scheme, Staff submitted that Dookhie and RARE be ordered to disgorge 60% of the total amounts obtained by the Respondents (being $645,507.88), and Todorov should be ordered to disgorge 40% of these amounts (being $438,410.56) (Staff's Submissions, para. 41).

[64] Dookhie submits that he be ordered to pay a disgorgement order of an amount that the Commission may find reasonable.

[65] First, I agree with Staff's submission that any amounts ordered against Dookhie and RARE should be imposed on a joint and several basis. Dookhie controlled RARE, he was the architect of the fraudulent scheme and he made all significant business decisions of the company, including the use of the RARE Investor Funds (Merits Decision, *supra* at paras. 162 and 203). It was through Dookhie's subjective knowledge of the fraud that RARE was found to have perpetrated a fraud on RARE Investors, contrary to subsection 126.1(b) of the Act (Merits Decision, *supra* at para. 162). In the Merits Decision, I found that Dookhie's dishonest acts allowed RARE to raise $1,226,832 from RARE Investors (Merits Decision, *supra* at para. 179). I therefore find that it is appropriate that any disgorgement amounts to be ordered against the Respondents shall be made jointly and severally against Dookhie and RARE.

[66] On the other hand, I do not agree with Staff's submissions regarding the calculation of its requested disgorgement orders against the Respondents. First, I find that the total amount obtained by the Respondents as a result of their non-compliance is $1,226,832, not $1,226,846.47. During the Material Time, the evidence showed that the source of funds of

RARE came solely from the deposits of RARE Investors. RARE was unsuccessful in generating any profits from its trading activities (Merits Decision, *supra* at para. 149). Therefore, I am satisfied that, on a balance of probabilities, the $1,226,832 raised from RARE Investors was obtained by the Respondents as a result of their non-compliance with Ontario securities law. However, in its written submissions, Staff referenced the value of RARE's total source of funds ($1,226,846.47), which included the amounts raised from RARE Investors ($1,226,832) and income received from a mutual fund investment account at the Bank of Montreal ($14.47) (Merits Decision, *supra* at para. 73). At the Sanctions and Costs Hearing, I raised this issue and Staff acknowledged its submission on the amounts obtained from the Respondents should be reduced by $14.47 (Transcript, Sanctions and Costs Hearing, August 28, 2014, p. 28, line 21 to p. 29, line 17). As such, Staff is in agreement that the total amount obtained by the Respondents is $1,226,832.

[67] Second, in calculating the appropriate disgorgement amount for the Respondents, I find that the total payments, rather than net payments, made by each Respondent to RARE should be deducted from the total amounts obtained. In its written submissions, Staff deducted the amounts each Respondent paid to RARE, but did so inconsistently: for Todorov, Staff deducted his *net* payment to RARE of $31,928.03 instead of his total payment of $59,150 to RARE; whereas, for Dookhie and 632 Company, Staff deducted their *total* payment of $60,000 to RARE and not the net payments of $172,200.30 made by RARE to Dookhie and to a Pre-RARE Investor. I raised this discrepancy with Staff at the Sanctions and Costs Hearing, and Staff agreed that the payments made to RARE by each respondent in this matter should be treated similarly (Transcript, Sanctions and Costs Hearing, August 28, 2014, p. 34, line 15 to p. 35, line 10).

[68] Third, I find that the appropriate percentages to be allocated to the Respondents are: 69% of the RARE Investor Funds to Dookhie and RARE; and 31% of such amounts to Todorov. These percentages are supported by my finding in the Merits Decision that Dookhie brought in 13 RARE Investors, whose invested funds represented 69% of the total funds invested in RARE, and that Todorov brought in 3 RARE Investors, whose invested funds represented 31% of the total funds invested in RARE (Merits Decision, *supra* at paras. 106 and 109). Staff submitted that these percentages be varied to attribute 60% of the funds to Dookhie and RARE, and 40% of the funds to Todorov, based on the differences in the roles played by the Respondents.

[69] I do not find that it is appropriate to alter the Respondents' percentage allocations of an amount to be ordered for disgorgement from the amounts obtained by Dookhie and Todorov from RARE Investors for RARE's activities to some other amounts based on a determination of a percentage allocation of their involvement in the overall scheme. By engaging in such an assessment, the amounts obtained by the Respondents would not be reasonably ascertainable (*Limelight*, *supra* at para. 52). Staff also did not present any evidence to show that the Respondents obtained amounts through their non-compliance that would reflect a 60-40 allocation. Instead, Staff relies on the same evidence and findings that were before me at the Merits Hearing. Therefore, relying on the evidence presented at the Merits Hearing and my findings in the Merits Decision, I find that any disgorgement orders made in this matter should allocate responsibility and liability for 69% of RARE Investor Funds to Dookhie and RARE, and 31% of RARE Investor Funds to Todorov.

(c) Appropriate Disgorgement Orders

[70] In this case, I find that investors were substantially harmed by the fraudulent scheme perpetrated by the Respondents. Aside from several interest payments, most RARE Investors have not been repaid any of their principal investments (Merits Decision, *supra* at para. 76). It does not appear likely that investors will be able to obtain any redress. I find that it is appropriate to impose disgorgement orders against the Respondents for the amounts they obtained through their serious misconduct.

[71] As discussed in paragraph 65 above, I find that the amounts raised from RARE Investors totaling $1,226,832 are the amounts obtained by the Respondents through their non-compliance with Ontario securities law. I find that Dookhie and RARE obtained 69% from these amounts.

[72] I find that the amounts obtained by Todorov are those that were directly received by him from RARE. Although Todorov was a director, directing mind and shareholder of RARE, Dookhie was the mastermind of the fraudulent scheme. Dookhie had primary contact with investors and he drafted and distributed the promotional documents of RARE (Merits Decision, *supra* at paras. 106). Dookhie was also responsible for all the banking activity of RARE and was therefore found to be "solely responsible for the unauthorized uses of the RARE Investor Funds" (Merits Decision, *supra* at para. 177). I also note that Todorov's role with RARE was acting as its chief trading strategist, but following his aggressive trade in May, 2009, Todorov no longer engaged in RARE's trading activity.

[73] The evidence showed that Setenterprice, a company that was jointly owned by Todorov and his wife, received a total of $16,000 directly, and funds were paid to a third party at Todorov's direction in the amount of $11,221.97. However, the evidence also showed that RARE received $59,150 from Todorov and Setenterprice throughout the Material Time. As a result, RARE actually received net payments from Todorov and Setenterprice of $31,928.03 (Merits Decision, *supra* at para. 74).

[74] Regarding the deductions that should be made to the total amounts of funds available for disgorgement orders in this matter, I have accounted for the following:

- Two of the 16 RARE Investors received partial payments of their principal investments amounting to $45,000;
- In terms of the payments made by the Respondents to RARE during the Material Time: Dookhie through 632 Company paid a total of $60,000 into RARE; Todorov and his company Setenterprice paid a total of $59,150 into RARE; and Sunderji paid a total of $10,000 into RARE (Merits Decision, *supra* at para. 74); and
- In the Sunderji Settlement, Sunderji agreed to disgorge $6,000.

[75] Please refer to the chart below for the appropriate calculation of disgorgement orders to be imposed on the Respondents pursuant to paragraph 10 of subsection 127(1) of the Act.

	Amounts	Totals
		$1,226,832
Less: Amounts Returned to RARE Investors		$45,000
Less: Amounts RARE Received from the Respondents and Sunderji During the Material Time		
Dookhie and 632 Company	$60,000	
Todorov and Setenterprice	$59,150	
Sunderji	$10,000	$129,150
Less: Sunderji Settlement Disgorgement Amount		$6,000
Net RARE Investor Funds		**$1,046,682**
Disgorgement Order – Dookhie and RARE (69%)		**$722,210.58**
Disgorgement Order – Todorov (31%)		**$324,471.42**

[76] I find that the net receipts from RARE Investors (i.e. the net RARE Investor Funds) were obtained as a result of the misconduct of RARE, Dookhie and Todorov. These receipts have been ascertained and a disgorgement order for these receipts would have a significant general and specific deterrent effect. For the amounts they obtained as a result of their non-compliance with Ontario securities law, I find that it is appropriate to impose the following orders pursuant to paragraph 10 of subsection 127(1) of the Act: an order against Dookhie and RARE to disgorge to the Commission $722,210.58 on a joint and several basis; and an order against Todorov to disgorge to the Commission $324,471.42. The amounts paid to the Commission in satisfaction of the disgorgement orders are designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

D. Costs

1. The Applicable Law

[77] Pursuant to section 127.1 of the *Act*, the Commission has authority to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has acted contrary to the public interest. Factors to be considered by the Commission when awarding costs are set out in Rule 18.2 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "***Rules of Procedure***").

[78] Staff seeks to recover costs from the Respondents totaling $267,390.50, which consists of fees and disbursements. Using the same percentage allocation requested for disgorgement orders, Staff requests that RARE and Dookhie be ordered to pay, jointly and severally, 60% of the total costs ($160,434.30), and Todorov be ordered to pay 40% of the total costs ($106,956.20). Staff did not seek costs for: the majority of the costs of the investigation conducted in this matter; any litigation costs in connection with pre-hearing conference attendances; time spent on settlement negotiations, conferences and hearings, and the drafting of materials related to the Sunderji Settlement; and time spent preparing for and attending the hearing on sanctions and costs. Staff seeks indemnity in respect of fees for 1,406.5 hours spent by litigation counsel, forensic accountant and investigator, whereas the total number of hours spent by all staff in this matter is 2,975 hours. Staff calculates their requested costs as follows:

Description	Total Hours	Rate	Total
Mike de Verteuil (Senior Forensic Accountant)	273.00	$185	$50,505.00
Laura Lavalley (Investigation Staff)	543.00	$185	$100,455.00
Donna Campbell (Senior Litigation Staff)	590.50	$205	$121,052.50
Total Fees	**1406.50**	**-**	**$272,012.50**
Less: Costs that Adil Sunderji agreed to pay in the Sunderji Settlement			$5,000.00
Plus: Disbursements			$378.00
Total Costs			**$267, 390.50**

[79] In support of this request, Staff provided a Bill of Costs, which includes the Affidavit of Julia Ho sworn July 17, 2014 (the "**Ho Affidavit**"). The Ho Affidavit appends detailed dockets of Staff, along with copies of receipts and invoices reflecting the costs of witness fees and service of documents.

[80] Dookhie submits that no costs of the hearing be payable by him.

2. Analysis

[81] In *Re Ochnik* (2006), 29 O.S.C.B. 5917 ("***Ochnik***"), the Panel identified criteria that were considered by the Commission in past decisions when awarding costs:

(a) failure by Staff to provide early notice of an intention to seek costs may result in a reduced costs award;

(b) the seriousness of the charges and the conduct of the parties;

(c) abuse of process by a respondent may be a factor in increasing the amount of costs;

(d) the greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case; and

(e) the reasonableness of the costs requested by Staff.

(*Ochnik*, *supra* at para. 29)

[82] The purpose of sanction orders made under section 127 of the Act is to "restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets" and to protect the public interest (*Asbestos*, *supra* at para. 43). On the other hand, the purpose of orders made under section 127.1 of the Act is not to punish, but to "indemnify the Commission for expenses incurred and to exercise some control over the hearing process" (*Ochnik*, *supra* at para. 28, citing *Re Tindall* (2000), 23 O.S.C.B. 6889 at para. 68).

[83] Applying the factors from *Ochnik* and the factors listed in Rule 18.2 of the *Rules of Procedure*, I find the following factors to be relevant in imposing a costs order against RARE, Dookhie and Todorov:

(a) a Notice of Hearing was issued by the Commission on November 22, 2011 to notify the Respondents in this matter that Staff would be seeking investigation and hearing costs against them;

(b) Staff has proven serious allegations against the Respondents involving a substantial amount of investor funds and misconduct that led to multiple contraventions of Ontario securities law, including fraud, and conduct contrary to the public interest;

(c) on March 13, 2013, the Commission granted an adjournment request from Todorov to reschedule the Merits Hearing from March, 2013 to May, 2013;

(d) on May 22, 2013, given that counsel for Dookhie and RARE at the time was not present at the start of the hearing day, the Commission granted a brief two adjournments on that date to accommodate counsel;

(e) on August 12, 2013, the Commission granted the request from counsel of Dookhie and RARE at the time to provide an extension for the Respondents' written submissions;

(f) Dookhie and Todorov attended examinations before Enforcement Staff in April, May and August, 2010, but these examinations were compelled (Merits Decision, *supra* at para. 39).

[84] I have also considered that a greater amount of time was spent at the Merits Hearing proving allegations against RARE and its main architect, Dookhie, than the amount of time spent on proving allegations against Todorov. I therefore find that it is appropriate to attribute greater costs against RARE and Dookhie than to Todorov. However, I do not agree with Staff's percentage allocation regarding costs, which is based on the same allocation Staff requested for disgorgement orders. I find that the costs should be apportioned in the same percentages as the amounts ordered to be disgorged, that is 69% as to Dookhie and RARE and 31% as to Todorov. I also find that the total amount of costs sought by Staff to be not unreasonable in the circumstances of this matter.

[85] Having considered the foregoing, and in particular, the complexity of the matter and the conduct of both the Respondents and Staff during the Merits Hearing, I find that it is appropriate to award costs in the amount of $184,499.45 on a joint and several basis against RARE and Dookhie, and costs in the amount of $82,891.05 against Todorov.

V. CONCLUSION

[86] For the reasons set out above, I conclude that it is in the public interest to make the orders set out below. In my view, the sanctions imposed will deter the Respondents and other like-minded individuals from engaging in similar misconduct in the capital markets in the future and the sanctions are proportionate to the circumstances and conduct of each Respondent.

[87] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by RARE, Dookhie and Todorov shall cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RARE, Dookhie and Todorov shall be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to RARE, Dookhie and Todorov permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, the Respondents be reprimanded;

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, Dookhie and Todorov shall resign any position that they hold as a director or officer of an issuer;

(f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Dookhie and Todorov shall be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dookhie and Todorov shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) pursuant to paragraph 9 of subsection 127(1) of the Act, Dookhie shall pay an administrative penalty of $250,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, Todorov shall pay an administrative penalty of $150,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(j) pursuant to paragraph 10 of subsection 127(1) of the Act, Dookhie and RARE shall jointly and severally disgorge to the Commission a total of $722,210.58 that was obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(k) pursuant to paragraph 10 of subsection 127(1) of the Act, Todorov shall disgorge to the Commission a total of $324,471.42 that was obtained as a result of his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(l) pursuant to subsection 127.1 of the Act, Dookhie and RARE shall jointly and severally pay $184,499.45 for the costs incurred in this matter;

(m) pursuant to subsection 127.1 of the Act, Todorov shall pay $82,891.05 for the costs incurred in this matter.

DATED at Toronto this 6th day of March, 2015.

"Edward Kerwin"

Edward P. Kerwin