



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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

**- AND -**

**IN THE MATTER OF  
DAVID CHARLES PHILLIPS**

**ENDORSEMENT**

**Hearing:** June 6, 2012

**Panel:** Edward P. Kerwin - Commissioner

**Appearances:** Alistair Crawley - for David Charles Phillips  
Bruce O'Toole and  
Jocelyn Loosemore

Yvonne Chisholm - for Staff of the Ontario Securities  
Sean Horgan Commission

## ENDORSEMENT

At the conclusion of a hearing held on June 6, 2012, I ordered that a temporary cease trade order against David Charles Phillips be extended to September 28, 2012. What follows are my reasons for that order.

The temporary cease trade order was issued by the Commission on May 15, 2012, on an *ex parte* basis at the request of Staff of the Enforcement Branch. The temporary order set out the allegations against Phillips that the Commission relied upon as justification for the issuance of the temporary order. The order required Phillips to cease trading all securities, and ordered that any exemptions contained in Ontario securities law do not apply to Phillips. It was to expire on the fifteenth day after its making, unless extended by order of the Commission.

A Notice of Hearing was issued by the Commission on May 16, 2012, setting the matter down for hearing on May 30, 2012, for the purpose of considering whether the temporary order should be extended.

The hearing was convened on May 30, 2012. Staff sought an extension of the order, and counsel for Phillips opposed an extension. The hearing was adjourned, on consent, to June 6, 2012. The temporary order was extended, also on consent, to June 8, 2012.

On June 4, 2012, Staff filed a Statement of Allegations against Phillips and John Russell Wilson (“the Statement of Allegations”). The Statement of Allegations did not include any of the specific allegations cited in the temporary order.

The hearing was reconvened on June 6, 2012, and I heard evidence from Stephanie Collins, a Senior Forensic Accountant with the Enforcement Branch of the Commission, and Greg Macleod, the chief restructuring officer of the First Leaside Group of Companies. Counsel for Phillips conducted extensive cross-examinations of both Staff witnesses but called no witnesses in response.

In their submissions, Staff argued that there is sufficient evidence of potentially harmful conduct to warrant an extension of the temporary order. Staff requested the order be extended until the conclusion of the hearing on the merits of the Statement of Allegations. In the alternative, Staff requested a significant continuation of the temporary order to allow time for Staff to consider whether the Statement of Allegations should be amended to include the allegations at issue in this hearing.

Counsel for Phillips took the position that Staff have not demonstrated that an extension of the order is warranted. In the alternative, counsel submitted that an extension, if ordered, should not be tied to the resolution of the allegations in the Statement of Allegations because the alleged conduct which Staff claim to justify the existence of temporary restrictions on Phillips’ activity in the capital markets will not be resolved through a hearing on the merits of the allegations in the Statement of Allegations. Counsel submitted, therefore, that an extension of the restrictions,

if warranted, should only be long enough to allow Staff to amend the Statement of Allegations to include the alleged conduct giving rise to the temporary order.

Without making findings as to the merits of the allegations, I find that Staff have provided sufficient evidence of the alleged conduct on the part of Phillips that gave rise to the temporary order to justify an extension of the temporary order. In my view, the alleged conduct may be harmful to the public, and therefore the continuation of the temporary order is warranted to protect the public interest. However, I share the concern expressed by counsel for Phillips that, barring an amendment to the Statement of Allegations, the allegations giving rise to the temporary order will never be adjudicated. I am troubled that the alleged conduct of Phillips, which may be sufficiently harmful to the public interest to warrant restrictions on his activities in the capital markets, does not appear to be harmful enough to warrant inclusion in the Statement of Allegations. Therefore, I am not prepared to extend the temporary order indefinitely. I find that the public interest would best be served by an extension of the temporary order for a finite period of time, that is, to September 28, 2012, to allow Staff an opportunity to amend, if Staff deems appropriate, the Statement of Allegations filed June 4, 2012, to include the alleged conduct that gave rise to the temporary order.

Dated at Toronto this 27<sup>th</sup> day of November, 2012.

*“Edward P. Kerwin”*

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Edward P. Kerwin