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

- and -

IN THE MATTER OF ROBERT WAXMAN

HEARING HELD PURSUANT TO SECTION 127 OF THE ACT

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SETTLEMENT HEARING RE: ROBERT WAXMAN

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HEARING:	Friday, December 21, 2007	
PANEL:	Paul K. Bates	- Commissioner and Chair of the Panel
	David L. Knight	- Commissioner
	Suresh Thakrar	- Commissioner
APPEARANCES:	Karen Manarin Melanie Adams	-for Staff of the Ontario Securities Commission
	Alan Lenczner Ed Lederman	-for Robert Waxman

ORAL RULING AND REASONS

The following text has been prepared for the purpose of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the Chair of the Panel for the purpose of providing a public record of the decision.

Chair:

[1] This was a hearing under section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, (the "Act") for the Ontario Securities Commission (the "Commission") to consider whether it is in the public interest to approve a proposed Settlement Agreement between Staff of the Commission ("Staff") and the respondent Robert Waxman ("Mr. Waxman").

[2] We have read the written submissions, and heard the oral submissions and we have decided to approve the Settlement Agreement as being in the public interest.

[3] By way of context, during the summer of 1997, Philip Services Corp. ("Philip") commenced a process to identify and calculate potential items to be included in a restructuring charge. In the fall of 1997, Philip issued a prospectus for a public offering, which did not contain any provision with respect to these items.

[4] This proceeding is concerned with the role of Mr. Waxman as a director of Philip and as president of the Metals Group – as we have heard this morning, the largest operating division of Philip. This case involved the failure to ensure that Philip filed financial statements in a prospectus that contained full, true and plain disclosure.

[5] In the Settlement Agreement, Mr. Waxman admits that:

(a) he acted contrary to the public interest by failing to ensure that Philip filed financial statements in the prospectus that contained full, true and plain disclosure of a restructuring charge in the amount of $155.7 million. A significant portion of the restructuring charge included goodwill write-downs relating to a number of acquisitions the Company had concluded over the period 1993 to 1996;

(b) he acted contrary to the public interest by failing to ensure that Philip filed financial statements in the prospectus that contained full, true and plain disclosure of approximately $31 million for holding certificates. The use of holding certificates involved the "sale and repurchase" of metal inventory without a corresponding physical movement of the inventory, which immediately generated cash for Philip;

(c) he acted contrary to the public interest by failing to ensure that Philip filed financial statements in the prospectus that contained full, true and plain disclosure of approximately $29 million of unrecorded liabilities for invoices issued by its supplier, Pechiney, in 1996. The Pechiney invoices were not properly recorded in the Company's financial statements for the year ended December 31, 1996 and for the quarters ended March 31, 1997, June 30, 1997 and September 30, 1997. Therefore, these financial statements were misleading and not accurate; and

(d) he acted contrary to the public interest by failing to ensure that Philip filed financial statements in the prospectus that contained full, true and plain disclosure of a financing arrangement between Philip and Commodity Capital Group Metals Inc. ("CCG") in the approximate amount of $30.2 million. The financial statements were misleading and not accurate due to the inappropriate accounting treatment of the sale and repurchase of inventory to CCG.

[6] By entering into the Settlement Agreement, Mr. Waxman has recognized that his conduct was contrary to the public interest. Mr. Waxman has accepted sanctions, which include a prohibition from acting as an officer or director of any reporting issuer, a prohibition from trading in securities, a reprimand, and payment of costs.

[7] The Commission's mandate in upholding the purposes of the Act, as set out in section 1.1 of the Act, is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in the capital markets.

[8] In accordance with paragraphs 2.1(2)(i) and (iii) of the Act, the Commission is guided by certain fundamental principles in pursuing the purposes of the Act, including the "requirements for timely accurate and efficient disclosure of information" and the "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants".

[9] Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions. The Act's focus on public disclosure of material facts in order to achieve market integrity would be meaningless without a requirement that such disclosure be accurate and complete and accessible to investors (see *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission*), [1978] 2 S.C.R. 112).

[10] The role of the Commission in exercising its public interest jurisdiction is set out in *Re Mithras Management Ltd*:

> […] the role of this Commission is to protect the public interest by 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, particularly under section 118 of the Act. 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 pp. 1610-1611)

[11] In determining whether the sanctions set out in the Settlement Agreement are appropriate, we have also considered the sanctioning factors established in *Re M.C.J.C. Holding and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743, which include:

- the seriousness of the allegations;
- the respondent's experience in the marketplace;
- the level of the respondent's activity in the marketplace;
- whether or not there has been a recognition of the seriousness of the improprieties;
- the restraint of future conduct that is likely to be prejudicial to the public interest (with reference to past conduct);

- 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;

- any mitigating factors;

- the size of any profit from the illegal conduct;

- the reputation and prestige of the respondent; and

- the remorse of the respondent.

[12] Specifically in the matter before us today, we acknowledge that Mr. Waxman has recognized the seriousness of his improprieties.

[13] We consider the agreed director and officer ban to be at the lowest acceptable level; however, we acknowledge two facts:

1. Mr. Waxman has been under a voluntary director and officer ban since March 8, 2006; and

2. We have been advised that Mr. Waxman is currently 52 years of age, and that the agreed director and officer ban imposed is tantamount to a life ban from the capital markets.

[14] In addition, we find that the agreed sanctions fulfill the requirement to deter future similar conduct, which is an important consideration as set out by the Supreme Court of Canada in *Re Cartaway Resources Corp*. (2004), 238 D.L.R. (4th) 193 (S.C.C.).

[15] We recognize that as established in *Re Sohan Singh Koonar et al*. (2002), 25 O.S.C.B. 2691, the role of the Commission Panel in reviewing a settlement agreement is not to substitute its own sanctions for what is proposed in the Settlement Agreement. Rather, the Commission should ensure that the agreed sanctions in the Settlement Agreement are within acceptable parameters.

[16] This is what we as a Panel have done in approving this Settlement Agreement. Considering the respondent's position as stated in the Settlement Agreement, we are of the view that the sanctions set out in the Settlement Agreement are within the acceptable parameters.

[17] As stated, in exercising our jurisdiction, we need to be satisfied that the Settlement Agreement is in the public interest. Therefore, we approve the Settlement Agreement as being in the public interest.

[18] As set out in the Settlement Agreement, Mr. Waxman accepts the sanctions, which include:

- he will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of twenty years;

- he will be prohibited from trading in securities for a period of ten years;

- he will pay costs to the Commission in the amount of $125,000; and
- he will be reprimanded.

Approved by the Chair of the Panel on January 8, 2008.

"*Paul K. Bates*"

Paul K. Bates