



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 M. O'BRIEN**

**ORDER**

**WHEREAS** on December 8, 2010, the Secretary of the Commission issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, 17<sup>th</sup> Floor Hearing Room on Monday, December 20, 2010 at 10:30 a.m., or as soon thereafter as the hearing can be held;

**AND WHEREAS** on December 9, 2010, the Respondent was served with the Notice of Hearing and Statement of Allegations dated December 7, 2010;

**AND WHEREAS** the Notice of Hearing provided for the Commission to consider, among other things, whether, in the opinion of the Commission, it is in the public interest, pursuant to s. 127 of the Act, to issue temporary orders against David M. O'Brien ("O'Brien"), as follows:

- (a) O'Brien shall cease trading in any securities for a prescribed period or until the conclusion of the hearing on the merits in this matter;
- (b) O'Brien is prohibited from acquiring securities for a prescribed period or until the conclusion of the hearing on the merits in this matter; and
- (c) Any exemptions contained in Ontario securities law do not apply to O'Brien for a prescribed period or until the conclusion of the hearing on the merits in this matter;

**AND WHEREAS** on December 20, 2010, Staff of the Commission and O'Brien appeared before the Commission and made submissions and O'Brien advised the Commission

that he was opposed to Staff's request that temporary orders be issued against him and that he wished to cross-examine Lori Toledano, a member of Staff, on her affidavit;

**AND WHEREAS** on December 20, 2010, the hearing with respect to the issuance of the temporary orders was adjourned until December 23, 2010 at 12:30 p.m.;

**AND WHEREAS** on December 23, 2010, a hearing with respect to the issuance of the temporary orders was held and the panel of the Commission considered the affidavit of Toledano, the cross-examination of Toledano and the submissions made by Staff and O'Brien;

**AND WHEREAS** on December 23, 2010, the Commission issued a temporary cease trade order pursuant to s. 127 of the Act ordering that:

- (a) O'Brien shall cease trading in any securities;
- (b) O'Brien is prohibited from acquiring any securities; and
- (c) Any exemptions contained in Ontario securities law do not apply to O'Brien;

(the "Temporary Cease Trade Order");

**AND WHEREAS** on December 23, 2010, the Commission ordered that the Temporary Cease Trade Order shall expire on April 1, 2011;

**AND WHEREAS** on December 23, 2010, the Commission ordered that Staff and O'Brien shall consult with the Secretary's Office and schedule a confidential pre-hearing conference for this matter;

**AND WHEREAS** a confidential pre-hearing conference was scheduled for February 24, 2011;

**AND WHEREAS** at the confidential pre-hearing conference on February 24, 2011, Staff of the Commission and O'Brien appeared and made submissions regarding the disclosure made by Staff, and Staff requested an extension of the Temporary Cease Trade Order;

**AND WHEREAS** on February 24, 2011, the Commission ordered that:

- a) a hearing to extend the Temporary Cease Trade Order shall take place on March 30, 2011 at 11:30 a.m.;
- b) a motion regarding disclosure shall take place on April 21, 2011 at 10:00 a.m., and in accordance with Rule 3.2 of the *Rules of Procedure* of the Ontario Securities

Commission, O'Brien shall serve and file a motion record, including any affidavits to be relied upon, by April 11, 2011 at 4:30 p.m.; and

- c) a further confidential pre-hearing conference shall take place on May 30, 2011 at 10:00 a.m;

**AND WHEREAS** on March 30, 2011, a hearing with respect to the extension of the Temporary Cease Trade Order was held, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

**AND WHEREAS** on March 30, 2011, the Commission ordered that:

- a) the Temporary Cease Trade Order shall be extended to April 26, 2011; and
- b) a further hearing to extend the Temporary Cease Trade Order shall take place on April 21, 2011 at 10:00 a.m.;

**AND WHEREAS** on April 21, 2011, a hearing with respect to the extension of the Temporary Cease Trade Order was held, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

**AND WHEREAS** on April 21, 2011, the Commission ordered that:

- a) the Temporary Cease Trade Order shall be extended until the conclusion of the hearing of the merits of this matter; and
- b) O'Brien may, if he wishes to do so, apply to the Commission for an order revoking or varying this Order pursuant to s. 144 of the Act;

**AND WHEREAS** also on April 21, 2011, O'Brien brought a motion regarding disclosure, wherein he sought an order from the Commission requiring Staff to provide him with all additional disclosure materials without requiring him to execute a further undertaking, and the panel of the Commission considered the evidence filed and the submissions made by Staff and O'Brien;

**AND WHEREAS** on April 21, 2011, the Commission ordered that Staff shall provide further disclosure materials to O'Brien without requiring the signing by him of an undertaking as to the confidentiality of that disclosure. The Commission further Ordered that:

- 1) All disclosure materials provided to Mr. O'Brien are confidential and may be used by him only for the purpose of making full answer and defence in this proceeding. The use of disclosure materials for any other purpose is strictly prohibited. All disclosure materials provided to Mr. O'Brien are subject to the strict confidentiality restrictions imposed by section 16 of the Act;
- 2) Mr. O'Brien is also subject to the implied undertaking that all disclosure materials provided to him are subject to the restrictions on use referred to in paragraph (1);
- 3) The Previous Undertaking signed by Mr. O'Brien is binding upon him and applies by its terms to all of the disclosure materials provided by Staff to Mr. O'Brien, including all disclosure materials provided by Staff to Mr. O'Brien in the future; if Mr. O'Brien wishes to challenge the validity of the Previous Undertaking he is entitled to bring a motion before the Commission to do so;
- 4) If Mr. O'Brien wishes to use the disclosure materials provided by Staff to him for any purpose other than as provided in paragraph (1), he must make an application to the Commission under section 17 of the Act for an order of the Commission consenting to that use;

**AND WHEREAS** at the confidential pre-hearing conference on May 30, 2011, Staff of the Commission and O'Brien appeared and Staff sought to set dates for a hearing on the merits, while O'Brien submitted to the Commission that he was unable to set hearing dates at that time. The Commission adjourned the hearing to June 20, 2011 at 10:00 a.m., for the purpose of setting the dates for the hearing on the merits;

**AND WHEREAS** at the confidential pre-hearing conference on June 20, 2011, Staff of the Commission and O'Brien appeared before the Commission and submissions were made by both parties regarding the scheduling of the hearing on the merits;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED THAT:**

1. the hearing on the merits is to commence on March 12, 2012 at 10:00 a.m. at the offices of the Commission, 20 Queen St. West, 17<sup>th</sup> floor, Toronto, and shall continue

- on March 14, 15, 16, 19, 20, 21, 22, 23, 26, and 28, 2012, or such further or other dates as may be agreed upon by the parties and fixed by the Office of the Secretary; and
2. a further confidential pre-hearing conference shall take place on January 11, 2012 at 10:00 a.m., or on such other date as may be agreed upon by the parties and fixed by the Office of the Secretary, at the offices of the Commission, 20 Queen St. West, 17<sup>th</sup> floor, Toronto.

**DATED** at Toronto this 20<sup>th</sup> day of June, 2011.

*“Mary G. Condon”*

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Mary G. Condon