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Securities
Commission

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de l'Ontario

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

- AND -

**IN THE MATTER OF
BLUE GOLD HOLDINGS LTD., DEREK BLACKBURN,
RAJ KURICHH AND NIGEL GREENING**

**REASONS AND DECISION
(Subsection 127(1) of the *Securities Act*)**

Hearing: April 18, 20, 25 and 26, 2016

Decision: July 26, 2016

Panel: Alan Lenczner, Q.C. - Commissioner and Chair of the Panel
Janet Leiper - Commissioner
Timothy Moseley - Commissioner

Appearances: Swapna Chandra - For Staff of the Commission
Anna Huculak
Raj Kurichh - On his own behalf
Nigel Greening - On his own behalf

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REASONS AND DECISION

I. INTRODUCTION

A. Overview of Significant Events

[1] The respondents Derek Blackburn, Raj Kurichh and Nigel Greening were the founding principals and shareholders of the respondent Blue Gold Holdings Ltd. (“**BGH**”), a company formed in March 2010, and headquartered in Mississauga, Ontario, to engage in the business of manufacturing water treatment equipment.

[2] Upon incorporation, BGH’s directors were Blackburn and Greening. Blackburn, an Ontario resident, was BGH’s President and Chief Executive Officer. Greening, a resident of England, was BGH’s Executive Vice-President, Field Operations and Installations. Kurichh, a resident of Ontario, was an officer of BGH throughout the material time, but did not become a director until December 2012.

[3] BGH initially issued approximately 3.28 million shares to each of Blackburn, Greening and Kurichh for nominal consideration. Beginning in July 2010, Blackburn, Greening and Kurichh raised approximately \$1.5 million from approximately 100 investors in Ontario and elsewhere through the sale of shares of BGH, as a result of which Blackburn, Greening and Kurichh together owned 60% of BGH’s outstanding shares, with the retail investors holding the remaining 40%.

[4] Over time, BGH acquired some intellectual property relating to water treatment, and made limited efforts to produce and deliver plants and equipment. BGH earned no business-related revenue at any time during its existence.

[5] In late 2012 and early 2013, BGH’s principals transferred BGH’s assets to a new corporation, Blue Gold Tailing Technologies Inc. (“**BGTT**”). BGTT then amalgamated with Golden Cross Resources Inc., a company listed on the Canadian Securities Exchange. Through a series of transactions, BGH’s retail shareholders’ interest in the enterprise was reduced from 40% to 12%.

B. Allegations, Issues and Conclusions

[6] Enforcement Staff of the Ontario Securities Commission (“**Staff**” of the “**Commission**”) alleges that the respondents contravened Ontario securities law by:

- a) engaging in the business of trading in BGH shares without being registered;
- b) conducting an illegal distribution of BGH shares;
- c) making prohibited representations relating to the listing of BGH shares on an exchange;
and
- d) perpetrating frauds upon BGH investors by:

- i) deceiving them as to BGH's activities and as to government approval of those activities;
- ii) misusing investor funds; and
- iii) improperly diluting their interests through, among other things, the issuance of shares of BGTT.

[7] Staff alleges that as directors and officers of BGH, each of Blackburn, Kurichh and Greening authorized, permitted or acquiesced in the alleged breaches of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") by BGH, and therefore that they are responsible for those breaches.

[8] After this proceeding was initiated, but before the hearing on the merits began, Blackburn died. Staff therefore withdrew all allegations against him. Staff seeks various sanctions against BGH, Kurichh and Greening.

[9] For the reasons that follow, we conclude that:

- a) BGH, Kurichh and Greening engaged in the business of trading, without being registered, thereby contravening section 25 of the *Act*;
- b) BGH and Kurichh engaged in distributions of BGH shares without a prospectus, and their purported reliance upon the accredited investor exemption was not valid, as a result of which they contravened section 53 of the *Act*;
- c) BGH and Kurichh made representations that BGH would become a public company, listed on an exchange, and thereby contravened section 38 of the *Act*;
- d) with respect to Staff's allegations of fraud,
 - i) Kurichh knowingly participated in BGH's fraudulent misrepresentations regarding BGH's sales pipeline and government approval of BGH's activities;
 - ii) Kurichh actively participated in Blackburn's fraudulent diversion of company funds for Blackburn's personal use; and
 - iii) BGH and Kurichh fraudulently diluted the interests of BGH's retail shareholders; and
- e) pursuant to section 129.1 of the *Act*, Kurichh and Greening are deemed to have contravened Ontario securities law, by virtue of their having acquiesced or actively participated in BGH's breaches described above.

[10] We therefore order that a sanctions hearing be held in respect of Kurichh and Greening.

II. PRELIMINARY MATTERS

A. Greening's Participation in the Hearing

[11] Greening was present at the hearing on its first day, but made no opening submissions and declined to cross-examine the one witness who testified that day.

[12] On the second day of the hearing, Greening did not appear. The hearing proceeded in his absence. Late in the morning of that day, Greening sent an email to the Commission's registrar, in which he advised that he had urgent matters to take care of, that he was unsure whether he would appear for subsequent hearing days, and that the hearing should continue without him. He did not appear again during the hearing.

B. Transcript of Blackburn's Examination

[13] Prior to his death, Staff conducted two examinations of Blackburn under oath. Staff sought to introduce the transcripts of those examinations into evidence. Kurichh and Greening consented to the admission of the transcripts.

III. LEGAL FRAMEWORK, ISSUES AND ANALYSIS

A. Introduction

[14] As noted above in paragraph [6], Staff alleges that the respondents contravened four provisions of Ontario securities law. In addition, Staff seeks to have Kurichh and Greening held responsible for BGH's breaches. In the following paragraphs, we set out the relevant provisions, and identify and analyze the issues presented.

B. Engaging in the Business of Trading Without Being Registered

[15] Subsection 25(1) of the *Act* provides:

Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities or derivatives unless the person or company [is registered.]

[16] None of the respondents has ever been registered. Further, there was no suggestion that any of the respondents was entitled to an exemption from the registration requirement.

[17] There is no dispute that the respondents traded in securities of BGH. Therefore, we must determine whether those trades, taken together, constitute "engaging in the business of trading" within the meaning of subsection 25(1) of the *Act*.

[18] Section 1.3 of Companion Policy 31-103CP, *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, sets out five factors that Staff "consider relevant in determining whether an individual or firm is trading or advising in securities for a business purpose". Of those five factors, two are particularly relevant in this case.

[19] One factor asks whether the trading was carried on “with repetition, regularity or continuity”. The respondents traded repeatedly and continuously, beginning in July 2010. Approximately 125,000 BGH shares were sold to retail shareholders in that month, and by the end of 2010, approximately 3.3 million shares had been issued. Trading continued in a nearly unbroken pattern until late 2012.

[20] Another factor suggests that we consider whether the activity in question constitutes “directly or indirectly soliciting” securities transactions. Any new corporation seeking capital must, of course, solicit trades. We must determine whether the activities in this case cross the line between permissible solicitation and the business of trading.

[21] In answering that question, it is useful to consider the extent to which the efforts of the respondents were devoted to capital raising as opposed to the underlying business. BGH was, at least for a time, attempting to conduct a legitimate business. However, over time, whatever real business may have existed did not persist, and instead the respondents’ efforts were devoted primarily to raising capital. BGH generated no business-related revenues at any time in its existence. Any funds that it had came exclusively from shareholders.

[22] We therefore conclude that, while BGH’s early efforts to raise capital may not have crossed the line, there is no doubt that by late 2012, both Kurichh and Greening actively solicited new shareholders, and did so in a manner that constitutes engaging in the business of trading in securities.

C. Illegal Distribution

[23] Subsection 53(1) of the *Act* states:

No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[24] Subsection 1(1) of the *Act* defines “distribution” to include a trade in securities of an issuer that have not been previously issued. The BGH shares had not been previously issued.

[25] At the beginning of the hearing, Kurichh and Greening confirmed that no prospectus was ever used in connection with the issuance of BGH shares.

[26] Neither respondent expressly claimed the benefit of an exemption to subsection 53(1). However, some of the documents relating to the process of subscribing for BGH shares alluded to the private issuer exemption and the accredited investor exemption.

[27] We can easily dispose of the private issuer exemption, which at the relevant time was found in section 2.4 of NI 45-106, *Prospectus Exemptions*. Its availability was limited to issuers with no more than fifty beneficial shareholders. It is undisputed in this case that there were well more than fifty beneficial shareholders of BGH.

[28] It remains for us to determine whether the distributions of BGH shares qualified for the accredited investor exemption. At the relevant time, this exemption was found in section 2.3 of NI 45-106, which stated, in part:

The prospectus requirement does not apply to a distribution of a security if the purchaser purchases the security as principal and is an accredited investor.

[29] BGH's subscription forms allowed potential investors to indicate whether they were accredited investors, a term defined in NI 45-106. In the course of its investigation, Staff sent approximately 100 questionnaires to BGH investors, asking among other things whether the investor was in fact an accredited investor. The responses to those questionnaires disclosed that 77% of the investors did not qualify.

[30] In October 2012, Kurichh sent emails to BGH investors, asking them to complete a "Certificate of Purchaser" and to check the box that indicated that the investor was "a close personal friend of a director, executive officer, founder or control person of the issuer". The responses to the questionnaires sent by Staff make it apparent that most investors were not "friends" at all, but had instead been introduced to BGH by another person who was already an investor.

[31] Ms. D, an investor who testified at the hearing, stated that when she first received her subscription form, it consisted only of a two-page document without supporting schedules that were referred to in the document. More than a year later, she received the schedules, as well as a phone call from Blackburn. In that call, Blackburn advised her that the Commission was making inquiries about BGH because the company had sold more shares to non-accredited investors than was permitted. Blackburn asked Ms. D to check the box that would indicate that she was a friend or family member. She refused, given that she did not know Blackburn at the time she purchased the shares, as a result of which BGH completed the form with the box checked purporting to indicate that Ms. D was an accredited investor.

[32] Mr. L, another investor who testified at the hearing, stated that on Kurichh's instructions he executed a subscription agreement that had previously been completed to indicate that he was a close personal friend of a director, executive officer, founder or control person. Shortly thereafter, he signed a "Certificate of Purchaser" to the same effect.

[33] Numerous investors, including Ms. D and Mr. L, were shown in BGH's records as being accredited investors when they were not. In some cases, the investors were asked (sometimes by Kurichh through e-mail) to complete the form inaccurately. In other cases, the form was completed inaccurately for them. There can be no doubt that at least some of the distributions of BGH shares did not qualify for the accredited investor exemption, and therefore contravened subsection 53(1) of the *Act*.

[34] At the hearing, Kurichh admitted that he instructed some investors to complete certificates indicating that they were close personal friends of BGH's principals when that was

not in fact the case. We therefore conclude that Kurichh himself contravened that same provision.

[35] A number of the subscription agreements bear Greening's signature and appear to have been marked in advance to show that the investor was an accredited investor, thereby giving rise to a suspicion that Greening was a knowing participant in these illegal trades. However, Staff led no evidence to support this suspicion, and accordingly we are unable to find that Greening directly contravened subsection 53(1) of the *Act*.

D. Representations Regarding Listing

[36] The relevant portions of subsection 38(3) of the *Act* provide:

Subject to the regulations, no person or company, with the intention of effecting a trade in a security... shall, except with the written permission of the Director, make any written or oral representation that the security... will be listed on an exchange... or that application has been or will be made to list the security... on an exchange... unless,

- (a) ... application has been made to list or quote the securities and other securities issued by the same issuer are already listed on an exchange...; or
- (b) the exchange... has granted approval to the listing... of the securities..., conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[37] Staff alleges that Blackburn and Kurichh made representations on behalf of BGH that BGH's securities would soon be listed on an exchange and that these representations were made with the intention of effecting a trade in securities of BGH.

[38] Staff also alleges, and it is undisputed, that none of the exceptions provided for in subsection 38(3) of the *Act* applies. Specifically,

- a) the Director did not give permission for such representations to be made;
- b) no application was ever made to list the securities on an exchange; and
- c) no exchange had consented to or otherwise indicated that it did not object to any such representations.

[39] Given the withdrawal of all allegations against Blackburn, we must determine whether Kurichh made any of the representations alleged and, if so, whether he made those representations with the intention of effecting a trade in securities of BGH.

[40] In December 2010, BGH issued an information package intended for existing and potential investors. The package contained financial projections, referred to BGH's intention to

list shares on the TSX Venture Exchange (“**TSXV**”) through a reverse takeover, and indicated that a consultant’s report would “support current valuation to the Ontario Securities & Exchange Commission (OSC) [*sic*] as part of the RTO”.

[41] The intention to list the shares on the TSXV was repeated in:

- a) a newsletter issued by BGH in March 2011, which updated the target date to June of 2011;
- b) an online news release dated May 27, 2011, which stated that “Blue Gold has begun the process to list on the TSX:V”;
- c) an October 2011 telephone conversation between an investor and Kurichh, in which, according to the investor, Kurichh explained that the repeated delays in BGH going public were due to the sale of TMX Group Limited, the owner of the TSXV, and to the fact that it was a bad time for “green” stocks;
- d) an information package issued by BGH titled “Highlights December 2011”, which stated that BGH was “in process of engaging in an RTO whereby a publicly traded company listed on a Toronto Stock Exchange” would acquire a BGH subsidiary; and
- e) an April 2012 account of an investor who had visited BGH’s office and, according to the investor, been assured that all the necessary documentation for a reverse takeover was complete, and that the plan was to complete the transaction by the end of June.

[42] Ms. D testified that when Kurichh came to her home in July 2011 to “sell me shares”, Kurichh told her that at the beginning of September:

...there was going to be an IPO, that the shares were going to open at one dollar, if not two, if not three dollars, and therefore it was the time to invest because... it was such a great product, that there were great chances that the stock was going to open at a very strong price.

[43] Mr. L testified that, in a phone conversation with Kurichh in September 2012, Kurichh told him that BGH would go public within three to six months and that a family connection at the TSX would assist with processing the application, so there would be no difficulties going public. Shortly after this conversation, Mr. L visited BGH’s facility and met with Blackburn and Kurichh. During that meeting, Kurichh repeated the representations.

[44] In his own testimony at the hearing, Kurichh admitted that he advised potential investors that the shares of BGH “would eventually become publicly traded”. Kurichh claimed, however, that he was repeating information provided to him by Blackburn, and that Kurichh was never warned by Blackburn or by Wildeboer Dellelce LLP (BGH’s counsel at the material time) that he could not do so. Kurichh concedes that he ought to have done his “own due diligence”.

[45] The representations made were not merely general representations about plans to seek listing on an exchange. Representations of that nature could reasonably be expected from many budding issuers, and prohibiting such representations would unnecessarily impede the raising of capital. The representations in this case were specific as to the exchange on which the listing would be sought and as to the timing of the application. We therefore find that BGH and Kurichh made representations prohibited by subsection 38(3) of the *Act*.

E. Fraud

[46] Because Blackburn died before the hearing, Staff pursues fraud allegations only as against Kurichh, whether as principal or as a participant in fraud perpetrated by Blackburn. Staff's allegations can be grouped into three principal complaints:

- a) there were numerous fraudulent misrepresentations regarding the extent to which BGH had secured contracts with third parties, whether BGH's activities had received government approval and whether certain celebrities were associated with BGH's activities;
- b) Blackburn fraudulently diverted company funds for his own personal purposes; and
- c) through a series of transactions including the assignment of intellectual property to a new entity, and the reverse take-over, the individual respondents fraudulently diluted the interests of retail shareholders.

[47] The relevant portions of section 126.1 of the *Act* provide:

A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities... that the person or company knows or reasonably ought to know,

...

(b) perpetrates a fraud on any person or company.

[48] In determining whether Kurichh contravened this section, we consider whether, with respect to each of the three categories identified in paragraph [46] above, there was conduct that was fraudulent in nature, and if so, the extent to which Kurichh knew or ought to have known that the conduct perpetrated a fraud.

1. Fraudulent Misrepresentations

a) Sales pipeline

[49] The only evidence suggesting the existence of a real revenue earning opportunity for BGH was with respect to an agreement entered into in April 2011, pursuant to which BGH agreed to sell, for approximately US\$300,000, one waste water treatment plant to Hasar's Grupo Ecologico ("**Hasar's**") for installation in Guadalajara, Mexico. A ceremony was held in

Mexico in January 2012 to celebrate the project's launch. The contract was never performed and BGH received no revenue from it.

[50] There was some evidence that BGTT had business opportunities. Specifically:

- a) on May 1, 2012, BGTT and Hasar's entered into four Plant Installation and Operation Agreements to treat water at four locations in Mexico; and
- b) on July 13, 2012, BGTT, Nano Water Technologies Africa (PTY) Ltd. and Sylvania Metals Pty Ltd. entered into a Plant Installation and Operation Agreement, pursuant to which mining tailings were to be collected and sold, with the profits to be distributed among the parties.

[51] In stark contrast to these limited opportunities, even if they were real, BGH issued numerous documents that painted a far rosier picture. For example:

- a) in May 2012, BGH issued an investor presentation document that referred to the "Mexico Current Sales Pipeline", which was expected to generate profit of \$17 million annually; and
- b) in August 2012, BGH issued an investor presentation document that stated that BGH had 30 contracts in the sales pipeline, which contracts would generate annual revenue of approximately \$100 million.

[52] The investor presentations significantly overstated the true value of the sales pipeline, and were used to solicit investment from BGH's retail shareholders. These representations were fraudulent.

[53] In his examinations by Staff in the course of the investigation, Blackburn testified that Kurichh participated in the production of these fraudulent documents. Kurichh did not dispute this at the hearing. We therefore conclude, on a balance of probabilities, that Kurichh knowingly participated in at least some of the fraudulent misrepresentations as to BGH's sales pipeline.

b) *Government approval*

[54] A March 2011 newsletter distributed to existing and potential BGH shareholders asserted that on March 21, Environment Canada had responded to Ontario's Ministry of the Environment with positive news, and that steps were being taken to seek provincial government approval.

[55] Blackburn, Kurichh and others attended a meeting with Ministry staff on May 17, 2011, to discuss whether BGH's product, Antinfek, could be used to treat wastewater in Ontario.

[56] Following that meeting, on May 26, 2011, the Ministry's representative issued a memorandum to Blackburn and others regarding the meeting. The representative noted that

Ministry staff had two principal concerns about the use of Antinfek in Ontario, that further information was required, and that a favourable review was not guaranteed.

[57] The following day, BGH issued a news release titled “Blue Gold Canada Receives Approval from the Ministry of Environment”. The release, which named Kurichh as the contact for further information, stated:

Blue Gold Canada, the first ever organic & nano bio-technology based water purification company, has received approval from the Ministry of Environment Standards Development Branch (“the Ministry”) to conduct a pilot project with Ontario Clean Water Agency.

[...]

“This is a significant and measurable milestone in our progress here in Canada, we have already conducted these pilots in other countries with overwhelming results and the Ministry has approved Blue Gold to demonstrate the power of Antinfek 10H in accredited labs with Ontario Clean Water”, states company co-founder Raj Kurichh.

[58] The Ontario Clean Water Agency became aware of the news release. Understandably, the agency considered the release to be inaccurate, and asked BGH to remove any reference to it.

[59] The news release was blatantly false, to the knowledge of BGH’s principals, including Kurichh.

c) *Celebrity involvement*

[60] A December 2011 newsletter to BGH investors described relationships involving various public figures, including:

- a) an introduction to the Prince of Monaco;
- b) a relationship with a renowned car racing champion who, according to the newsletter, wished to introduce BGH products to a major car manufacturer; and
- c) solicitation of BGH’s participation in a film that would star two of Hollywood’s most famous actors and that would prominently feature BGH’s brand and products.

[61] No evidence was adduced at the hearing to support the truth of these representations. Similarly, we saw nothing in the many documents tendered as exhibits, including various communications among BGH’s principals and others, to suggest that these representations were true. While we cannot conclude on a balance of probabilities that the representations were fraudulent, we note that they would undoubtedly have contributed to investor interest in BGH’s activities.

2. Diversion of Company Funds for Blackburn's Benefit

[62] As noted above, BGH generated no business-related revenues at any time. Of the \$3.2 million received by BGH throughout its existence, \$1.4 million came from BGH shareholders, \$1.2 million came from two of Blackburn's friends, who ultimately received gifted shares of BGTT, and almost \$600,000 was transferred from BGTT as partial compensation for business expenses.

[63] Those funds were disbursed as follows:

- a) \$1.2 million transferred directly to Blackburn, and a further \$184,000 for Blackburn's personal benefit, including a car, a yacht, and entertainment expenses;
- b) \$376,000 to Kurichh;
- c) \$79,000 to Greening;
- d) \$843,000 in business-related expenses; and
- e) the remaining approximately \$770,000 for other miscellaneous items, some of which may have been business-related.

[64] Kurichh admitted that in April 2011 he deposited investor money in his personal bank account. He testified that Blackburn was going through a divorce at the time and told Kurichh that he did not want to be seen to be living a lavish lifestyle. Kurichh claims that he asked Blackburn why the funds could not simply be deposited into BGH's account, but Blackburn avoided the question.

[65] In addition, both Blackburn and Kurichh admitted that they shopped for personal items at high-end retailers, using funds from BGH's bank account.

[66] Staff's Statement of Allegations does not allege the diversion of company funds for Kurichh's own personal benefit, and we therefore reach no conclusion as to whether or not that occurred. However, we conclude on a balance of probabilities that Kurichh knowingly participated in the diversion of funds to Blackburn's benefit, and therefore that Kurichh is personally responsible for that fraudulent diversion.

3. Dilution of Interest

a) Acquisition of intellectual property and creation of BGTT

[67] In its early days, BGH acquired intellectual property from several sources.

- a) In June 2010, BGH entered into four licencing agreements with Dove Biotech Limited, pursuant to which BGH acquired certain rights to water remediation technology known as Antinfek. BGH terminated its relationship with the company in December 2011.

- b) In June 2011, BGH acquired the rights to an “Integrated Wind Turbine and Desalination System” from its inventor.
- c) In July 2011, BGH entered into an exclusive licencing agreement with the University of Saskatchewan, pursuant to which the university licenced certain patents to BGH in return for payments totalling \$70,000 and royalties.

[68] By April 2012, it became evident that issues with BGH’s financial and other records required the formation of a new corporation to accomplish the planned reverse take-over. Blackburn incorporated BGTT and became its sole shareholder and director.

[69] Immediately following the creation of BGTT, Emmanuel Moya, a paid advisor to BGH, assigned four patents to BGH and four to BGTT for nominal consideration. Blackburn and Kurichh directed that any new contracts for business opportunities developed by BGH with BGH clients were to be signed with BGTT rather than BGH. The fact that the business opportunities were being diverted to BGTT was not disclosed to the BGH retail shareholders.

[70] By September 2012, Blackburn, Kurichh and Greening held 60% of BGH’s shares, having paid nominal consideration. Retail shareholders together held the remaining 40% and had contributed \$1.5 million.

[71] On November 21, 2012, BGTT entered into an amalgamation agreement with a wholly-owned subsidiary of a publicly listed company, Golden Cross Resources Inc. (“**Golden Cross**”).

[72] At a special meeting of BGH shareholders on December 14, 2012, the shareholders approved the sale of substantially all of BGH’s assets in exchange for \$1.5 million, payable in the form of approximately 30.5 million shares of BGTT. The sale was not completed, due to BGH’s inability to deliver the audited financial statements that would be required to complete the reverse take-over.

[73] As a substitute for the failed asset sale, BGH and BGTT entered into an agreement on January 16, 2013, pursuant to which BGH granted BGTT an exclusive licence to exploit inventions claimed by BGH, including patents held by BGTT, and the licence agreement with the University of Saskatchewan. In return, BGTT issued approximately 30.5 million shares to BGH, with a “deemed aggregate value” of \$1.5 million.

[74] In January 2013, the individual respondents signed various resolutions authorizing the issuance of BGTT shares. Pursuant to those authorizations, the following shares were issued:

- a) approximately 20.2 million to Blackburn, Kurichh and Greening, at a price of 0.1868 cents per share;
- b) approximately 27.9 million to the friends, family and business associates of the individual respondents, at a price of 0.1868 cents per share;

- c) approximately 23.1 million to Blackburn, Kurichh and Greening (approximately 7.7 million each) at a price of 0.747 cents per share, as consideration for services under their respective consulting agreements with BGTT; and
- d) the approximately 30.5 million to BGH at a deemed aggregate value of approximately \$1.5 million, as referred to in paragraph 73 above.

[75] These transactions resulted in BGTT shares being issued for approximately five cents per share through the BGH agreements, but for fractions of a cent to BGH's principals and their family, friends and business associates.

[76] Following these share issuances, Blackburn, Kurichh and Greening held 60% of BGTT's shares, while the family, friends and business associates of BGTT's principals held 28%. BGH's retail shareholders' interest in the business was reduced from 40% (see paragraph 70 above) to a right to the remaining 12% interest in BGTT, through a proposed return of capital.

b) Amalgamation

[77] Between June and November 2012, Golden Cross made five separate loans to BGH and BGTT, totalling approximately \$2.5 million, in respect of which Blackburn signed the promissory notes on behalf of both corporations.

[78] On May 29, 2013, the amalgamation of BGTT with Golden Cross was completed. The 102 million outstanding shares of BGTT were exchanged for shares of Golden Cross at a ratio of approximately 0.37 shares of Golden Cross for one share of BGTT. The closing price of Golden Cross shares on the day of the amalgamation was \$0.19, fixing the total value of the transaction at approximately \$7.2 million.

c) Disclosure to shareholders

[79] The December 2010 information package referred to in paragraph [40], above asserted that the value of Canadian licences held by BGH was \$100 million.

[80] In the summer of 2012, two draft reports were obtained from different independent firms, which reports assessed the fair market value of some or all of the assets of BGH and/or BGTT:

- a) a July 2012 report assessing the value of all assets of the Blue Gold Group (including BGH and BGTT), being the patents and licences as well as the potential contracts referred to in paragraph [50] above as being approximately \$32 million; and
- b) an August 2012 report assessing the value of the intangible assets of Blue Gold Group (principally the University of Saskatchewan licence and the patents assigned by Moya) as being approximately \$9 to \$10 million.

[81] Neither draft report was disclosed to BGH shareholders.

d) Conclusion

[82] Through the transfer of rights from BGH to BGTT, the dilution of the BGH retail shareholders' overall interest in the enterprise, and the failure to disclose to those shareholders the valuations received, the retail shareholders were fraudulently deprived of any opportunity they might have had to challenge the sequence of transactions. The respondents cannot benefit from our inability to know for certain whether the shareholders, had they been fully apprised of the principals' intentions and the draft valuations, would have successfully blocked the transactions or obtained compensation or other relief.

4. Findings as to Fraud

[83] For the reasons set out above, we conclude that BGH and Kurichh fraudulently:

- a) misrepresented that BGH had secured more business than it actually had;
- b) misrepresented that BGH had obtained government approval of its activities;
- c) diverted investor funds for Blackburn's personal benefit; and
- d) diluted the interests of BGH's retail shareholders.

F. Kurichh's and Greening's liability for BGH's breaches of the Act

[84] In seeking to hold Kurichh and Greening responsible for BGH's breaches of the *Act*, Staff relies on section 129.2, which provides:

For the purposes of this *Act*, if a company... has not complied with Ontario securities law, a director or officer of the company... who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law...

[85] Kurichh admits that he was an active principal in BGH's activities throughout the material time. He submits that he was Blackburn's "puppet" and that he believed Blackburn was at all times acting on the basis of sound legal advice. Kurichh acknowledges, however, that he ought to have done his own due diligence.

[86] While Kurichh did not join the board of BGH until December 2012, he was an officer throughout the material time. This was not a large corporation in which some officers might justify being unaware of some of the corporation's activities. Kurichh was one of only three principals of the corporation, was fully involved in its activities, and is therefore responsible for each of BGH's contraventions of Ontario securities law, in addition to his own breaches described above. It is not sufficient for an officer in Kurichh's position to claim that he or she simply played along with the directions of others.

[87] While Greening was less involved, as a director and officer of BGH throughout the material time, he executed all necessary resolutions and, based on the evidence before us,

offered no challenge or objection to any steps taken by BGH. Even if he had merely turned a blind eye, we would conclude that he had “acquiesced” in BGH’s non-compliance with Ontario securities law. He is also, therefore, responsible for each of BGH’s contraventions.

IV. CONCLUSION

[88] For the reasons set out above, we conclude that:

- a) BGH, Kurichh and Greening engaged in the business of trading, without being registered, thereby contravening section 25 of the *Act*;
- b) BGH and Kurichh engaged in distributions of BGH shares without a prospectus, and their purported reliance upon the accredited investor exemption was not valid, as a result of which they contravened section 53 of the *Act*;
- c) BGH and Kurichh made representations that BGH would become a public company listed on the TSXV, and thereby contravened section 38 of the *Act*;
- d) with respect to Staff’s allegations of fraud,
 - i) Kurichh knowingly participated in BGH’s fraudulent misrepresentations regarding BGH’s sales pipeline and government approval of BGH’s activities;
 - ii) Kurichh actively participated in Blackburn’s fraudulent diversion of company funds to Blackburn’s personal use; and
 - iii) BGH and Kurichh fraudulently diluted the interests of BGH’s retail shareholders; and
- e) pursuant to section 129.1 of the *Act*, Kurichh and Greening are deemed to have contravened Ontario securities law, by virtue of their having acquiesced or actively participated in BGH’s breaches described above.

[89] Staff shall contact the Commission’s Office of the Secretary, copying all parties, within 15 days of these Reasons and Decision to arrange dates for a hearing regarding sanctions.

DATED at Toronto this 26th day of July, 2016.

“Alan Lenczner”

Alan Lenczner, Q.C.

“Janet Leiper”

Janet Leiper

“Timothy Moseley”

Timothy Moseley