

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c.S.5, as amended**

- and -

**EUGENE N. MELNYK, ROGER D. ROWAN, WATT CARMICHAEL INC.,
HARRY J. CARMICHAEL AND G. MICHAEL MCKENNEY**

**STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION**

Further to a Notice of Hearing issued on July 28, 2006, Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

The Respondents

1. Eugene N. Melnyk (“Melnyk”) is the Chairman of the Board of Directors of Biovail Corporation (“Biovail”). From December 2001 to October 2004, Melnyk was Chairman and Chief Executive Officer of Biovail. Melnyk resigned as CEO of Biovail on October 8, 2004. Melnyk became Executive Chairman of the Board in November 2004 and relinquished this title on June 27, 2006. He has been a director of Biovail since March 1994 when Biovail’s predecessors, Trimel Corporation and Biovail Corporation International, amalgamated. Melnyk is a Canadian citizen. He has resided in Barbados since 1991. Melnyk is, and was during the material time, an insider of Biovail within the meaning of subsection (1) of the *Securities Act* (Ontario) (the “Act”).

2. Watt Carmichael Inc. (“Watt Carmichael”) is registered as a broker and investment dealer under the Act, and is a participating organization of the Toronto Stock Exchange (the “TSX”) and a member of the Investment Dealers Association of Canada (the “IDA”).

3. Roger D. Rowan (“Rowan”) is, and was during the material time, the President and Chief Operating Officer of Watt Carmichael. Rowan was a director of Biovail from 1997 until his resignation in 2005 and was therefore, during that time, an insider of Biovail within the meaning of subsection (1) of the Act. Rowan also served as a member of the Biovail audit committee during his appointment as a director of Biovail. Rowan is, and was during the material time, the registered representative at Watt Carmichael with responsibility for trading in certain accounts, referred to below as the Conset, Congor and Southridge Accounts. As at December 31, 2005, Rowan owned approximately 29% of Watt Carmichael.

4. Harry J. Carmichael (“Carmichael”) is, and was during the material time, the Chairman and CEO of Watt Carmichael, and was registered as a trading officer/director at Watt Carmichael. As at December 31, 2005, Carmichael owned approximately 44% of Watt Carmichael.

5. G. Michael McKenney (“McKenney”) is, and was during the material time, registered as a trading officer and the Chief Compliance Officer and Chief Financial Officer of Watt Carmichael.

Other Entities

Biovail Corporation

6. Biovail is a reporting issuer in the province of Ontario within the meaning of subsection 1(1) of the Act. The common shares of Biovail are listed and posted for trading on the TSX and the New York Stock Exchange.

The Cayman Trusts

7. In 1996, Eugene Melnyk established the following trusts: the Conset Trust, the Congor Trust, the Southridge Trust, and the Archer Trust (collectively referred to as the “Trusts”). Melnyk was the settlor of the Trusts, and he was also listed as a beneficiary in the Deeds of Settlement for the Trusts. Other beneficiaries included family members (including

his wife and children) and certain friends of Melnyk. The trustees for each of the Trusts are located in the Cayman Islands (the “Trustees”).

8. The assets of the Trusts are held by investment companies and primarily consist of Biovail shares. The investment companies are the following: Conset Investments Limited (“Conset”), Congor Investments Limited (“Congor”), Southridge Management Limited (“Southridge”) and Archer Investments Limited (“Archer”) (collectively, the “Investment Companies”). These companies were incorporated under the laws of the Cayman Islands.

9. In 1996, Melnyk caused the transfer in excess of 1,100,000 Biovail shares to each of the Investment Companies from holdings of Biovail shares over which he exercised control or direction. In or about September 1996, in excess of 4 million shares were transferred to the Trusts, representing approximately 19% of the outstanding shares of Biovail at that time.

Canadian and U.S. Accounts

10. In 1996, trading accounts were opened at Watt Carmichael for Congor (the “Congor Account”), Conset (the “Conset Account”), Southridge (the “Southridge Account”) and Archer (the “Archer Account”). The Congor, Conset and Southridge Accounts at Watt Carmichael are referred to collectively as the “Watt Carmichael Accounts”.

11. Rowan is the registered representative for the Congor, Conset and Southridge Accounts. During the material time, while he was an insider of Biovail, Rowan exercised discretionary trading authority for the Congor and Conset Accounts pursuant to agreements authorizing him to operate discretionary accounts. In addition, Biovail repurchased its own shares during its 2002 Normal Course Issuer Bid through a brokerage account at Watt Carmichael. The registered representative for Biovail’s account at Watt Carmichael was Roger Rowan. Rowan was also the registered representative for the personal trading account(s) of Melnyk and his wife.

12. The Archer Account was transferred to BMO Nesbitt Burns (“BMO”) in 1996 (the “BMO Archer Account”). During the material time, a senior investment advisor and his daughter were the registered representatives for the BMO Archer Account. The senior investment advisor is, and was during the material time, a director of Biovail. His daughter was also the registered representative for Melnyk’s personal trading account(s) and his mother’s personal trading account.

13. U.S. trading accounts were opened in 1996 with Sands Brothers & Co. Ltd. (“Sands Brothers”) for Congor, and in 1997 with Monness Crespi, Hardt & Co. Inc. for Southridge (“Monness, Crespi”). In 2002, a U.S. trading account was opened with Lehman Brothers Inc. (“Lehman Brothers”) for Archer.

14. The Watt Carmichael Accounts, the BMO Archer Account, together with the U.S. trading accounts, are referred to collectively as the “Accounts”.

Rowan’s control or direction over Biovail securities held in Congor and Conset Accounts

15. During 2002, 2003, and 2004 Rowan exercised or shared control or direction in relation to trading in the common shares of Biovail and Biovail call options (in respect of common shares of Biovail) in the Congor and Conset Accounts. As noted above, during the material time, while Rowan was a director of Biovail, he exercised discretionary trading for the Congor and Conset Accounts pursuant to agreements authorizing him to operate discretionary accounts.

16. During 2002, while he was an insider of Biovail, Rowan engaged in discretionary trading in Biovail securities for the Conset and Congor Accounts:

- (a) Rowan purchased in excess of 4,800,000 Biovail common shares at a cost of approximately U.S. \$170,000,000, and sold in excess of 4,800,000 Biovail common shares for proceeds of approximately U.S. \$160,000,000 in the Conset Account;

(b) Rowan purchased in excess of 9,000 Biovail call options at a cost of approximately U.S. \$4,000,000 in the Conset Account; and

(c) Rowan purchased in excess of 1,700,000 Biovail common shares at a cost of approximately U.S. \$70,000,000, and sold in excess of 1,500,000 Biovail common shares for proceeds of approximately U.S. \$60,000,000 in the Congor Account.

17. Similarly, during 2003, while Rowan was an insider of Biovail, he engaged in discretionary trading in Biovail securities for the Conset and Congor Accounts:

(a) Rowan purchased in excess of 7,800,000 Biovail common shares at a cost of approximately U.S. \$265,000,000, and sold in excess of 8,800,000 Biovail common shares for proceeds of approximately U.S. \$290,000,000 in the Conset Account;

(b) Rowan purchased in excess of 12,000 Biovail call options at a cost of approximately U.S. \$4,000,000 in the Conset Account;

(c) Rowan exercised Biovail call options to purchase in excess of 900,000 Biovail common shares at a cost of approximately U.S. \$25,000,000 in the Conset account; and

(d) Rowan purchased in excess of 25,000 Biovail common shares at a cost of approximately U.S. \$1,000,000, and sold in excess of 650,000 Biovail common shares for proceeds of approximately \$25,000,000 in the Congor Account.

18. During 2004, while Rowan was an insider of Biovail, he engaged in discretionary trading in Biovail securities for the Conset and Congor Accounts:

(a) Rowan purchased in excess of 150,000 Biovail shares at a cost of approximately U.S. \$2,000,000, and sold in excess of 350,000 Biovail shares for proceeds of approximately \$6,000,000 in the Conset Account; and

(b) Rowan sold 1,700 Biovail shares for proceeds in excess of U.S. \$30,000 in the Congor Account.

Rowan's Trading in Southridge Account

19. During 2002, 2003, and 2004, while Rowan was an insider of Biovail, he engaged in trading in Biovail securities for the Southridge Account:

(a) Rowan purchased in excess of 600,000 Biovail common shares at a cost of approximately U.S. \$25,000,000, and sold in excess of 700,000 Biovail common shares for proceeds of approximately U.S. \$30,000,000 during 2002;

(b) Rowan purchased in excess of 3,500 Biovail call options (in respect of common shares of Biovail) at a cost of approximately U.S. \$2,000,000 during 2002;

(c) Rowan purchased in excess of 800,000 Biovail common shares at a cost of approximately U.S. \$25,000,000 and sold in excess of 800,000 Biovail common shares for proceeds of approximately U.S. \$25,000,000 during 2003; and

(d) Rowan sold in excess of 375,000 Biovail common shares at a cost of approximately U.S. \$8,000,000 during 2004.

20. Rowan purported to exercise discretionary trading authority in relation to trading in Biovail securities held in the Southridge Account. In fact, Rowan was not authorized to engage in discretionary trading, and the account was not documented as a discretionary trading account.

Commissions from trading in Watt Carmichael Accounts

21. During 2003, commissions in excess of \$1.4 million were generated in the Conset, Congor and Southridge Accounts as a result of Rowan's trading activity. Also, significant commissions were generated in relation to the Watt Carmichael Accounts during 2002 as a result of Rowan's trading activity. Watt Carmichael received the commissions generated from these accounts. As a 29% shareholder of Watt Carmichael, Rowan benefited substantially from net income distributed to him as a result of commissions earned from trading in Biovail securities in the Congor, Conset and Southridge Accounts.

Melnyk's control or direction over Biovail securities held in Canadian and U.S. Accounts

22. During the material time, Melnyk exercised or shared control or direction over the Biovail common shares and call options held in the Accounts described above. Melnyk exercised or shared control or direction over the Biovail common shares and call options with other persons, namely Rowan in relation to the Watt Carmichael Accounts, and/or the Trustees in respect of the Accounts.

23. Particulars concerning the manner in which Melnyk exercised or shared control or direction over Biovail securities in the Accounts include the following:

(a) Melnyk provided recommendations and/or directions in relation to the opening of certain Accounts at the Canadian and U.S. firms, and directions in relation to the transfer of Biovail common shares between Accounts;

(b) Melnyk provided his approval and/or directions in relation to certain acquisitions or dispositions of Biovail common shares held in the Accounts. Melnyk communicated his approval or directions to certain Trustees and/or registered representatives at the Canadian and U.S. brokerage firms in respect of such acquisitions or dispositions either directly or through his assistant;

(c) Between April 1998 and December 2003, Melnyk requested and received from the Trusts loans in the amounts of U.S. \$88,375,778 and Cdn. \$4,050,830. As at December 7, 2005, the outstanding amounts owed by Melnyk (principal together with compounded interest at 6%) are U.S. \$100,184,324.39 and Cdn. \$5,150,864.85. Melnyk directed that a certain number of Biovail common shares be sold to generate sufficient proceeds in order to fund the loans. At other times, Melnyk requested loans from the Trustees and knew or should have known that the Trustees were required to sell Biovail common shares in order to fund the loans; and

(d) During the material time, Melnyk, through his assistant, communicated instructions or directions in relation to the manner in which Biovail common shares in the Trusts should be voted at Biovail annual general meetings to certain Trustees and/or certain registered representatives for the Accounts.

24. In addition to the foregoing, during the material time, Melnyk retained an indirect beneficial interest in the Biovail common shares and call options held in the Trusts.

25. During 2002, the following trading in Biovail common shares and call options occurred in the Accounts:

(a) acquisitions in excess of 4,800,000 Biovail common shares at a cost of approximately U.S. \$170,000,000, and dispositions in excess of 4,800,000 Biovail common shares for proceeds of approximately U.S. \$160,000,000 in the Conset Account at Watt Carmichael;

(b) acquisitions of 9,000 Biovail call options (in respect of common shares of Biovail) at a cost of approximately U.S. \$4,000,000 in the Conset Account at Watt Carmichael;

(c) acquisitions in excess of 1,700,000 Biovail common shares at a cost of approximately U.S. \$70,000,000, and dispositions of 1,500,000 Biovail common

shares for proceeds of approximately U.S. \$60,000,000 in the Congor Account at Watt Carmichael;

(d) acquisitions in excess of 600,000 Biovail common shares at a cost of approximately U.S. \$25,000,000, and dispositions in excess of 700,000 Biovail common shares for proceeds of approximately U.S. \$30,000,000 in the Southridge Account at Watt Carmichael;

(e) acquisitions in excess of 3,500 Biovail call options (in respect of common shares of Biovail) at a cost of approximately U.S. \$2,000,000 in the Southridge Account at Watt Carmichael;

(f) acquisitions in excess of 640,000 Biovail common shares at a cost of approximately U.S. \$20,000,000, and dispositions in excess of 450,000 Biovail common shares for proceeds of approximately U.S. \$20,000,000 in the Congor Account at Sands Brothers; and

(g) dispositions of 100,000 Biovail common shares for proceeds of approximately U.S. \$5,000,000 in the Southridge Account at Monness Crespi.

26. During 2003, the following trading in Biovail common shares and call options occurred in the Accounts:

(a) acquisitions in excess of 7,800,000 Biovail common shares at a cost of approximately U.S. \$265,000,000, and dispositions in excess of 8,800,000 Biovail common shares for proceeds of approximately U.S. \$290,000,000 in the Conset Account at Watt Carmichael;

(b) acquisitions in excess of 12,000 Biovail call options (in respect of Biovail common shares) at a cost of approximately U.S. \$4,000,000 in the Conset Account at Watt Carmichael;

(c) the exercise of Biovail call options to purchase 900,000 Biovail common shares at a cost of approximately U.S. \$25,000,000 in the Conset account at Watt Carmichael;

(d) acquisitions in excess of 25,000 Biovail common shares at a cost of approximately U.S. \$1,000,000, and dispositions in excess of 650,000 Biovail common shares for proceeds of approximately U.S. \$25,000,000 in the Congor Account at Watt Carmichael;

(e) acquisitions in excess of 800,000 Biovail common shares at a cost of approximately U.S. \$25,000,000, and dispositions in excess of 800,000 Biovail common shares for proceeds of approximately U.S. \$25,000,000 in the Southridge Account at Watt Carmichael;

(f) dispositions in excess of 1,300,000 Biovail common shares for proceeds of approximately U.S. \$30,000,000 in the Archer Account at BMO Nesbitt Burns;

(g) acquisitions of 300,000 Biovail common shares at a cost of approximately U.S. \$8,000,000, and dispositions in excess of 450,000 Biovail common shares for proceeds of approximately U.S. \$8,000,000 in the Archer Account at Lehman Brothers; and

(h) acquisitions of 300,000 Biovail common shares at a cost of approximately U.S. \$5,000,000 in the Southridge Account at Monness Crespi.

27. During 2004, the following trading in Biovail common shares occurred in the Accounts at Watt Carmichael:

(a) acquisitions of in excess of 150,000 Biovail common shares at a cost of approximately U.S. \$2,000,000, and dispositions in excess of 350,000 Biovail

common shares for proceeds of approximately U.S. \$6,000,000 in the Conset Account;

(b) dispositions of 1,700 Biovail common shares for proceeds of approximately U.S. \$30,000 in the Congor Account; and

(c) dispositions in excess of 375,000 Biovail common shares at a cost of approximately U.S. \$8,000,000 in the Southridge Account.

Current Status of Trusts and Accounts

28. During 2004 and 2005, Melnyk transferred the assets of the four Trusts to four new trusts (referred to as the Breakwater, Edgewater, South Point and Highwater trusts). In particular, the Investment Companies described in paragraph 8 above were transferred to the new trusts.

29. As at February 2006, the Canadian and U.S. Accounts held in the aggregate 9,408,232 Biovail common shares, as particularized below:

- (a) 827,500 shares in the Southridge Account at Watt Carmichael;
- (b) 2,113,385 shares in the Southridge Account at Monness Crespi;
- (c) 676,566 shares in the Conset Account at Watt Carmichael;
- (d) 3,495,841 shares in the Congor Account at Watt Carmichael; and
- (e) 2,294,940 shares in the Archer Account at Lehman Brothers.

Reporting requirements under Ontario securities law

30. Section 107 of the Act requires insiders to file insider reports in respect of securities of reporting issuers over which the insiders have “beneficial ownership” or “control or direction”.

31. Specifically, section 107 of the Act provides as follows:

(1) A person or company who becomes an insider of a reporting issuer other than a mutual fund, shall, within ten days from the day that he, she or it becomes an insider, or such shorter period as may be prescribed by the regulations, file a report as of the day on which he, she or it became an insider disclosing any direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as may be required by the regulations.

(2) An insider who has filed or is required to file a report under this section or any predecessor section and whose direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer changes from that shown or required to be shown in the report or in the latest report filed by the person or company under this section or any predecessor section shall, within 10 days from the day on which the change takes place, or such shorter period as may be prescribed by the regulations, file a report of direct or indirect beneficial ownership of or control or direction over securities of the reporting issuer as of the day on which the change took place and the change or changes that occurred, giving any details of each transaction as may be required by the regulations.

32. The term “insider” is defined in subsection 1(1) of the Act to include a director and senior officer of the reporting issuer, as well as any person who beneficially owns, directly or indirectly, or exercises control or direction over more than 10% of the voting securities of the reporting issuer.

33. In the alternative, in the event that the “insider” is not required to file reports under section 107 of the Act in respect of a transaction involving securities of the reporting issuer, Multilateral Instrument 55-103 *Insider Reporting for Certain Derivative Transactions* (“MI 55-103”) sets out certain additional insider reporting requirements. In particular, subsection 2.1 provides as follows:

Section 2.1 Reporting Requirement – If an insider of a reporting issuer:

(a) enters into, materially amends or terminates an agreement, arrangement or understanding of any nature or kind, the effect of which is to alter, directly or indirectly,

- (i) the insider’s economic interest in a security of the reporting issuer, or
- (ii) the insider’s economic exposure to the reporting issuer; and

(b) the insider is not otherwise required to file an insider report in respect of such event under any provision of Canadian securities legislation, then the insider shall file a report in accordance with Section 3.1 of this Instrument.

34. MI 55-103 came into force on February 28, 2004. Sections 2.3 and 3.1 of MI 55-103 require an insider to disclose the existence and material terms of pre-existing arrangements that were entered into prior to the effective date and continue in force after the effective date:

2.3 Existing agreements which continue in force -- If an insider of a reporting issuer, prior to the effective date of this Instrument, entered into an agreement, arrangement or understanding in respect of which

- (a) the insider would have been required to file an insider report under this Instrument if the agreement, arrangement or understanding had been entered into on or after the effective date, and
- (b) the agreement, arrangement or understanding remains in effect on or after the effective date of this Instrument,

then the insider shall file a report in accordance with Section 3.2 of this Instrument.

...

3.2 A person or company who is required under Section 2.3 of this Instrument to file a report shall, within 10 days, or such shorter period as may be prescribed, from the effective date of this Instrument, file a report in the form prescribed for insider reports under securities legislation disclosing the existence and material terms of the agreement, arrangement or understanding.

Rowan's Failure to file Insider Reports under Section 107 of the Act

35. As noted above, Rowan was an insider of Biovail. Rowan exercised or shared control or direction in relation to the trading of the securities in Biovail described above. Subsection 107(2) of the Act required Rowan to file a report of each change in the holdings of Biovail securities held in each of the Congor and Conset Accounts within ten days of the day the change took place.

36. While an insider of Biovail, Rowan executed numerous trades in the Congor and Conset Accounts, as particularized above. Rowan repeatedly breached the requirements contained in Ontario securities law by failing to file any insider reports in respect of the numerous trades executed in 2002, 2003 and 2004 contrary to subsection 107(2) of the Act. Rowan has not filed any insider reports in relation to these trades to date.

Rowan's Unauthorized Trading in the Southridge Account

37. Rowan purported to exercise discretionary trading authority in the Southridge Account as described above. In fact, Rowan did not have discretionary trading authority for the Southridge Account. Rowan engaged in improper trading contrary to the Know Your Client requirements set out in subsection 1.5(1) of OSC Rule 31-505 and contrary to the public interest.

Melnyk's Failure to File Insider Reports under Section 107

38. As noted above, Melnyk was an insider of Biovail. Melnyk exercised or shared control or direction in relation to the securities of Biovail which were purchased or sold in the Accounts as described above.

39. During the material time, there have been in excess of 5,000 trades in Biovail securities in the Accounts. Subsection 107(2) of the Act required Melnyk to file a report for each change in his holdings of any securities over which he has control or direction within ten days of the day the change took place. The Biovail securities held in each of the Accounts were securities over which Melnyk had control or direction and thus formed part of his holdings. The trades described above constituted changes to such holdings.

40. Melnyk repeatedly breached Ontario securities law by failing to file any insider reports in respect of the numerous trades in Biovail common shares in 2002, 2003 and 2004 as described above, contrary to subsection 107(2) of the Act. Melnyk has not filed any reports in relation to these trades to date. In addition, in failing to file those insider reports,

Melnyk acted contrary to the public interest by failing to disclose his complete holdings (and changes in his holdings) to the public.

Melnyk's Failure to Disclose Existence and Material Terms of Trust Arrangements in 2004

41. In the alternative to the allegations referred to above, Melnyk has failed to file, and to date has not filed, any insider report in accordance with the requirements of Ontario securities law as set out in MI-55-103. Specifically, in March 2004, Melnyk became subject to a requirement to file an insider report disclosing the existence and material terms of the trust arrangements pursuant to sections 2.3 and 3.2 of MI 55-103, but failed to comply, and to date has not complied, with this requirement.

Melnyk's Failure to File Early Warning Press Releases and Reports under s. 101 of the Act

42. Melnyk failed to issue and file early warning press releases and failed to file early warning reports in accordance with the requirements contained in section 101 of the Act and section 3.1 of National Instrument 62-103. Specifically, past early warning press releases and reports filed by Melnyk under section 101 of the Act should have disclosed the securities held by the Trusts, that the Trusts are family trusts established by Melnyk, that he exercised control or direction over Biovail securities held in the Accounts, and that these securities formed part of his holdings.

Melnyk's Failure to Comply with Control Block Distribution Rules

43. As described above, Melnyk exercised or shared control or direction over the Biovail securities held in the Accounts. During the material time, the Biovail common shares held in the Accounts, when combined with Melnyk's other holdings, formed an aggregate of over 20% of the outstanding common shares of Biovail that would be a control block as described in clause (c) of the definition of "distribution" in subsection 1(1) of the Act. As such,

Melnyk was subject to control block distribution rules contained in Ontario securities law and any sale of Biovail securities by the Trusts would either have to be qualified by a prospectus or conducted in reliance upon, and in accordance with the terms of, an exemption from the prospectus requirements contained in Ontario securities law.

44. In particular, during the material time on or after November 30, 2001, Melnyk failed to comply with the requirements of Section 2.8 of Multilateral Instrument 45-102 *Resale of Securities*, and the requirements contained in Form 45-102F3 (Notice of Intention to Distribute Securities and Accompanying Declaration) (now Form 45-102F1). Specifically, Melnyk failed to file the required form in relation to any sale on a stock exchange of Biovail securities over which he exercised or shared control or direction in the Accounts, and thereby failed to file the required certificates in the form specified by Form 45-102F3 (now Form 45-102F1). Among other requirements, Melnyk was required to make declarations that he had no knowledge of any material fact or material change with respect to Biovail which had not been generally disclosed by Biovail. During the material time prior to November 30, 2001, Melnyk failed to comply with the comparable predecessor requirements in subsection 72(7) of the Act and in the regulations.

Biovail Management Proxy Circulars

45. In April 2002 and 2003, Biovail prepared Management Proxy Circulars in connection with the solicitation of proxies to be used at the Annual Meetings of the Shareholders of Biovail to be held on June 25, 2002 and June 20, 2003, respectively.

46. Biovail was required to send these Circulars, by virtue of clause 86(1)(a) of the Act. At the time, section 176 of Ontario Regulation 1015 to the Act required an information circular to contain the information prescribed by Form 30 (now Form 51-102F5 under National Instrument 51-102 *Continuous Disclosure Obligations*).

47. Item 5 (para. vii) of Form 30 required disclosure of the following:

State the number of securities of each class of voting securities of the reporting issuer or of any subsidiary of the reporting issuer beneficially owned, directly or indirectly or over which control or direction is exercised by each proposed director.

Melnyk's Failure to make Required Disclosures in Circulars

48. Biovail's 2002 Management Proxy Circular (the "Biovail's 2002 Circular") discloses information concerning the number of Biovail common shares beneficially owned directly or indirectly or over which control or direction is exercised by directors as at April 30, 2002. As a director, Melnyk was required to provide complete and accurate information to Biovail to be disclosed in the 2002 Circular. During the material time, item 5(1)(vii) of Form 30 of the Regulation to the Act (now item 7.1(f) of Form 51-102F5), required disclosure of the number of voting shares directly or indirectly owned or over which control or direction is exercised by all proposed directors in the Management Information Circular.

49. Biovail's 2002 Circular states that Melnyk beneficially owned directly or indirectly or exercised control or direction over 25,097,816 Biovail common shares as at April 30, 2002 (or 16.7% of the outstanding common shares of Biovail). However, as at April 30, 2002, Melnyk exercised control or direction over an additional 12,674,603 Biovail common shares held in the following accounts: the Conset Account at Watt Carmichael; the Congor Accounts at Watt Carmichael and Sands Brothers; the Archer Account at BMO; and the Southridge Accounts at Watt Carmichael and Monness Crespi (for a total of 25.1% of the outstanding common shares of Biovail).

50. Biovail's 2003 Management Proxy Circular (the "Biovail's 2003 Circular") discloses information concerning the number of Biovail common shares beneficially owned directly or indirectly or over which control or direction is exercised by directors as at April 30, 2003. As a director, Melnyk was required to provide complete and accurate information to Biovail to be disclosed in the 2003 Circular.

51. Biovail's 2003 Circular states that Melnyk beneficially owned directly or indirectly or exercised control or direction over 26,101,816 Biovail common shares as at April 30, 2003 (or 16.57% of the outstanding common shares of Biovail). However, as at April 30, 2003, Melnyk exercised control or direction over an additional 12,293,917 Biovail common shares held in the following accounts: the Conset Account at Watt Carmichael; the Congor Accounts at Watt Carmichael; the Southridge Accounts at Watt Carmichael and Monness Crespi; and the Archer Accounts at BMO and Lehman Brothers (for a total of 24% of the outstanding common shares of Biovail).

52. Similarly, Melnyk has failed to provide complete and accurate information to Biovail concerning the number of Biovail common shares held in the Accounts over which he exercised control or direction, in relation to Biovail's 2004, 2005 and 2006 Circulars.

53. Melnyk engaged in conduct that was contrary to the public interest and contrary to the requirements of Ontario securities law in that he failed to ensure that Biovail filings concerning the number of Biovail common shares over which he exercised control or direction held in the Accounts were complete and accurate. As a result of Melnyk's failure to disclose this information, the disclosure contained in Biovail's Circulars for 2002 to 2006 in a material respect and at the time and in light of the circumstances under which it was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements in the Biovail Circulars not misleading. Specifically, Melnyk should have ensured that past management proxy circulars of Biovail disclosed, among other things:

- a) the Biovail securities held by the Trusts;
- b) that the Trusts are family trusts established by Melnyk;
- c) that Melnyk exercised or shared control or direction over the Biovail securities held by the Trusts; and
- d) that these securities formed part of Melnyk's holdings.

Rowan's failure to make disclosures in Biovail Circulars

54. As described above, as a director, Rowan was required to provide complete and accurate information to Biovail to be disclosed in the 2002 Circular. Biovail's 2002 Circular states that Rowan beneficially owned directly or indirectly or exercised control or direction over 1,217,953 Biovail common shares as at April 30, 2002. However, as at April 30, 2002, Rowan exercised or shared control or direction over, at least, an additional 2,353,402 Biovail common shares held in the Watt Carmichael Accounts.

55. Rowan was required to provide complete and accurate information to Biovail to be disclosed in the 2003 Circular. The 2003 Circular states that Rowan beneficially owned directly or indirectly or exercised control or direction over 1,190,403 Biovail common shares as at April 30, 2003. However, as at April 30, 2003, Rowan exercised or shared control or direction over, at least, an additional 1,777,336 Biovail common shares in the Watt Carmichael Accounts.

56. Similarly, Rowan failed to provide complete and accurate information to Biovail concerning the number of Biovail common shares held in the Congor and Conset Accounts, over which he exercised or shared control or direction in relation to the Biovail 2004 Circular.

57. Rowan engaged in conduct that was contrary to the public interest in that he failed to provide complete and accurate information to Biovail concerning the number of Biovail common shares over which he exercised control or direction. As a result of Rowan's failure to disclose this information, the disclosure contained in Biovail's 2002, 2003 and 2004 Circulars concerning the foregoing in a material respect and at the time and in light of the circumstances under which it was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements in the Biovail Circulars not misleading. Specifically, Rowan should have advised Biovail that he exercised or shared control or direction over the Biovail securities held in the Congor and Conset Accounts at Watt Carmichael, and that such securities should be disclosed in the Biovail

Circular, as forming part of his holdings in Biovail securities over which he exercised control or direction.

Trading in Accounts during Biovail Trading Blackout Periods: 2002 and 2003

58. During 2002, there were three periods in which trading by the Biovail Board of Directors and employees was prohibited (referred to the “Biovail Blackout Periods”). The Biovail Blackout Periods in 2002 were as follows: February 7 to April 29, 2002 (including the Blackout Periods relating to the Q4/2001 and Q1/2002 earnings announcements and Biovail’s normal course issuer bid); July 16, 2002 to July 29, 2002; and October 18, 2002 to October 31, 2002).

59. During 2003, there were four periods in which trading by the Biovail Board of Directors and employees was prohibited. The Biovail Blackout Periods in 2003 were as follows: February 21, 2003 to March 6, 2003; April 18, 2003 to May 1, 2003; July 14, 2003 to July 31, 2003; and September 30, 2003 to November 3, 2003.

60. Melnyk and Rowan attended a number of board and audit committee meetings and received material undisclosed information concerning Biovail prior to and/or at the time of certain meetings. In particular, during 2002 and 2003, Melnyk and Rowan received the Biovail Management Reports in relation to the release of Biovail’s quarterly earnings announcements. The Biovail Blackout Periods were in effect seven days prior to and two days following the release of quarterly and annual financial statements, and in some cases, for extended periods.

61. In 2002, Rowan engaged in trading of Biovail common shares in the Conset, Congor and Southridge Accounts at Watt Carmichael during each of the Biovail Blackout Periods. Specifically, there were acquisitions in excess of 2,000,000 Biovail common shares at a cost of approximately U.S. \$100,000,000, and dispositions in excess of 2,000,000 Biovail common shares for proceeds of approximately U.S. \$90,000,000 during the 2002 Blackout Periods.

62. In 2003, Rowan engaged in trading of Biovail common shares in the Conset, Congor, and Southridge Accounts at Watt Carmichael during each of the Biovail Blackout Periods. Specifically, there were acquisitions in the Watt Carmichael Accounts in excess of 2,200,000 Biovail common shares at a cost of approximately U.S. \$75,000,000, and acquisitions of 10,000 call options for proceeds of approximately U.S. \$4,000,000 (in respect of common shares of Biovail). Further, 300,000 Biovail call options (in respect of common shares of Biovail) were exercised at a cost of approximately U.S. \$10,000,000, and in excess of 2,700,000 Biovail common shares were sold from the Watt Carmichael Accounts for proceeds of approximately U.S. \$90,000,000.

63. Further, in 2003, 360,000 Biovail common shares were sold for proceeds of approximately U.S. \$10,000,000 from the BMO Account for Archer. In 2003, 300,000 Biovail common shares were sold for proceeds of approximately U.S. \$8,000,000 in the Lehman Brothers Archer Account.

64. Biovail adopted a policy effective December 5, 2001 entitled “Insider Trading, Reporting and Blackout Policy”. The Biovail Insider Trading, Reporting and Blackout Policy stated, among other things, the following:

It is illegal for any director, officer or employee of the Company or any subsidiary of the Company to trade in the securities of the Company while in the possession of material non-public information concerning the Company. It is also illegal for any director, officer or employee of the Company to give material non-public information to others who may trade on the basis of that information. In order to comply with applicable securities laws governing (i) trading in Company securities while in the possession of material non-public information concerning the Company and (ii) tipping or disclosing material non-public information to outsiders, and in order to prevent the appearance of improper trading or tipping, the Company has adopted this Insider Trading Policy for all of its directors, officers and employees, members of their families and others living in their households, and investment partnerships and other entities (such as trusts and corporations) over which such directors, officers or employees have or share voting or investment control.

Directors, officers and employees are responsible for ensuring compliance by their families and other members of their households and entities over which they exercise voting or investment control.

This Insider Trading Policy applies to any and all transactions in the Company's securities, including its common shares and options to purchase common shares, warrants and any other type of securities that the Company may issue in the future.

....

Black-Out Periods

There is a mandatory seven (7) days blackout period for all employees of the Company prior to the release of quarterly and annual financial statements which shall continue until two (2) trading days after the time such information has been released to the public.

...

... Accordingly, effectively immediately, if any Member of the Board, Corporate Officer or Divisional Officer, intends to trade in the Company's shares, such person must inform either the Chairman of the Board or the Chief Legal Officer in advance so that a determination may be made as to whether there is any corporate reason to prevent such trading.

65. Section 76(1) of the Act prohibits trading by insiders with knowledge of material facts with respect to the reporting issuer that have not been generally disclosed. National Policy 51-201 *Disclosure Standards* (NP 51-201), provides guidance on best disclosure practices to ensure that everyone investing in securities has equal access to information which may affect their investment decisions. Part VI of NP51-201 deals with best practices in the disclosure of material information and section 6.11 provides specific guidance regarding insider trading policies and blackout periods. Further, Multilateral Policy 34-202 also provides guidance to registrants acting as corporate directors.

66. During the material time, Melnyk received and reviewed the statements for all Accounts including the Watt Carmichael Accounts. Therefore, Melnyk knew or should have known that Rowan engaged in trading in Biovail common shares in the Conset, Congor and Southridge Accounts during the Biovail Blackout Periods in 2002 and 2003, and that Rowan

continued to trade prior to certain earnings releases in 2002 and 2003, including in circumstances where Rowan received material undisclosed information, namely, the Biovail Management Reports.

Rowan's conduct contrary to the public interest and s. 76(1) of the Act

67. During 2002 and 2003, Rowan engaged in conduct contrary to the public interest in that he engaged in discretionary trading in Biovail securities in the Watt Carmichael Accounts during Biovail Blackout Periods during 2002 and 2003. In particular, Rowan failed to adhere to the requirements of Biovail's "Insider Trading, Reporting and Blackout Policy" in circumstances where he had knowledge of material non-public information concerning Biovail, or in circumstances where there was an appearance of improper trading having regard to his multiple roles as a director of Biovail and member of Biovail's audit committee, and his position as the President of Watt Carmichael and registered representative for the Congor, Conset and Southridge Accounts. Further, Rowan breached the requirements contained in subsection 76(1) of the Act in that he had knowledge of material undisclosed information, namely information contained in Biovail's Management Reports, prior to certain earnings releases, and continued to engage in trading in the Congor, Conset and/or Southridge Accounts.

Melnyk's conduct contrary to the public interest in relation to trading in Watt Carmichael Accounts during Biovail Blackout Periods

68. Having regard to Melnyk's positions as Chairman of the Board and CEO of Biovail and Biovail "Insider Trading, Reporting and Blackout Policy" applicable to the company's directors, Melnyk engaged in conduct contrary to the public interest in that he failed to take any steps to direct Rowan to cease trading in Biovail common shares during the Biovail Blackout Periods. In addition, Melnyk knew or should have known that Rowan continued to trade in Biovail common shares held in the Conset, Congor and Southridge Accounts during 2002 and 2003 in circumstances where Rowan received material undisclosed information prior to certain earnings releases as described above.

69. Further, Melnyk engaged in conduct contrary to the public interest in that he approved trades in Biovail common shares during the Biovail Blackout Period in October 2003. Specifically, on October 3, 2003, Melnyk approved a purchase of 300,000 Biovail common shares in the Archer Account held at Lehman Brothers. Also, on October 22, 2003, Melnyk arranged for a matched trade between Archer (BMO) and Conset (Watt Carmichael). Specifically, Melnyk knew or should have known that 360,000 Biovail common shares were sold by Archer to Conset in order to generate proceeds for a loan to Melnyk of \$10 million.

IDA Staff were materially misled

70. On January 21, 2000, the IDA notified Harry Carmichael, Chairman and CEO of Watt Carmichael, that IDA Staff had completed a Sales Compliance Review of Watt Carmichael and requested various documents and information, including documents and information concerning the Conset and Congor Accounts. Specifically, the IDA requested Watt Carmichael to provide copies of the trust agreements for both the Conset and Congor Accounts and to state the identity of the beneficial owners of these accounts.

71. Watt Carmichael sent a response on March 29, 2000 to the IDA regarding IDA inquiries set out in a letter from the IDA dated January 21, 2000.

72. On May 24, 2000, the IDA requested information from Watt Carmichael in relation to items that the IDA identified as having not been adequately addressed in Watt Carmichael's response dated March 29, 2000. Specifically, the IDA stated that Watt Carmichael's response did not satisfy the IDA's previous request to identify the beneficial owner(s) of the Congor and Conset Accounts. The IDA stated, among other things:

“... As mentioned in our 1999 SCR [Sales Compliance Review of Watt Carmichael] the activities surrounding Mr. Eugene Melnyk's involvement in the Conset and Congor accounts do raise concerns regarding the beneficial ownership of these accounts since it appears that the Biovail holdings in these accounts may form part of Mr. Melnyk's control position.

... In addition, please forward any further documents that would identify the beneficial owners of the Conset and Congor accounts and documents to ascertain whether the Biovail holdings in these accounts form part of Mr. Melnyk's control position in Biovail."

73. The IDA requested further documents that would identify the beneficial owners of the Conset and Congor Accounts and documents to ascertain whether the Biovail holdings in these accounts formed part of Melnyk's control position in Biovail.

74. Following receipt of the IDA request, Rowan sent a memo dated June 7, 2000 to Melnyk with a copy of the IDA letter dated May 24, 2000 referred to above. In the memo, Rowan stated among other things:

"...Eugene, can we provide the IDA with some suitable response to get them to go away....If you do not wish to disclose the beneficiaries to the IDA (I don't see any harm in doing so), is there some declaration we can provide the IDA which states that Eugene Melnyk is not a beneficiary of the trust and therefore has no beneficial ownership in them. If we can provide the above, I am confident that we can get the IDA to go away. Please call me regarding this."

75. At the time of the Rowan memo to Melnyk, Melnyk was listed as a beneficiary in the Deeds of Settlement for each of the Congor and Conset Trusts. Subsequent to Rowan's memo of June 7, 2000 to Melnyk, attempts were made by Melnyk to secure written confirmation from the Congor and Conset Trustees that Melnyk was not a beneficiary of either of the Congor or Conset Trusts. Similar requests were sent to the Trustees of Archer and Southridge.

76. In response to such requests, Melnyk received a letter from the Congor Trustees dated July 17, 2000 listing Melnyk as a beneficiary of the Congor Trust, together with other family members, as reflected in the Congor Deed of Settlement. Melnyk also received a letter dated July 17, 2000 from the Conset Trustees stating that "...the beneficiaries include the following...". The Conset Trustee provided a list of the beneficiaries other than Melnyk who were listed in the Deed of Settlement. In fact, the Conset Deed of Settlement listed Eugene Melnyk, the Settlor of the Trust, as a beneficiary, together with other beneficiaries, including family members of Melnyk.

77. The Southridge Trustees responded to Melnyk's request by fax on July 13, 2000. The Trustees wrote:

"Your original fax requested that the names of the beneficiaries be listed excluding the Settlor. The beneficiaries listed in the Trust Deed include the Settlor. For completeness and avoidance of doubt the Settlor has been included in the list provided to Mr. Melnyk."

Along with the fax, the Southridge Trustees sent a list of the Southridge Trust beneficiaries that included Melnyk.

78. The Archer Trustees responded to Melnyk's Request on July 14, 2000 with a letter listing the beneficiaries of the trust that did not include Melnyk. In fact, the Archer Deed of Settlement listed Eugene Melnyk, the Settlor of the Trust, as a beneficiary, together with other beneficiaries, including family members of Melnyk.

79. On July 17, 2000, Melnyk's assistant forwarded to Rowan the aforementioned letters from the Congor and Conset Trustees. As noted above, these letters included the list of the beneficiaries of each of the Congor and Conset Trusts as described above.

80. By letters dated July 24, 2000 from Melnyk to each of the Conset and Congor Trustees, Melnyk indicated that he revocably disclaimed his interest in the Conset and Congor Trusts. In particular, Melnyk's letter stated:

"Please note that this disclaimer of interest is revocable and may be revoked by me by letter in writing to you."

81. Melnyk's U.S. counsel provided to Watt Carmichael a letter addressed to the IDA dated August 1, 2000, stating among other things:

"Under the law of Cayman Islands, which governs those trusts, the identity of the beneficiaries of the Trusts is a matter of strictest confidence. Nonetheless, we have recently received written confirmation from each of the respective trustees of the Congor Trust and the Conset Trust regarding the current beneficiaries to the Trusts, and we have been authorized to confirm that Eugene Melnyk is not a beneficiary of either Trust. Nor, of course, is he a trustee of the Trusts."

82. Rather than provide to IDA Staff the lists of the beneficiaries of the Conset and Congor Trusts, Watt Carmichael responded to the IDA inquiries on August 10, 2000 by delivering to the IDA a copy of the letter dated August 1, 2000 above.

83. Rowan, as President of Watt Carmichael and the registered representative for the Congor and Conset Accounts, engaged in conduct contrary to the public interest. Specifically, having regard to the requests for information made by the IDA, and the information available to Rowan concerning the identity of the beneficiaries as set out in letters from the Congor and Conset trustees dated July 17, 2000, Rowan knew or should have known that the Watt Carmichael letter dated August 10, 2000 to the IDA (enclosing the AugU.S.t 1, 2000 letter noted above) provided responses that were misleading or untrue or did not state facts that were required to be stated to make the statements not misleading.

84. Melnyk knew or should have known that the statements contained in the August 1, 2000 letter to the IDA were misleading or untrue or did not state a fact that was required to be stated to make the statements not misleading. In particular, the IDA Staff were not informed of the following: that Melnyk was listed as a beneficiary in the Deeds of Settlement for the Congor and Conset Trusts, the identity of the other beneficiaries of the Congor and Conset Trusts (which included Melnyk's immediate family) as set out in the Deeds of Settlements for the Trusts and letters from the Trustees dated July 17, 2000, as described above; and that Melnyk revocably (rather than irrevocably) disclaimed his interest in the Congor and Conset Trusts as reflected in his letters dated July 24, 2000 to the Congor and Conset Trustees.

Watt Carmichael and Rowan Materially Misled OSC Staff

85. During Staff's investigation, Rowan and Watt Carmichael failed to produce documents and information requested by OSC Staff in a timely manner or at all, altered a document or caused a document to be altered in an effort to conceal information from OSC Staff, and provided misleading information to OSC Staff. Specifically:

(a) Watt Carmichael failed to produce in a timely manner documents, the particulars of which have been provided by OSC Staff to the respondents Rowan, Watt Carmichael, Carmichael and McKenney;

(b) In response to a request for documents from OSC Staff dated July 22, 2004, Watt Carmichael provided the first page only of a letter dated February 24, 1998 from the Congor Trustees to Rowan and did not produce the second page of the letter containing handwritten notations made by Rowan, including the notations “Eugene” and “(EM)” beside the list of assets for Congor contained on page 2 of the letter;

(c) Following a further request made by OSC Staff on January 25, 2005 for page two of the letter dated February 24, 1998 from the Congor Trustees to Rowan, Watt Carmichael faxed to OSC Staff page two of the letter without Rowan’s handwritten notations. Staff’s investigation reveals that subsequent to OSC Staff’s requests, page two of this page was altered to erase Rowan’s handwritten notations;

(d) During Rowan’s examination under oath by OSC Staff on February 9, 2005, he was asked to identify the beneficial owner of Conset Investments. Rowan responded: “My understanding is there are a number of beneficiaries of the Trust. I don’t have the list of beneficiaries”. In fact, Rowan had in his possession or control the letter dated July 17, 2000 from the Conset Trustees to Melnyk listing the beneficiaries of the Conset Trust. This information was not provided to OSC Staff at the time of Rowan’s examination; and

(e) Watt Carmichael failed to produce certain documents reflecting communications between Rowan and other persons regarding the Southridge and Congor Trusts, the particulars of which have been provided by OSC Staff to the respondents, Rowan, Watt Carmichael, Carmichael and McKenney.

Failure to Supervise Rowan

86. Rule 31-505 of Ontario securities law, IDA Regulation 1300.2 and IDA Policy No. 2 require IDA members to supervise trading in client accounts and to implement procedures and policies to ensure that client accounts are supervised. Section 3.1 of Rule 31-505 provides as follows:

“A registered dealer shall supervise each of its registered salesperson, officer and partner and a registered adviser shall supervise each of its registered officers and partners in accordance with Ontario securities law and terms or conditions imposed by the Director of the Commission on the registration of the salesperson, officer or partner of the dealer or the officer or partner of the advisor requiring that the actions of the registered salesperson, officer or partner of the registered dealer or the registered officer or partner of the registered adviser be supervised in a particular manner.”

87. Further, IDA Regulation 1300.2 provides as follows:

“Each member shall designate a director, partner or officer of, in the case of a branch office, a branch manager reporting directly to the designated director, partner or officer who shall be responsible for the opening of new accounts and the supervision of account activity. Each such designated person shall be approved by the applicable District Council and, where necessary to ensure continuous supervision, the Member may appoint one or more alternates to such designated person who shall be so approved. The director, partner or officer as the case may be, shall be responsible for establishing and maintaining procedures for account supervision and such persons, or in the case of a branch office, the branch manager shall ensure that the handling of client business is within the bounds of ethical conduct consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry.”

88. Watt Carmichael did not adequately supervise Rowan’s trading in Biovail securities in the Congor, Conset and Southridge Accounts. Carmichael, in his capacity as Chairman and CEO, and McKenney, in his capacity as Chief Compliance Officer, failed to adequately supervise trading by Rowan and to address conflicts of interest despite indications that supervision was required. Specifically, Carmichael and McKenney knew or should have known that:

(a) Rowan had multiple roles as a director of Biovail and member of Biovail's audit committee, and as the President of Watt Carmichael and the registered representative for the Congor, Conset and Southridge Accounts;

(b) Rowan engaged in discretionary trading in Biovail securities in 2002 and 2003 in the Congor and Conset Accounts pursuant to discretionary trading agreements and therefore, Rowan, as an insider of Biovail, had reporting obligations under subsection 107(2) of the Act;

(c) Rowan was required to cease trading in Biovail securities during the Biovail Blackout Periods in relation to the Congor, Conset, and Southridge Accounts. Rowan continued to engage in trading in Biovail securities in the periods prior to release of Biovail's quarterly earnings in 2002 and 2003 in circumstances where Rowan had knowledge, or potentially had knowledge, of material undisclosed information when he traded in Biovail securities; and

(d) Rowan engaged in unauthorized discretionary trading in the Southridge Accounts.

89. As described above, Watt Carmichael's letter to the IDA dated August 10, 2000 (enclosing the August 1, 2000 letter noted above) provided responses to the IDA that were misleading or untrue or did not state facts that were required to be stated to make the statements not misleading. Carmichael, in his role as Chairman and CEO of Watt Carmichael, and McKenney, in his role as Chief Compliance Officer, authorized, permitted or acquiesced in the misconduct described above.

90. As described above, Watt Carmichael failed to produce documents requested by OSC Staff in a timely manner or at all, altered a document in an effort to conceal information from Staff and provided misleading information to OSC Staff. Carmichael, in his position as Chairman and CEO, and McKenney, in his position as Chief Compliance Officer, authorized, permitted or acquiesced in the misconduct described above.

Conduct Contrary to the Public Interest

91. Staff allege that the conduct set out above of Melnyk, Rowan, Watt Carmichael, Carmichael and McKenney violates securities laws as specified and constitutes conduct contrary to the public interest.

92. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

Dated at Toronto this 28th day July, 2006.