Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8
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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

**- AND -**

**IN THE MATTER OF GOLDPOINT RESOURCES CORPORATION, PASQUALINO NOVIELLI also known as Lee or Lino Novielli, BRIAN PATRICK MOLONEY also known as Brian Caldwell, and ZAIDA PIMENTEL also known as Zaida Novielli**

# REASONS FOR DECISION ON SANCTIONS AND COSTS
**(Sections 127 and 127.1 of the Act)**

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| **Hearing:** | August 15, 2012 | |
| **Decision:** | February 1, 2013 | |
| **Panel:** | Mary G. Condon | - Vice Chair and Chair of the Panel |
| **Appearances:** | Cameron Watson | - For Staff of the Commission |
| | Pasqualino Novielli | - For himself and Goldpoint Resources Corporation |
| | No one appeared for Brian Patrick Moloney or Zaida Pimentel | |

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**REASONS FOR DECISION ON SANCTIONS AND COSTS**
**(Sections 127 and 127.1 of the Act)**

## I. INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether it is in the public interest to make an order with respect to sanctions and costs against Pasqualino Novielli ("**Novielli**"), Brian Patrick Moloney ("**Moloney**"), Zaida Pimentel ("**Pimentel**") (collectively, the "**Individual Respondents**") and Goldpoint Resources Corporation ("**Goldpoint**") (collectively, the "**Respondents**").

[2] The hearing on the merits (the "**Merits Hearing**") in this matter took place on September 21, 22, 23, 24, 25, 28 and 30, 2009, October 1, 2009 and December 16, 2009. The Commission issued the decision on the merits in this matter on May 5, 2011 (*Re Goldpoint Resources Corporation* (2011), 34 O.S.C.B. 5478)(the "**Merits Decision**"). Following the issuance of the Merits Decision, the Commission held a separate hearing to consider sanctions and costs on August 15, 2012 (the "**Sanctions and Costs Hearing**").

[3] Staff of the Commission ("**Staff**") appeared at the Sanctions and Costs Hearing and made oral submissions, supported by Staff's written submissions, a brief of authorities, a supplementary brief of authorities, a bill of costs, the Affidavit of Charlene Rochman, sworn June 23, 2011, in relation to the bill of costs, and the Affidavit of Service of Peaches A. Barnaby, sworn August 14, 2012.

[4] Staff represented that Novielli appeared on his own behalf and on behalf of Goldpoint, of which he was President and a director, and Novielli did not dispute Staff's submission. Novielli made oral submissions and submitted an order issued by the Ontario Court of Justice regarding certain funds seized. Neither Moloney nor Pimentel appeared.

## II. THE MERITS DECISION

[5] In the Merits Decision, the Commission found that the Respondents contravened the Act as follows:

(a) Goldpoint, Novielli, Moloney and Pimentel traded in Goldpoint securities without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act and contrary to the public interest;

(b) Goldpoint, Novielli, Moloney and Pimentel distributed Goldpoint securities without a preliminary prospectus and prospectus having been filed and receipted by the Director, contrary to subsection 53(1) of the Act and contrary to the public interest;

(c) Goldpoint, through its employees, agents or representatives, made prohibited representations that Goldpoint securities would be listed on a

stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest;

(d) Goldpoint, Novielli, Moloney and Pimentel perpetrated a fraud on Goldpoint investors, contrary to subsection 126.1(b) of the Act and contrary to the public interest;

(e) Novielli and Moloney, as directors or officers or *de* facto directors or officers of Goldpoint who authorized, permitted or acquiesced in Goldpoint's contraventions of subsections 25(1)(a), 53(1), 38(3) and 126.1(b) of the Act, are deemed under section 129.2 also to have contravened subsections 25(1)(a), 53(1), 38(3) and 126.1(b) of the Act; and

(f) Pimentel made statements to Staff of the Commission, during her compelled examination, that in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue, contrary to subsection 122(1)(a) of the Act and contrary to the public interest.

(Merits Decision, *supra*, at para. 253)

[6] The Commission found that the Respondents were involved in a fraudulent scheme to market and issue securities of Goldpoint. The Respondents actively promoted and solicited investments in Goldpoint, traded previously unissued Goldpoint shares and raised $1,696,750 from over 110 investors without meeting registration and prospectus requirements, contrary to subsections 25(1)(a) and 53(1) of the Act and contrary to the public interest (Merits Decision, *supra*, at para. 248).

[7] It was found that, when promoting its shares and soliciting investors, Goldpoint made prohibited representations to investors that it would be listed on a stock exchange, contrary to subsection 38(3) of the Act and contrary to the public interest. These prohibited representations were employed in conjunction with other high pressure sales tactics, such as representations to investors relating to the future value or price of Goldpoint securities, which the Commission found to be contrary to the public interest (Merits Decision, *supra*, at para. 249).

[8] The Commission further found that the Respondents knowingly engaged in fraud, contrary to subsection 126.1(b) of the Act and contrary to the public interest. Even knowing that Goldpoint had no underlying legitimate business, the Respondents engaged in the activities referenced in paragraphs [6] and [7] above, made false and misleading statements that Goldpoint had profitable mining operations in Ghana and engaged in unauthorized diversion of investor funds by spending a significant portion of investor funds for purposes unrelated to Goldpoint's operations. More specifically, the Commission found that, of the total $1,696,750 raised by the Respondents, $1,681,750 was deposited into an account at the Royal Bank of Canada in the name of Goldpoint (the "**Goldpoint RBC Account**"). The Commission further found that, of that $1,681,750, only $104,288, or approximately 6% of those funds, could be traced to Goldpoint's projects or operating expenses. A total of $1,481,201, or approximately 88% of those

funds, was withdrawn by the Respondents or transferred to accounts controlled directly or indirectly by them. Banking records show that the $1,481,201 was withdrawn in the form of cash, transferred to other accounts, or used by the Respondents to fund their personal expenditures. The Commission made the following findings with respect to the flow of investor funds from the Goldpoint RBC Account:

(a) From October 26, 2007 to April 24, 2008, $513,260 was transferred through a series of 24 transactions to an account at TD Canada Trust in the name of 1112086 Ontario Inc., a company of which Moloney was administrator and the sole director (the "**Moloney TD Account**");

(b) On February 28, 2008 and March 7, 2008, $25,000 and $40,000, respectively, were transferred to an HSBC account controlled by Moloney;

(c) From November 2, 2007 to April 29, 2008, $311,879 was withdrawn in a series of 53 transactions by way of cheques made payable to "Cash" and signed by Moloney on behalf of Goldpoint;

(d) From November 6, 2007 to May 5, 2008, $584,562 was transferred in a series of 32 transactions to an account jointly held by Novielli and Pimentel at TD Canada Trust (the "**Novielli-Pimentel Joint Account**");

(e) On January 16, 2008, $4,500 was withdrawn by a cheque payable to "Cash" and signed by Novielli; and

(f) From February 22, 2008 to April 21, 2008, $2,000 was paid to Pimentel and deposited in two Royal Bank accounts controlled solely by her.

(Merits Decision, *supra*, at para. 172)

As a result of the Respondents' fraudulent misconduct, more than 110 investors were wrongfully deprived of $1,696,750 (Merits Decision, *supra*, at para. 250).

[9] As directors or officers of Goldpoint, Novielli and Moloney authorized, permitted or acquiesced in the contraventions by Goldpoint of sections 25, 53, 38 and 126.1 of the Act. They were found to be liable for these contraventions by Goldpoint pursuant to section 129.2 of the Act (Merits Decision, *supra*, at para. 251).

[10] The Commission noted in the Merits Decision that funds in various accounts associated with Novielli, Moloney and Pimentel were frozen pursuant to directions issued by the Commission under subsection 126(1) of the Act. The following funds were frozen:

(a) $96,259.97 in the Goldpoint RBC Account;

(b) US$11,420.34 in an account in the name of Novielli;

(c) $239,472.34 in the Moloney TD Account;

(d) $65,841.35 in the Novielli-Pimentel Joint Account;

(e) $53,991.46 in an account at National Bank of Canada in the name of Moloney; and

(f) $100,000 of undeclared cash in the possession of Novielli and Moloney that was seized by the Canadian Border Services when these Respondents were refused entry to the U.S. on February 7, 2009.

(Merits Decision, *supra*, at paras. 174 and 175)

[11] A further $15,000 is held in the trust account of a Canadian lawyer who had agreed to treat the funds as being subject to a freeze order (Merits Decision, *supra*, at para. 175).

## III. PRELIMINARY ISSUES

### A. Non-attendance at the Sanctions and Costs Hearing

[12] As referenced in paragraph [4] above, Novielli appeared on his own behalf and on behalf of Goldpoint, and no one appeared for the remaining Respondents, Moloney and Pimentel. Based on the Affidavit of Service of Peaches A. Barnaby, sworn August 14, 2012, and Novielli's appearance on his own behalf and on behalf of Goldpoint, I was satisfied that the Respondents were given notice of the Sanctions and Costs Hearing in accordance with section 6 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"). In accordance with subsection 7(1) of the SPPA, I was entitled to proceed in the absence of Moloney and Pimentel.

### B. Request for Standing as Intervenor

[13] At the commencement of the Sanctions and Costs Hearing, Matthew Valitutti ("**Valitutti**"), a lawyer from Solmon Rothbart Goodman LLP ("**Solmon**"), the law firm holding $15,000 in trust referred to in paragraph [11] above, appeared and indicated that he wished to make submissions on behalf of his law firm regarding the $15,000 that the firm is treating as subject to a freeze order. As the law firm is not a party to these proceedings, I invited submissions from Valitutti and the parties regarding his standing to intervene in the Sanctions and Costs Hearing.

[14] Valitutti submitted that his standing is based on his request, namely, that the Commission either (i) adjourn the issue of disbursement of frozen funds until the determination of the civil application before the Superior Court of Justice; or (ii) make sanctions orders conditional on the outcome of the civil application. Valitutti submitted that, in considering his firm's standing to intervene in the Sanctions and Costs Hearing, the Commission should consider the factors set out below, and made the following submissions with respect to those factors.

(a) the nature of the matter – Valitutti submitted that the nature of the matter relates to funds that were obtained fraudulently, as found by the Commission. He submitted that Solmon has an interest in those funds.

(b) the issues – Valitutti submitted that the issue is whether or not the specific funds should be put on hold until the determination of the court proceeding.

(c) whether the person or company is directly affected – Valitutti took the position that Solmon is directly affected. Valitutti submitted that, pursuant to the Supreme Court of Canada's decision in *ITrade Finance Inc. v. Bank of Montreal*, [2011] 2 S.C.R. 360, the law firm has a solicitor's lien over those funds that takes priority over any other claims, and there is an outstanding civil application before the Superior Court of Justice to determine that issue. He submitted that the law firm would be directly affected by any order made by the Commission affecting the law firm's rights to those funds.

(d) the likelihood that the person or company will be able to make a useful and unique contribution to the Panel's understanding of the issues – Valitutti submitted that the Commission should have the full picture before it as to what it is being asked to decide and his submissions regarding the frozen funds would be a useful contribution to the Commission in that they present the Commission with the entire picture.

(e) any delay or prejudice to the parties – Valitutti submitted that his request would not cause any delay. It would not preclude the Commission from doing anything with the money or affect the parties' submissions on sanctions and costs.

(h) any other factors the Panel considers relevant – Valitutti reiterated that there is an outstanding civil proceeding before the Superior Court with respect to whether the law firm has rights to those funds. He referred to *Re Magna International Inc.* (2011), 34 O.S.C.B. 800 at para. 51, citing *Re Albino* (1991), 14 O.S.C.B. 365, for the proposition that "[w]here a would-be intervenor has a direct financial interest, in that that person may acquire a benefit or incur a loss as an immediate result of a Commission decision, full standing is appropriate".

[15] Staff opposed Valitutti's request on the grounds that the motion was not filed in accordance with the Ontario Securities Commission *Rules of Practice* (1997), 20 O.S.C.B. 1947 (the "***Rules of Practice***"), and more specifically, the time requirement of five days set out in subrule 6.1(1). Staff submitted that it only received motion materials from the law firm the day before the Sanctions and Costs Hearing, and the motion materials were insufficient to address the serious issues of law raised. Staff further submitted that if Solmon were truly an interested party, it would have reviewed the decision when it was released publicly on May 5, 2011 and advised Staff of its interest in becoming an intervenor. It was Staff's position that the Commission should refuse to hear the motion in accordance with subrule 6.4(2) of the *Rules of Practice* and "the chips will fall where they may in the Superior Court" (Hearing Transcript dated August 15, 2012 at p. 19).

[16] Novielli submitted that the $15,000 was not given to Solmon for the purpose of a retainer and that he used separate funds to retain the law firm.

[17] In response to Staff's submissions regarding the time requirement, Valitutti took the position that as an intervenor or an interested party, his law firm should have been given a copy of the Merits Decision as well as notice of the Sanctions and Costs Hearing. He submitted that his law firm was not given notice of the Sanctions and Costs Hearing.

[18] Although Solmon did not comply with the time requirement for filing a motion set out in subrule 6.1(1) of the *Rules of Practice*, I considered the submissions from the parties and Valitutti and made an oral ruling dismissing Valitutti's request for standing to make submissions in the Sanctions and Costs Hearing for the following reasons. Staff and the Respondents are parties to the Sanctions and Costs Hearing and would make submissions on sanctions and costs, including on the issue of whether a disgorgement order would be appropriate in this case. The question of how to satisfy such order, if one were made, and in particular, whether any frozen funds would be available to satisfy any disgorgement order is a matter before the Superior Court and is not a matter that I would address in my decision on sanctions and costs. In other words, it is not a question that directly relates to the matters at issue in the Sanctions and Costs Hearing. Accordingly, I did not grant standing to Valitutti as a representative of Solmon to make submissions at the Sanctions and Costs Hearing.

## IV. POSITIONS OF THE PARTIES

### A. Staff

#### 1. Specific Sanctions and Costs Requested

[19] Staff requests the following sanctions and costs orders against the Respondents.

[20] With respect to Goldpoint, Staff requests:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, an order that Goldpoint cease trading in securities permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, an order that the acquisition of any securities by Goldpoint is prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, an order that any exemptions contained in Ontario securities law do not apply to Goldpoint permanently;

(d) pursuant to paragraph 10 of subsection 127(1) of the Act, an order making Goldpoint jointly and severally liable, together with the Individual Respondents, to disgorge to the Commission $1,696,750 obtained as a result of their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(e) pursuant to section 127.1 of the Act, an order requiring payment by Goldpoint and the Individual Respondents on a joint and several basis of

$257,368.89 representing the costs and disbursements incurred in the investigation and hearing of this matter.

[21] With respect to the Individual Respondents, Staff requests:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, an order that the Individual Respondents cease trading in securities permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, an order that the acquisition of any securities by the Individual Respondents is prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, an order that any exemptions contained in Ontario securities law do not apply to the Individual Respondents permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, an order that the Individual Respondents be reprimanded;

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, an order that the Individual Respondents resign all positions as a director or officer of an issuer;

(f) pursuant to paragraph 8 of subsection 127(1) of the Act, an order that the Individual Respondents are permanently prohibited from becoming or acting as a director or officer of any issuer;

(g) pursuant to paragraph 8.2 of subsection 127(1) of the Act, an order that the Individual Respondents are permanently prohibited from becoming or acting as a director or officer of any registrant;

(h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, an order that the Individual Respondents are permanently prohibited from becoming or acting as a director or officer of any investment fund manager;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, an order requiring Novielli to pay an administrative penalty of $300,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(j) pursuant to paragraph 9 of subsection 127(1) of the Act, an order requiring Moloney to pay an administrative penalty of $300,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(k) pursuant to paragraph 9 of subsection 127(1) of the Act, an order requiring Pimentel to pay an administrative penalty of $300,000, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(l) pursuant to paragraph 10 of subsection 127(1) of the Act, an order making the Individual Respondents jointly and severally liable, together with Goldpoint, to disgorge to the Commission $1,696,750 obtained a result of

their non-compliance with Ontario securities law, to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act;

(j) pursuant to section 127.1 of the Act, an order requiring payment by the Individual Respondents and Goldpoint on a joint and several basis of $257,368.89 representing the costs and disbursements incurred in the investigation and hearing of this matter;

[22] Staff also requests:

(a) an order that all frozen funds were obtained as a result of the Respondents' contraventions of the Act; and

(b) an order that Staff may take all appropriate steps to obtain the frozen funds (together with interest). The frozen funds (together with interest) obtained shall be applied to the payment of the disgorgement orders made against the Respondents.

[23] Staff submits that any amounts paid to the Commission in compliance with the disgorgement, administrative penalty and freeze orders shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing in the investment schemes, in accordance with subsection 3.4(2)(b) of the Act, and that such amounts are to be distributed to investors who lost money as a result of investing in the fraudulent investment schemes on such basis, on such terms and to such investors as Staff in its discretion determines to be appropriate in the circumstances.

**2. Staff's Submissions on Sanctions and Costs**

[24] Staff submits that, while not one of the most egregious cases, this case nonetheless involved significant misconduct by the Respondents who perpetrated a fraudulent scheme that deprived over 110 investors of $1,696,750. It is Staff's submission that, without a complete expulsion from the capital markets, the Respondents may once again engage in conduct which is detrimental to others and abusive of the capital markets.

[25] Staff acknowledges that Pimentel is in a different position than Novielli and Moloney because she was not found to be a director or officer of Goldpoint. However, Staff submits that she was heavily involved in the operation of the scheme and the scheme would not have persisted as long or as effectively as it did without her involvement. Staff submits that the Respondents acted in concert with a common purpose in the execution of the investment scheme and that each of the Respondents was integral to its success. Accordingly, it is Staff's submission that Pimentel should be sanctioned in a manner similar to the other two Individual Respondents.

[26] Staff takes the position that there is no mitigating factor in this case. First, Staff submits that the actions of the Individual Respondents demonstrate that they have not recognized the seriousness of their improprieties. Staff submits that, for example, Novielli's submission that he wanted a fraudulent company to succeed, as set out in

paragraph [31] below, demonstrates a lack of insight about the Commission's findings of fraud.

[27] Staff also submits that the Respondents demonstrated a clear lack of remorse. According to Staff, although the Respondents appeared personally at the Merits Hearing, none of the Respondents expressed remorse for what happened, nor did their conduct at the Merits Hearing in any way expedite the hearing. While thirteen witnesses were called by Staff over nine hearing days, none of the Respondents testified or led evidence. Staff further submits that despite clear evidence to the contrary, Pimentel in closing submissions continued to deny she worked for Goldpoint.

[28] In addition, Staff submits that the fact that Novielli is a former registrant is an aggravating factor in this case because he ought to have known better. Staff notes that although Moloney and Pimentel had never been registered under the Act, this fact does not give rise to any mitigating factors.

[29] Staff submits that a respondent's inability to pay is not a mitigating factor to reduce any monetary sanctions. According to Staff, the danger is that respondents will hide behind potential financial difficulties and skate away from their responsibilities. Furthermore, Staff submits that, in this case, the Respondents' past conduct which led them to make submissions that they are in a disadvantaged financial position is one of dishonesty and deprivation. Staff submits that the Respondents may have the ability to pay in the future and therefore it is necessary to impose monetary sanctions on the Respondents to protect the public.

**B. Submissions of Novielli**

[30] Novielli acknowledges that he was a registrant, that he held a life insurance license with the Financial Services Commission of Ontario which has been revoked, that he had 22 years of experience in the financial services industry, and "That's the only thing I've done. For 20-odd years of my life I've been around the markets" (Hearing Transcript dated August 15, 2012 at p. 92). He submits that, as a result of the proceedings against him, his reputation has been tarnished and he will never be able to obtain a license with any financial regulatory agency again. Accordingly, "the biggest issue what to do for the rest of my life…is still up in the air". He submits that, meanwhile, he has been "doing…jobs here and there in the cleaning services" (Hearing Transcript dated August 15, 2012 at p. 94). He submits that he lives modestly and that his "liabilities far exceed [his] assets" (Hearing Transcript dated August 15, 2012 at p. 97).

[31] Novielli submits that there were no regulatory proceedings against him prior to this matter and while his "ultimate goal was to have Goldpoint succeed", "it was obviously ultimately a bad decision that took place" (Hearing Transcript dated August 15, 2012 at p. 94).

[32] Novielli submits that Staff's characterization that he did not express remorse is not accurate. He makes the following submissions on this point:

> I do sincerely, you know, regret what has taken place, what I put the Commission through, and what I put the investors through. I do regret the way this has worked out.
>
> …
>
> …And whether I made good decisions or bad decisions, I regret decisions where I am at this point. I could have done things better in terms of procedure and what I should have followed in terms of getting to where my ultimate goal was to be with Goldpoint. Obviously, it was a situation gone wrong. So I admit that. It went very, very wrong.
>
> I do regret that I didn't consult more advice of the Commission before I proceeded down this road with Goldpoint. Being the fact that I had been in the markets before, I relied on making decisions on people that were not as knowledgeable as I thought they were, both on the accounting side and the legal side.
>
> (Hearing Transcript dated August 15, 2012 at pp. 91 and 93)

[33] He also submits that he attended the Merits Hearing everyday and was cooperative with the Commission. He submits that he did not testify because he was not represented by counsel and "didn't want to put myself in a situation where I was vulnerable to something that I couldn't protect myself about or something I would say" (Hearing Transcript dated August 15, 2012 at p. 93).

[34] Novielli takes issue with the accuracy of the amount received, namely, $1,696,750, as well as the disbursement and use of investor funds. He submits that although the Commission found that the Respondents retained 88% of investor funds, he did not spend any of those funds on himself personally as "a lot of those funds are still available to the Commission, are seized" (Hearing Transcript dated August 15, 2012 at p. 92).

[35] Novielli also submits that Pimentel teaches at a daycare, which had been "her whole life", and she had no knowledge of the capital markets (Hearing Transcript dated August 15, 2012 at p. 96). Novielli takes the position that it is unfair to characterize Pimentel's involvement as being at the same level as that of himself or Moloney. He submits that the Commission found, and Staff agrees, that Pimentel was not a director or officer of Goldpoint. He submits that she never had signing authority for Goldpoint and was "not there a hundred percent of the time" (Hearing Transcript dated August 15, 2012 at p. 95). He further submits that she had nothing to do with the business of Goldpoint and submits by way of example that she did not travel with him to Ghana.

[36] He made the following submissions regarding the funds received by Pimentel:

> The money that was allocated to her or that she received was not the funds of a supervisor. If you look at the funds that came, they were all traceable to where they went and where they were spent. Nothing went to her hands, nothing was spent in her hands. Everything had my name on it.

(Hearing Transcript dated August 15, 2012 at p. 95)

## V. SANCTIONS

### A. The Law on Sanctions

[37] The Commission's mandate, set out in section 1.1 of the Act, is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets.

[38] In *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("***Asbesto***s"), the Supreme Court of Canada described the purpose of an order made by the Commission under section 127 of the Act:

> …the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.
>
> (*Asbestos*, *supra*, at para. 43)

[39] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. The Commission described this objective in *Re Mithras Management Ltd*. (1990), 13 O.S.C.B. 1600 ("***Mithras***"):

> …the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts…We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Mithras*, *supra*, at pp. 1610 and 1611)

[40] The Commission has identified a number of factors to be considered when determining the appropriate sanctions to be imposed. They include:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent and other like-minded individuals from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit obtained or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective; and

(l) the size of any financial sanctions or voluntary payment when considering other factors.

(see, for example, *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 ("***Belteco***") at p. 7746; and *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at p. 1136)

[41] General deterrence is an important factor that the Commission should consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court of Canada stated that "[…] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative".

[42] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances of each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra*, at p. 1134). Sanctions should also be proportionate to past decisions of the Commission and to the responsibilities of each of the respondents in the circumstances (*Re Coventree Inc*. (2012), 35 O.S.C.B. 119 at paras. 46, 66 and 93).

[43] Further, in imposing administrative penalties and disgorgement, the overall financial sanctions imposed on each respondent is a relevant consideration (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin Sanctions and Costs***") at para. 59). The Commission has also held that ability to pay, while not a predominant or determining factor, is relevant in determining the appropriate financial sanctions to be imposed (*Sabourin Sanctions and Costs*, *supra*, at para. 60).

## B. Specific Sanctioning Factors Applicable in this Matter

[44] Overall, the sanctions imposed in this matter must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future and by sending a strong message of specific and general deterrence.

[45] In considering the sanctioning factors set out in paragraph [40] above, I find the following specific factors and circumstances to be relevant in this matter, based on the findings made in the Merits Decision.

### 1. The seriousness of the proven allegations

[46] The conduct of the Respondents, which the Commission found to include various contraventions of the Act, was clearly serious. The sale and distribution of Goldpoint securities were carried out in contravention of the registration and prospectus requirements set out in subsections 25(1)(a) and 53(1) of the Act. When promoting its shares and soliciting investors, Goldpoint made prohibited representations to investors that it would be listed on a stock exchange, contrary to subsection 38(3) of the Act. These prohibited representations were employed in conjunction with other high pressure sales tactics, such as representations to investors relating to the future value or price of Goldpoint securities, contrary to the public interest (Merits Decision, *supra*, at paras. 248 and 249).

[47] Further, the Respondents were found to have perpetrated a fraud on Goldpoint investors, contrary to subsection 126.1(b) of the Act, by making false and misleading statements that Goldpoint had profitable mining operations in Ghana knowing that Goldpoint had no legitimate business. They also engaged in unauthorized diversion of investor funds and spent a significant portion of investor funds for purposes unrelated to Goldpoint's operations. This fraudulent distribution of Goldpoint securities wrongfully deprived over 110 investors of $1,696,750 (Merits Decision, *supra*, at para. 250).

[48] The Commission has previously held that fraud is "one of the most egregious securities regulatory violations", as it is both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 214).

[49] In the case of Pimentel, the Merits Hearing Panel found that she misled Staff in its investigation about her role in Goldpoint (Merits Decision, *supra*, at para. 247). In my view, this conduct is a serious contravention of the Act.

### 2. The Respondents' experience in the marketplace

[50] Novielli was registered as a salesperson of a mutual fund dealer from May 5, 2006 to June 26, 2008 and could be assumed to have some familiarity with the expectations imposed on registrants (Merits Decision, *supra*, at para. 9). In his submissions, Novielli acknowledged that "Yes, I've been in the market. That's the only thing I've done. For 20-odd years of my life I've been around the markets…I've been 22

years in the business of investments. That's my experience" (Hearing Transcript dated August 15, 2012 at pp. 92 and 96).

[51] Moloney and Pimentel have not been registered under the Act in any capacity (Merits Decision, *supra*, at paras. 10 and 11). I consider this to be a neutral factor when determining the appropriate sanctions to be imposed on Moloney and Pimentel.

**3. The level of the Respondents' activity in the marketplace**

[52] In the Merits Decision, the Commission found that all of the Respondents actively promoted and solicited investments in Goldpoint in furtherance of this fraudulent distribution over a period of approximately 10 months, from August 2007 to May 2008 (Merits Decision, *supra*, at paras. 4 and 248).

**4. The size of any profit obtained or loss avoided from the illegal conduct**

[53] The Respondents raised $1,696,750 from over 110 investors. $1,481,201, or approximately 88% of the funds, was withdrawn by the Individual Respondents or transferred to accounts controlled directly or indirectly by them (Merits Decision, *supra*, at para. 173).

[54] In my view, while the investor losses in this case fall neither at the most nor the least serious end of the spectrum, they have the capacity to result in a loss of investor confidence in the integrity of the capital markets.

**5. Remorse: the Respondents' recognition of the seriousness of their conduct**

[55] I do not accept Staff's submission, set out in paragraph [27] above, that the fact that the Respondents did not testify or that they did not express remorse at the Merits Hearing for what happened attests to a lack of remorse or failure to recognize the seriousness of their conduct in these circumstances. As the Commission stated in *Re Norshield Asset Management (Canada) Ltd.* (2010), 33 O.S.C.B. 7171 at para. 104, respondents are "entitled to defend themselves against the allegations before them, and we do not consider their lack of stated remorse under these circumstances to be a factor to be weighed against them". Accordingly, I find the way in which the Respondents participated in the Merits Hearing, including their choice not to testify, to be a neutral factor in this case.

[56] During the Sanctions and Costs Hearing, Novielli made the following submissions indicating his remorse: "I do sincerely, you know, regret what has taken place, what I put the Commission through, and what I put the investors through. I do regret the way this has worked out" (Hearing Transcript dated August 15, 2012 at p. 91). Novielli also submitted that his "ultimate goal was to have Goldpoint succeed" (Hearing Transcript dated August 15, 2012 at p. 94). In determining the appropriate sanctions, I am taking into consideration Novielli's submissions indicating his remorse and that he may have been influenced by his desire to have Goldpoint succeed.

### 6. Deterrence

[57] As noted above, specific deterrence has been held by the Commission to be a significant factor in determining the appropriate sanctions to be ordered, and it is relevant here. Goldpoint was the investment vehicle through which the fraudulent scheme was perpetrated. Novielli and Moloney, simply put, orchestrated the fraudulent investment scheme and diverted a significant amount of investor funds to accounts that they controlled. The Commission found that both Novielli and Moloney were involved in virtually all of Goldpoint's activities (Merits Decision, *supra*, at paras. 225 and 233). Moloney's role involved soliciting investors using an alias, participating in the development of promotional materials, authorizing the issuance of Goldpoint shares, accepting investor funds and diverting them in an unauthorized manner (Merits Decision, *supra*, at para. 197). Novielli's involvement included soliciting investors, signing Goldpoint share certificates, developing promotional materials, accepting investor funds and diverting them in an unauthorized manner (Merits Decision, *supra*, at para. 186). I am also troubled by the fact that Novielli engaged in this conduct as a former registrant who should have some understanding about the obligations of Ontario securities law.

[58] Although Pimentel was not found to be a director or officer of Goldpoint, she was found to have had an integral role in the scheme and to have knowingly engaged in fraud (Merits Decision, *supra*, at para. 216). She was found, among other things, to have actively solicited investors as a qualifier and later to have overseen the investor qualification process, including providing qualifiers with a script containing false and misleading statements, in her capacity as a supervisor or manager of the qualifiers (Merits Decision, *supra*, at paras. 72 and 246). She was also involved in the unauthorized diversion of investor funds as a significant amount of investor funds, over $586,562, were transferred to accounts held solely by her or jointly by her and Novielli (Merits Decision, *supra*, at paras. 172 and 209). Moreover, during Staff's investigation of this matter, she denied her involvement in Goldpoint and misled Staff, which as noted in paragraph [49], is a serious contravention of the Act.

[59] This sanctions order must effectively prevent and deter the Respondents from engaging in any further illegal or fraudulent conduct in the market place.

### 7. Ability to Pay

[60] At the Sanctions and Costs Hearing, Novielli made submissions regarding his ability to pay. However, Novielli provided no evidence to support these claims. In these circumstances, I place limited weight on Novielli's submissions about his financial situation in determining the appropriate monetary sanctions to be ordered.

## C. Appropriate Sanctions in this Matter

### 1. Market Participation Orders

[61] Staff submits that given their conduct, the Respondents should be subject to permanent trading, acquisition, exemption, director and officer bans. Staff further submits that the trading and acquisition bans applicable to the Respondents should not be subject to a "carve out" for personal trading in an RRSP account because their fraudulent

misconduct demonstrates that they cannot be trusted to participate in the capital markets in even a limited capacity.

[62] Novielli submits that he has no intention to trade in the future and does not object to the imposition of permanent market participation orders. In particular, he made the following oral submissions at the Sanctions and Costs Hearing:

> I feel that I didn't conduct myself properly, and I don't intend to go down this road again. So I don't intend to trade or put myself in this position again.
>
> (Hearing Transcript dated August 15, 2012 at p. 98)

[63] I find that, taking into account the factors enumerated above, it is appropriate to impose permanent trading, acquisition and exemption bans, without a carve-out, on the Respondents. This will serve to remove them from the capital markets and protect the investing public. The Respondents were involved in a fraudulent distribution of securities which raised $1,696,750 from over 110 investors in contravention of the registration and prospectus requirements. This fraudulent distribution was conducted through, among other things, making false and misleading statements and engaging in unauthorized diversion of investor funds. In addition, Goldpoint securities were sold to investors purportedly in reliance on the accredited investor exemption. The Commission found that the accredited investor exemption was not available because the investors did not meet the criteria to be accredited and the Respondents failed to take appropriate steps to ascertain the status of the investors as accredited investors (Merits Decision, *supra*, at para. 110). In my view, the Respondents cannot be trusted to participate in the capital markets in any way (*Re St. John* (1998), 21 O.S.C.B. 3851 at p. 3867).

[64] I also find that it is appropriate in the circumstances to impose permanent director and officer bans on the Individual Respondents. This fraudulent scheme was perpetrated by Novielli and Moloney through Goldpoint of which they were the directing minds, and they were found to have authorized, permitted or acquiesced in Goldpoint's contraventions of the Act. Although Pimentel was not found to be a director or officer of Goldpoint, she acted in a managerial or supervisory capacity at Goldpoint. I accept Staff's submission that, given her misconduct in her supervisory role, she should not be allowed to act as a director or officer of any issuer, registrant or investment fund manager. I find that the imposition of permanent director and officer bans will ensure that the Individual Respondents will not be placed in a position of control or trust with respect to any issuer, registrant or investment fund manager in the future.

**2. Reprimand**

[65] I find it appropriate to reprimand the Respondents, pursuant to paragraph 6 of subsection 127(1) of the Act, in order to reaffirm that the Commission will not tolerate future illegal and fraudulent conduct such as occurred in this case. The Respondents' actions caused harm to investors and the capital markets generally, and there is a need for a reminder that the Commission expects a higher standard of conduct from those accessing the privilege of involvement in the capital markets.

### 3. Disgorgement

[66] Staff seeks an order that the Respondents jointly and severally disgorge to the Commission $1,696,750 obtained as a result of their non-compliance with Ontario securities law pursuant to paragraph 10 of subsection 127(1) of the Act.

[67] As referenced at paragraph [34] above, in the Sanctions and Costs Hearing, Novielli disputed the accuracy of the total amount received. He also submitted an order issued by the Ontario Court of Justice which purportedly deals with the amount of $100,000 seized by the Canadian Border Services, as referenced in paragraph [10] above. In his submission, the order supports the proposition that he does not have anything to do with the money and that certain charges against him were withdrawn.

[68] Paragraph 10 of subsection 127(10) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance. The relevant factors to be taken into account when determining a disgorgement order are set out in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 at para. 52.

[69] I accept Staff's submission that the entire amount that the Merits Hearing Panel found was raised in the distribution of Goldpoint securities should be disgorged on a joint and several basis, to ensure that no financial benefit is retained from the Respondents' non-compliance with Ontario securities law. The purpose here is to achieve specific and general deterrence (*Sabourin Sanctions and Costs*, *supra*, at para. 65).

[70] In the Merits Decision, the Commission found that Goldpoint received $1,696,750 as a result of the fraudulent distribution of Goldpoint securities and the majority of those funds were dispensed fraudulently by its directors and/or officers, namely, Novielli and Moloney, either by way of cash withdrawals or by transfer to accounts directly or indirectly controlled by the Individual Respondents (Merits Decision, *supra*, at paras. 171 and 172). Novielli and Moloney should disgorge the entire amount raised jointly and severally with Goldpoint through which they acted.

[71] In the case of Pimentel, the Commission found that Pimentel received $586,562 from Goldpoint through an account jointly held by her and Novielli and through an account in her name only. While she was not found to be a director or officer of Goldpoint and did not have signing authority for accounts in the name of Goldpoint, she was nevertheless integral to the execution of the fraudulent scheme. In recognition of her distinct role in the investment scheme, it is appropriate to order that Pimentel disgorge the amount she personally obtained as a result of her non-compliance with Ontario securities law, in the amount of $586,562, jointly and severally with Goldpoint, Novielli and Moloney.

[72] Accordingly, I order that:

(a) Goldpoint, Novielli and Moloney shall jointly and severally disgorge to the Commission the amount of $1,110,188; and

(b) Pimentel, Goldpoint, Novielli and Moloney shall jointly and severally disgorge to the Commission the amount of $586,562.

[73] With respect to Staff's request set out in paragraph [22] above, I simply note that the Merits Hearing Panel made findings in paragraph 172 of the Merits Decision as to the flow of investor funds from the Goldpoint RBC Account into bank accounts held by the Individual Respondents, as set out in paragraph [8] above. The Merits Hearing Panel also found that certain funds were frozen in accounts associated with the Individual Respondents pursuant to directions issued by the Commission under subsection 126(1) of the Act, as set out in paragraph [10] above.

[74] The amounts paid to the Commission in satisfaction of the disgorgement order are designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

**4. Administrative Penalty**

[75] Staff seeks an order that the Individual Respondents each pay an administrative penalty of $300,000. Staff submits that the Individual Respondents committed multiple and repeated violations of the Act, including fraud, which caused harm to investors, and a substantial administrative penalty is necessary to deter the Individual Respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants. Staff submits that the administrative penalties requested are appropriate in the circumstances, considering the amount of disgorgement requested and balancing the magnitude of the harm committed by the Individual Respondents.

[76] Novielli submits that he considers the administrative penalty in the amount of $300,000 requested by Staff to be excessive.

[77] The Commission in *Re Lyndz Pharmaceuticals Inc.* (2012), 35 O.S.C.B. 7357 ("***Lyndz Sanctions and Costs***") at para. 95, having considered a number of prior cases of the Commission, noted as follows with respect to administrative penalties: "the goals of specific and general deterrence are most effectively met by administrative penalties that are proportional to each respondent's culpability in the matter, take all the circumstances into account, consider administrative penalties imposed in similar cases, and have regard to any aggravating and mitigating factors".

[78] In these circumstances, I am of the view that significant administrative penalties against the Individual Respondents are necessary to achieve the goals of specific and general deterrence. The Individual Respondents engaged in a fraudulent distribution of Goldpoint securities and deprived investors of $1,696,750. As discussed above, Novielli and Moloney orchestrated this fraudulent investment scheme. They were responsible for the dissemination of false and misleading information, both in their solicitation of investors and through Goldpoint's website and promotional materials, and the unauthorized diversion of investor funds to uses unrelated to the operations of Goldpoint. I find that significant administrative penalties should be imposed on Novielli and Moloney given their role as perpetrators of the fraudulent scheme in this case.

[79] I am mindful that Pimentel played a lesser role in this investment scheme. Once again, she was not found to be a director or officer of Goldpoint and did not exercise control over investor funds while they were in accounts in the name of Goldpoint. She nevertheless played an integral role in the scheme as a supervisor or manager of the qualifiers and received a significant portion of the funds raised. In addition, she misled Staff during its investigation about her role in Goldpoint, which is a significant infraction. Given her misconduct, I find that a substantial administrative penalty is also appropriate with respect to Pimentel.

[80] I have also considered the previous cases relied on by Staff, including *Sabourin Sanctions and Costs*, *Re Rowan* (2010), 33 O.S.C.B. 91, appeal dismissed, *Rowan v. Ontario (Securities Commission)*, 2012 ONCA 208, affirming [2010] O.J. No. 5681 (Div. Ct.), *Re Lehman Cohort Global Group Inc*. (2011), 34 O.S.C.B. 2999, *Re Sulja Brothers Building Supplies, Ltd*. (2011), 34 O.S.C.B. 7515, *Re Maple Leaf Investment Fund Corp.* (2012), 35 O.S.C.B. 3075, and *Lyndz Sanctions and Costs*, for the range of administrative penalties that have been ordered by the Commission against respondents involved in similar misconduct. Based on all of the foregoing, I accept that the administrative penalties requested by Staff are appropriate and proportionate in the circumstances. Accordingly, I order that Novielli pay an administrative penalty in the amount of $300,000, Moloney pay an administrative penalty in the amount of $300,000 and Pimentel pay an administrative penalty in the amount of $300,000. The amounts paid to the Commission in satisfaction of the administrative penalties are designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

[81] Staff did not request that Goldpoint pay an administrative penalty. Accordingly, no such order will be made.

## VI. COSTS

[82] Staff requested that the Respondents pay, on a joint and several basis, the amount of $257,368.89, representing the costs and disbursements incurred in relation to Staff's investigation and the hearing on the merits in this matter. Staff submits that this request for costs is proportionate and reasonable in the circumstances.

[83] Staff filed a bill of costs and the Affidavit of Charlene Rochman, sworn June 23, 2011, in support of its costs claim. The bill of costs shows that Staff is requesting $117,463.75 in relation to its investigation of this matter, $126,087.50 in relation to the hearing on the merits, and $13,817.64 for disbursements. It shows that the costs in the amount of $117,463.75 requested for Staff's investigation include time spent by three Staff counsel, three Staff investigators and an assistant manager. It further shows that the costs in the amount of $126,087.50 requested for the hearing on the merits include time spent by three Staff counsel and three Staff investigators. Staff submits that it is not claiming all of the costs incurred in this matter, as Staff is only claiming for the time of "senior" Staff members and not "junior" Staff members, and that Staff is not claiming for any time spent in relation to the Sanctions and Costs Hearing.

[84] Novielli made the following submissions with respect to costs:

> I had no control about the costs. It was a procedure. There are many people involved on the Commission's side going through the procedure. I had no say. I just followed along with what was expected of me through these hearings.
>
> So in terms of costs, it had nothing to do with me. The costs were all 'beared' upon the Commission and what they spent.
>
> (Hearing Transcript dated August 15, 2012 at p. 98)

[85] Pursuant to subsections 127.1(1) and 127.1(2) of the Act, the Commission has discretion to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act and has not acted in the public interest. In exercising the discretion to award costs against the Respondents, I find the considerations discussed in paragraphs [86] and [87] below to be relevant.

[86] I find that it is appropriate to order that the Respondents be jointly and severally liable for costs in the total amount of $210,241.39, which include $42,691.25 for the time spent by Matthew Boswell, the primary litigation counsel, during the investigation phase of this matter, $62,715.00 for the time spent by Wayne Vanderlaan, the primary investigator, during the investigation phase, $76,772.50 for the time spent by Boswell during the litigation phase, $14,245.00 for the time spent by Vanderlaan in attending hearings during the litigation phase and $13,817.64 for disbursements. In my view, it is reasonable in the circumstances to award costs for the time spent by the primary investigator during the investigation and to attend and testify at the hearing and for the time spent by the primary Staff counsel of this matter. I would also order the Respondents to pay any disbursements incurred by Staff. However, I do not find it appropriate in the circumstances to order costs for time spent by Staff members who played a minor role in the investigation or the litigation phase of this matter.

[87] In my view, the Respondents should be jointly and severally liable for the costs ordered. While the Respondents did not obstruct the Merits Hearing, they did not contribute to a more efficient or effective hearing which raised complex and important issues. They did not participate in a way that helped the Commission understand the issues before it or in a well-prepared manner. Following a nine-day hearing, Staff withdrew certain allegations relating to subsections 38(2) and 38(3) of the Act and proved all but two of the remaining allegations against the Respondents, who all played an integral role in the scheme.[1] In ordering costs, I also note that while Pimentel was not found to be a director or officer of Goldpoint as alleged by Staff, she misled the Commission during the investigation in an attempt to hide her involvement.

[88] Accordingly, I order that the Respondents jointly and severally pay costs in the amount of $210,241.39.

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[1] Staff alleged that Goldpoint made prohibited undertakings with respect to the price of Goldpoint shares contrary to subsection 38(2) of the Act. Staff also alleged that Pimentel was a director or officer of Goldpoint and was therefore liable for Goldpoint's contraventions of the Act pursuant to section 129.2 of the Act. Neither of these allegations was proven.

## VII. CONCLUSION

[89] For the reasons above, I find that it is in the public interest to order the following sanctions, which are proportionate to the Respondents' conduct, reflect the seriousness of the Respondents' non-compliance with Ontario securities law and are intended to deter the Respondents and other like-minded people from engaging in similar misconduct.

[90] I will issue a separate order giving effect to the decision on sanctions and costs, as follows:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, the trading in any securities by Goldpoint, Novielli, Moloney and Pimentel cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Goldpoint, Novielli, Moloney and Pimentel is prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Goldpoint, Novielli, Moloney and Pimentel permanently;

(d) pursuant to paragraph 6 of subsection 127(1) of the Act, Novielli, Moloney and Pimentel are reprimanded;

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, Novielli, Moloney and Pimentel resign any positions that they may hold as a director or officer of an issuer;

(f) pursuant to paragraph 8 of subsection 127(1) of the Act, Novielli, Moloney and Pimentel are prohibited permanently from becoming or acting as a director or officer of any issuer;

(g) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Novielli, Moloney and Pimentel are prohibited permanently from becoming or acting as a director or officer of any registrant;

(h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Novielli, Moloney and Pimentel are prohibited permanently from becoming or acting as a director or officer of any investment fund manager;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, Novielli, Moloney and Pimentel shall pay an administrative penalty in the amount of $300,000 each which is designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(j) pursuant to paragraph 10 of subsection 127(1) of the Act, Goldpoint, Novielli and Moloney shall jointly and severally disgorge to the Commission the amount of $1,110,188 obtained as a result of their non-compliance with Ontario securities law which is designated for allocation or

for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(k) pursuant to paragraph 10 of subsection 127(1) of the Act, Pimentel, Goldpoint, Novielli and Moloney shall jointly and severally disgorge to the Commission the amount of $586,562 obtained as a result of their non-compliance with Ontario securities law which is designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

(l) pursuant to section 127.1 of the Act, Goldpoint, Novielli, Moloney and Pimentel shall jointly and severally pay costs in the amount of $210,241.39.

DATED at Toronto this 1st day of February, 2013.

"*Mary G. Condon*"

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Mary G. Condon