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BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Bradley Donald Moore, 2024 BCSECCOM 361 Date: 20240819

Notice of Administrative Penalty

Bradley Donald Moore

Section 162.01 of the *Securities Act*, RSBC 1996, c. 418

Summary of Alleged Contraventions and Conditional Findings

1. Staff submitted a report (the Report) alleging that Bradley Donald Moore contravened section 3.3 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (NI 55-104) by failing to file timely insider reports for 156 transactions valued at approximately $614,938. Staff further recommended I impose an administrative penalty under section 162.01 of the Act.

2. Based on the information in the Report, and subject to Moore's right to dispute the allegations or amount of the penalty under section 162.04, I consider that:

   - Moore has contravened section 3.3 of NI 55-104; and
   - it is in the public interest to require Moore to pay an administrative penalty of $40,000.

3. My reasons follow:

Contraventions

4. Moore, a British Columbia resident, has been the CEO and a director of Global Compliance Applications Corporation (Global Compliance) since February 3, 2016. Global Compliance has been a reporting issuer in British Columbia since 2014. As such, Moore has been a reporting insider of Global Compliance, as defined in NI 55-104, at all relevant times.

5. Under section 3.3 of NI 55-104:

   A reporting insider must within five days of any of the following changes file an insider report in respect of a reporting issuer disclosing a change in the reporting insider's

   (a) beneficial ownership of, or control or direction over, whether direct or indirect, securities of the reporting issuer, or

(b) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

6. Staff provided affidavit evidence that between September 6, 2018 and December 8, 2020, Moore completed 156 transactions that changed his ownership, control or direction over Global Compliance securities and had a total value of approximately $614,938. None of the transactions were reported within five days of the change. The affidavit is based primarily on Moore's own SEDI filings

7. Staff also interviewed Moore and he acknowledged in that interview that certain of his insider reports had been filed late.

8. Based on the evidence staff provided, I am satisfied that Moore contravened section 3.3 of NI 55-104 by failing to file insider reports on time for 156 transactions with an approximate value of $614,938.

Application of section 162.01 to Prior Contraventions

9. Staff noted that the power to impose administrative penalties by notice under section 162.01 came into force on March 27, 2020. 83 of Moore's 156 contraventions occurred before this date. This raises the question of whether a penalty under section 162.01 can be issued for those prior contraventions.

10. Staff submit that there is a common law presumption that purely procedural legislation is presumed to apply immediately. Section 162.01, they argue, is purely procedural and does not affect Moore's substantive rights, and therefore it is presumed to apply to contraventions of NI 55-104 that occurred prior to its enactment. Before the enactment of section 162.01, Moore's contraventions of NI 55-104 were already subject to a monetary penalty under section 162 of the Act. Sections 162.01 to 162.04 only provide an alternate, procedurally fair process for the executive director to impose that monetary penalty instead of the Commission imposing it after a hearing under section 162. Even if it could be argued that a hearing before the Commission would be a more advantageous process to a respondent, there is no vested interest in the process.

11. I sent staff several questions on this issue, including questions about the legal presumption that new laws do not apply retrospectively. To summarize, staff responded that the presumption against retrospectivity is not engaged because section 162.01 is not "prejudicial" legislation; it merely creates a new, procedurally fair process for imposing monetary sanctions that could already have been imposed before its enactment. However, staff said that if I do find section 162.01 to be prejudicial legislation, the presumption against retrospectivity is not rebutted because section 162.01 provides for a penalty, versus a forward-looking prohibition on participating in securities markets.

Law on Prior Contraventions Issue (Retrospectivity)

12. Laws generally operate only from the date of their enactment. This is a matter of basic fairness and the rule of law: *Thow v. B.C. (Securities Commission), 2009 BCCA 46* at para. 10.

13. The Supreme Court of Canada explains in *Brosseau v. Alberta (Securities Commission), [1989] 1 SCR 301* that the common law presumes that the Legislature does not intend prejudicial enactments to apply retrospectively:

> The so-called presumption against retrospectivity applies only to prejudicial statutes. It does not apply to those which confer a benefit. As Elmer Driedger, Construction of Statutes (2nd ed. 1983), explains at p. 198:
>
> > . . . there are three kinds of statutes that can properly be said to be retrospective, but there is only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Second, there are those that attach prejudicial consequences to a prior event; they attract the presumption. Third, there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption.

14. In *Thow*, the BC Court of Appeal found that an increase in monetary penalties under section 162 of the Securities Act could not be applied to contraventions that pre-dated the amendment. Unlike with orders that protect the public by preventing a person from participating in a particular profession or activity going forward, the presumption against retrospectivity is not rebutted in the case of monetary penalties because they are punitive in a broad sense

15. In R v. Dineley, 2012 SCC 58, the minority decision explained that there is an interpretive presumption that purely procedural laws have immediate effect (at para. 47):

> "[I]n the absence of legislative indication to the contrary, procedural law is presumed to operate from the moment of its enactment, regardless of the timing of the facts underlying the particular case"

In *Dineley*, the majority of the Supreme Court of Canada found that the elimination of a defence to an impaired driving offence in the Criminal Code was substantive and therefore not retrospective.

16. Staff further referred me to *Delfs v. Stricker, 2024 BCCA 35*, a vehicle accident case that dealt with whether a reverse onus provision was substantive or procedural. In that case, the British Columbia Court of Appeal said the following:

Procedural or substantive law

[117] Professors Sullivan and Côté have each commented that statutes dealing with evidentiary rules are generally considered to be procedural. Sullivan notes that generally, the rules of evidence are considered to be procedural rules that are applied immediately to pending actions upon coming into force: at 790. She defines procedural legislation at 784:

> Procedural legislation is about the conduct of legal proceedings. It indicates how investigations will be carried out, actions will be prosecuted, proof will be made and rights and liabilities will be enforced in the context of a legal proceeding. Such legislation is presumed to apply immediately to pending and on-going proceedings. There is a common law presumption that procedural legislation is intended to apply from the moment it comes into force to all procedures that have yet been carried out…
>
> The presumption is formulated in a variety of ways: (1) persons do not have a vested right in procedure; (2) the effect of a procedural change is deemed to be beneficial for all; (3) procedural provisions are an exception to the presumption against retrospectivity; and (4) procedural provisions are intended to have an immediate effect. …

[118] Similarly, in Pierre-Andre Côté, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Thomson Reuters Canada, 2011), Côté states at 197:

> Statutes dealing with rules of evidence are not directly related to the existence of a substantive right. They deal, rather, with the various elements which may influence the judge in ruling on the right's existence, that is, with the legal means of asserting a right rather than with its existence. As they regulate the actions of a judge and the parties during a trial, it would seem reasonable that the evidentiary statutes that are applicable be those in force at the time of administration of the evidence.

[119] Further guidance on the distinction between purely procedural and substantive legislation was provided by Justices Moldaver and Brown in *Chouhan*:

> [92] … Broadly speaking, procedural amendments depend on litigation to become operable: they alter the method by which a litigant conducts an action or establishes a defence or asserts a right. Conversely, substantive amendments operate independently of litigation: they may have direct implications on an individual's

> legal jeopardy by attaching new consequences to past acts or by changing the substantive content of a defence; they may change the content or existence of a right, defence, or cause of action; and they can render previously neutral conduct criminal.

[120] For a provision to be regarded as procedural, it must be exclusively so: Application under s. 83.28 of the Criminal Code (Re), 2004 SCC 42 at para. 56, citing Angus v. Sun Alliance Insurance Co., 1988 CanLII 5 (SCC), [1988] 2 S.C.R. 256. In Angus, La Forest J. held at 265:

> A provision is substantive or procedural for the purposes of retrospective application not according to whether or not it is based upon a legal fiction, but according to whether or not it affects substantive rights. P.-A. Côté, in The Interpretation of Legislation in Canada (1984), has this to say at p. 137:
>
> > In dealing with questions of temporal application of statutes, the term "procedural" has an important connotation: to determine if the provision will be applied immediately [i.e. to pending cases], … the question to be considered is not simply whether the enactment is one affecting procedure but whether it affects procedure *only* and does not affect substantial rights of the parties." [Quoting *DeRoussy v. Nesbitt* (1920), 1920 CanLII 490 (AB CA), 53 D.L.R. 514, 516; emphasis added by Côté.]

17. In *R. v. Chouhan, 2021 SCC 26*, the removal of peremptory challenges during criminal jury selection was held to be procedural, not substantive, despite the negative impact of the change on one party i.e. the accused. In that case, the Supreme Court agreed with the Ontario Court of Appeal that "even where a procedure operates more favourably to the accused than its replacement, there is no vested interest, and by extension no substantive right, to a specific procedure."

18. Finally, in *Round v. MacDonald, Dettwiler and Associates Ltd., 2023 BCCA 456*, Ms. Round sought leave to bring an action for damages against MacDonald, Dettwiler and Associates under causes of action introduced as part of the civil liability provisions of Part 16.1 of the Act. One of the reasons the chambers judge dismissed her application was because the legislation creating her right of action was enacted after the events alleged to give rise her claim, and the new legislation did not apply retrospectively. On appeal, Ms. Round argued, among other things, that Part 16.1 of the Act was procedural because it was identical to the pre-existing provisions in Part 23.1 of the Ontario Securities Act, and she could have sought relief under that Act. She contended that the Ontario legislation created the substantive rights, while the BC legislation "simply provides a procedural scheme to facilitate the enforcement of those rights in British Columbia" (at para. 38).

19. The Court of Appeal upheld the judge's decision, finding that the Part 16.1 created a new substantive obligation, and did not apply retrospectively (at para. 42):

> In *Dineley*, Deschamp J., for the majority, at para. 15, also approved the following statement of La Forest J. from Angus at 265-266:
>
> > Normally, rules of procedure do not affect the content or existence of an action or defence (or right, obligation, or whatever else is the subject of the legislation), but only the manner of its enforcement or use. ... Alteration of a "mode" of procedure in the conduct of a defence is a very different thing from the removal of the defence entirely. [Emphasis in original.]
>
> In the present case, the legislation creates a new obligation. It is therefore substantive and does not apply retroactively. *Dineley* makes it clear the real question on retroactivity is whether the legislation creates new consequences for completed acts or imposes new substantive obligations.

Analysis of Prior Contraventions Issue

20. Determining whether section 162.01 applies to Moore's prior contraventions is not a simple exercise. However, I have concluded that it does apply retrospectively.

21. Sections 162 through 162.02 of the Act provide as follows:

> **Administrative penalty**
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> **162** (1) If the commission, after a hearing,
>
> (a) determines that a person has contravened
>
> (i) subject to subsection (2), a provision of this Act or of the regulations, or
>
> (ii) a decision of the commission, the executive director or a designated organization, whether or not the decision has been filed under section 163, and
>
> (b) considers it to be in the public interest to make the order,
>
> the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention.
>
> (2) If the commission, after a hearing,

(a) determines that a person has contravened section 57.7, and

(b) considers it to be in the public interest to make the order,

the commission may order the person to pay the commission an administrative penalty of not more than $5 million for each contravention.

(3) If the commission, after a hearing, determines that a person named in a summons or demand under section 144 (1) has failed or refused

(a) to attend,

(b) to take an oath,

(c) to answer questions,

(d) to preserve records and things or classes of records and things in the custody, possession or control of the person, or

(e) to provide information or to produce the records and things or classes of records and things in the custody, possession or control of the person,

the commission may, if the commission considers it to be in the public interest to make the order, order the person to pay the commission an administrative penalty of not more than $1 million.

Administrative penalty imposed by notice

162.01 If, based on information obtained from a review, investigation or any other source, the executive director

(a) considers that a person has contravened

(i) a prescribed provision of this Act,

(ii) a provision of the regulations, or

(iii) a decision of the commission or the executive director, whether or not the decision has been filed under section 163, and

(b) considers it to be in the public interest,

the executive director may give written notice to a person requiring the person to pay an administrative penalty.

Amount of administrative penalty imposed by notice

162.02 (1) In determining the amount of an administrative penalty imposed on a person by notice under section 162.01, the executive director must consider the following:

(a) the person's past conduct;

(b) the seriousness of the conduct;

(c) factors that mitigate the person's conduct;

(d) the need to demonstrate the consequences of inappropriate conduct to those who access the capital markets;

(e) the need to deter those who participate in the capital markets from engaging in inappropriate conduct;

(f) orders made by the commission in similar circumstances in the past;

(g) any other matter relevant to the public interest.

(2) An administrative penalty for which a notice has been issued to a person under section 162.01 must not exceed,

(a) in the case of an individual, $100 000 for each contravention set out in the notice, or

(b) in the case of a person that is not an individual, $500 000 for each contravention set out in the notice.

22. There is nothing in the express wording of sections 162.01 or 162.02 indicating whether the Legislature intended them to apply retrospectively.

23. Staff's primary argument is that section 162.01 is purely procedural in nature and therefore under the common law presumption in *Dineley*, it should be presumed to apply immediately. Staff argue it is not substantive because it simply provides an alternate, procedurally fair way to impose a monetary sanction on Moore.

24. Paragraph 37 of staff's Report suggests that section 162.01 is just another way to impose the penalty in section 162 of the Act, which I do not agree with. Only the Commission has the power to issue penalties under section 162. If the Legislature wanted to provide a procedure for the executive director to issue penalties under section 162, it would have amended section 162.

25. I also think there are reasonable arguments that section 162.01 is partially substantive, and therefore not "purely" procedural. It creates a new power to issue penalties for misconduct; one that I did not have as executive director before the amendment. It does not create a new statutory civil cause of action like the secondary market civil liability provisions considered in *Round*, but it does expose market participants to a new category of remedy, and new jeopardy, albeit of the same type and in a lesser quantity than section 162 provides. In that sense, section 162.01 can be read as at least partially substantive. To use the language from *Dineley* that is quoted in *Round* above, one could assert it goes to the existence of an action the executive director can now take.

26. Despite these arguments, I have determined that, *in substance*, section 162.01 is purely procedural:
    - The fundamental basis upon which the executive director can impose a penalty is a violation of the regulations, and those regulations have not changed. Moore was required to comply with insider reporting obligations both before and after the adoption of section 162.01, and in that sense, his legal jeopardy has not changed. Section 162.01 is purely about the way his insider reporting obligations are enforced.
    - He was also exposed to the risk of monetary penalties before its adoption, and under section 162.01 the maximum penalties are lower. In substance, he is not exposed to new consequences for past acts.
    - Moore is only entitled to an opportunity to be heard under section 162.01 versus a hearing under section 162, but *Chouhan* makes it clear that there is no vested right in a particular procedure. A change in procedure, even to the detriment of a respondent, does not mean the legislation negatively affects substantive rights.

27. My finding that section 162.01 is purely procedural leads to the conclusion that it can be immediately applied to Moore's insider reporting contraventions that pre-date its adoption.

28. However, it is important to consider whether other interpretive principles – specifically, the presumption against retrospectivity - point to a different conclusion. As the Court said in *Dineley*:

> [10] There are a number of rules of interpretation that can be helpful in identifying the situations to which new legislation applies. Because of the need for certainty as to the legal consequences that attach to past facts and conduct, courts have long recognized that the cases in which legislation has retrospective effect must be exceptional.

29. *Brosseau* sets out three categories of laws for the purpose of determining whether the presumption against retrospectivity applies.

1. Laws that attach benevolent consequences to past acts, to which the presumption does not apply.
    - Section 162.01 is not benevolent.

2. Laws that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as further punishment for the event; these do not attract the presumption.
    - The case law clarifies that this category has to do with orders that prohibit someone from engaging in a profession or sphere of activity as a way of protecting the public. Section 162.1 does not provide for that type of protective order; it provides for monetary penalties.

3. Laws that attach prejudicial consequences to a prior event, which attract the presumption.
    - To complete my analysis, I need to decide whether section 162.01 is "prejudicial" legislation, and if so, whether the presumption against retrospectivity is rebutted.

30. I think there are reasonable arguments that section 162.01 is prejudicial. Looking at the broader scheme of the legislation, it appears that it was adopted in order to provide a more streamlined way for monetary sanctions to be imposed for less serious violations of securities legislation. Instead of the Commission tribunal holding a hearing and all of the process that a Commission hearing entails, the executive director can impose a penalty following only an opportunity to be heard. If the provision operates the way it appears it was intended to, there may be more penalties for violations of regulations than in the past. Market participants who might have received only a warning letter or had to pay a late fee in the past due to limited Commission enforcement resources may now be faced with a penalty issued under a public decision. It is easy to see how a market participant could view the impact of section 162.01 as prejudicial.

31. Despite these arguments, I agree with staff that section 162.01 is not prejudicial. It does not introduce any new substantive obligations or consequences, only procedural changes to the enforcement of those obligations. It does not expose Moore to a new or more severe penalty; it only provides a new process for imposing a monetary penalty for conduct that was a contravention prior to the amendment. The maximum penalty is lower than the one Moore was already exposed to. Since section 162.01 is not prejudicial, the presumption against retrospectivity does not apply.

32. To summarize, I find that section 162.01 is purely procedural and not prejudicial, so it applies to Moore's contraventions of the insider reporting obligations that occurred before March 27, 2020.

Administrative Penalty

33. Given that Moore has contravened the insider reporting requirement, I must now consider whether it is in the public interest for him to pay an administrative penalty, and if so, what amount is appropriate in the circumstances.

34. As noted above, administrative sanctions under the Act are intended to be protective and preventative. I may consider general as well as specific deterrence. The case of *Orr (Re)*, 2001 BCSECCOM 1106 confirms that factors like the number of unreported trades, duration of non-compliance, volume of unreported trades as a proportion of total volume and steps taken to fix the non-compliance are relevant when sanctioning insider reporting violations.

35. Under section 162.02(1), in determining the amount, I must consider the following factors.

Past conduct

36. Moore has no formal disciplinary history. However, prior to the above contraventions staff sent him a letter dated Nov 14, 2017 regarding late filings for November 2016 to October 2017 cautioning him that failing to file on time in the future could result in monetary fines or other sanctions. Moore has also been assessed late fees of $9000 of which $6800 remains outstanding.

37. The fact that Moore did not change his behaviour after a written warning and paying and being assessed late fees suggests that a more significant penalty is required both to deter him from future non-compliance but also to deter other reporting insiders from filing late.

Seriousness of the conduct

38. Insider reporting is a key element in the continuous disclosure regime for reporting issuers. It discloses to market participants the trading activities of the persons most closely connected to, and therefore in a position to be most knowledgeable about, a reporting issuer: *Re McLeary*, 2016 BCSECCOM 191. It also deters insider trading based on material undisclosed information: *Companion Policy 55*-104CP Insider Reporting Requirements and Exemptions.

39. During the relevant period, Moore failed to report 156 transactions over 27 months valued at approximately $614,938. His market transactions only accounted for approximately 2-3% of the total volume traded. However, during his heaviest trading in March and April, 2020, Moore's unreported transactions accounted for approximately 12-13% of the total Canadian trading volume respectively (over 10% including OTC and Frankfurt).

40. His efforts to bring his filings into compliance appear to have been driven by inquiries from his broker, a cease trade order issued by staff on December 8, 2020 related to his failure to file insider reports, and the investigation that led to this proceeding.

41. Moore's explanation for his non-compliance was "immaturity" and "lack of understanding of my responsibility", which is wholly unacceptable for the CEO of a public company. That said, there is no sign that Moore was intentionally concealing his trading or that he benefitted from its non-disclosure.

42. In summary, the duration and volume of non-compliance is of moderate seriousness, especially when compared to some of the settlements discussed below, but overall, the repeated failure to comply after a warning and late fees without a good reason make Moore's contraventions moderately serious to serious.

Mitigating factors

43. Moore was diagnosed with a serious illness in September 2020. His sworn interview with staff indicates he was "incapacitated" or that it was "affecting" him for at least one whole year. It does not appear his illness literally incapacitated Moore in the sense that he was unable to do anything, because according to staff's affidavit, from September 1, 2020 to December 8, 2020, he disposed of shares 28 times and participated in a private placement for $100,000. I do not make light of his illness, but if he was well enough to trade, he was well enough to comply with the insider reporting requirement. Filing an insider report can be onerous for a sick person, but filing agents are available to help reporting insiders comply with the technical aspects of their obligations. I further note that Moore took over two years to bring his filings up to date after his recovery, so his non-compliance appears to have been driven mostly by factors other than his illness.

The need to demonstrate the consequences of inappropriate conduct to those who access the capital markets and deter those who participate in the capital markets from engaging in inappropriate conduct

44. Moore's repeated past non-compliance despite a warning and late fees suggest there is a significant risk of future non-compliance. A penalty significant enough to encourage him to comply in future is warranted. The need to demonstrate to other reporting insiders that there will be serious consequences for repeated non-compliance and ignoring warnings also warrants a significant penalty.

Orders made by the commission in similar circumstances in the past

45. Staff provided a list of sanctions imposed by the Commission following a hearing:

Relevant Facts & Misconduct	***Sanctions***
Orr (Re), 2001 BCSECCOM 1106 • 92 transactions in securities of three reporting issuers over five years • Orr self-reported his contraventions and brought his filings up to date and paid $1850 in late fees	Penalty: $3,000 Market Bans: 6 month ban from relying on certain exemptions
Prowse (Re), 2002 BCSECCOM 232 • 110 transactions over one year representing almost a third of the trading • Also failed to file 10 insider reports for trades in securities of four other reporting issuers over roughly two years • When staff notified Prowse of his failures, he made his filings and paid late fees of $1150	Penalty: $5,000 Market Bans: 18 month ban from relying on certain exemptions; 18 month ban from acting as an officer or director for all but one reporting issuer subject to taking a course
Stevenson (Re), 2002 BCSECCOM 802 • 329 transactions over a 32 month period valued at over $1.7 million representing 13% of the total trading • After Staff cease-traded him for his filing failures, he brought his filing record up to date and paid late fees of $850	Penalty: $6,000 Market Bans: 3 year bans from relying on certain exemptions and trading in reporting issuers where he is an insider; 1 year officer/director ban
McLean (Re), 2003 BCSECCOM 301 • 333 transactions over a two year period representing 18% of trading • McLean made his filings more than 4 years after cease trade order, just before the hearing • Previously prohibited from acting as an officer or director of an issuer on the TSX Venture Exchange	Penalty: $10,000 Market Bans: 5 year ban from using certain exemptions 5 year ban from acting as officer or director of a reporting issuer

Re McLeary, 2016 BCSECCOM 191 (Sanctions) *Re McLeary*, 2015 BCSECCOM 444 (Liability) • 105 transactions in the securities of two reporting issuers valued at over $1.2 million • He intentionally concealed his transactions through offshore trading accounts • He had paid late fees of $5,250 • Prior Commission finding of a serious market manipulation leading to permanent market prohibitions	Penalty: $25,000 Market Bans: Permanent trading and market activity bans

46. Staff also provided a list of more recent settlements for insider reporting violations:

Relevant Facts & Misconduct	***Sanctions***
Wisbey (Re), 2024 BCSECCOM 43 • 547 transactions worth $4,149,329 not reported plus 138 transactions worth $2,833,772 were reported late over a four year and five month period • Failed to file Early Warning Reports • Misstatement of holdings in Information Circular • Distributing from control without notice • Paid late fees of $18,750	Undertaking to pay: $80,000
Penn (Re), 2021 BCSECCOM 472 • 425 transactions worth $1,155,947 over three years • Failed to file Early Warning Reports • Misstatement of holdings in Information Circular • Paid late fees of $9,100	Undertaking to pay: $75,000

Rubin (Re), 2021 BCSECCOM 473 • 122 transactions worth $646,566 over three years • Failed to file Early Warning Reports • Misstatement of holdings in Information Circular • Paid late fees of $4,300	Undertaking to pay: $65,000

47. Staff note that there is a significant gap between the monetary penalties ordered in the above decisions and more recent settlements and submit that the primary reasons for this gap are:
    1. The age of the decisions and effect of inflation on deterrence.
    2. The 2006 increase in the maximum monetary penalties permitted under the Act from $250,000 to $1 million.
    3. The presence of market bans in the old decisions.
    4. Recent willingness to enter into settlements for insider reporting that do not involve market bans but with higher penalties.

48. I agree with staff that the recent settlements provide better guidance for the purposes of this matter. In particular, the penalty should be more than the amounts in the older cases to account for inflation, higher penalty limits in the Act, and the fact that Moore will not be receiving any market bans. The *McLeary* case involving permanent market bans is not comparable because of the history of market manipulation.

49. The *Wisbey*, *Penn* and *Rubin* settlements are more serious in that each involved other contraventions. *Wisbey* and *Penn* involved a higher volume of transactions, whereas *Rubin* is comparable in scope. Unlike the respondents in *Penn* and *Rubin*, Moore was never registered under the Act. However, Moore received a warning letter and has not paid all of his late fees.

Other matters relevant to the public interest.

50. Staff submitted that there were no further relevant facts under this heading.

51. Based on all of the foregoing, staff recommended a penalty in the range of $35,000 to $45,000. I agree that is an appropriate range as it reflects the *Rubin* settlement while taking into account that *Rubin* involved other violations. I find the appropriate penalty amount is $40,000.

Requirement to Pay or Dispute the Administrative Penalty

52. Under section 162.01 of the Act, and subject to Moore's right to dispute the alleged contraventions or penalty amount under section 162.04 of the Act, I consider it in the public interest to require Moore to pay a total administrative penalty of $40,000 for the alleged contraventions.

53. Under section 162.04(1) of the Act, within 30 days of receiving this notice, Moore must:
    - pay the administrative penalty; or
    - give me written notice requesting an opportunity to be heard to dispute the alleged contraventions or the amount of the administrative penalty.

54. Under section 162.04(2.1) of the Act, Moore will be deemed to have contravened section 3.3 of NI 55-104, and the administrative penalty set out in this notice will be payable to the commission, if Moore:
    - pays the administrative penalty; or
    - fails to pay the full amount of the administrative penalty, or request an opportunity to be heard to dispute the alleged contraventions or the amount of the administrative penalty, within 30 days of receiving this notice.

August 19, 2024

Peter J. Brady
Executive Director