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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF  
ONTARIO

*THE CHARTERED ACCOUNTANTS ACT, 2010*

***An appeal in this matter was partially allowed. Please see the reasons of the Appeal Committee***

**TO:** JOE C. DWEK, CPA, CA

**AND TO:** The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegations against Joe C. Dwek, a member of CPA Ontario:

1. THAT, the said Joe C. Dwek, in or about the period April 1, 2010 to March 31, 2011, while employed as the Ultimate Designated Person ("UDP") of MineralFields Management Inc. ("MFMI"), Limited Market Dealer Inc. ("LMDI") and Pathway Investment Counsel ("Pathway") (collectively, the "MineralFields Group") and as the Chief Compliance Officer ("CCO") of MFMI and Pathway, failed to perform his professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct, in that:
  - a. he failed to meet his UDP responsibilities to establish, maintain and apply controls and supervision to ensure that trades made by access persons to the MineralFields Group were pre-approved and complied with Ontario securities law, as described in the Settlement Agreement attached as "Schedule A"; and
  - b. he failed to meet his UDP and CCO responsibilities to supervise and ensure MineralFields Group's compliance with Ontario securities law by delegating all compliance duties for the MineralFields Group to the CCO of LMDI, as described in the Settlement Agreement attached as "Schedule A".
2. THAT, the said Joe C. Dwek, in or about the period between January 1, 2002 and December 31, 2011, while the sole legal owner of the voting shares of MFMI and LMDI, associated himself with statements and representations which he knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct, in that:
  - a. he disclosed in regulatory filings with the Ontario Securities Commission that he was the sole owner of the registered firms within the Mineral Fields Group, when another individual had a beneficial interest in 49.9%

of the non-voting shares of MFMI and LMDI, as described in the Settlement Agreement attached as "Schedule A".

Dated at Toronto, this 6<sup>th</sup> day of September, 2016.

A handwritten signature in blue ink, appearing to be 'L.E. Davis', with a stylized, cursive script.

L.E. DAVIS, CPA, CA, DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

## SCHEDULE "A"

22e étage  
20, rue queen ouest  
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 JOE DWEK**

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**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
and JOE DWEK**

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**PART I - INTRODUCTION**

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement between Staff of the Commission ("Staff") and Joe Dwek ("Dwek") (the "Settlement Agreement"), and to make certain orders in respect of Dwek.

**PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing against Dwek in accordance with the terms and conditions set out below. Dwek consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out below.

### **PART III – AGREED FACTS**

#### **A. Background**

3. During the period between 2002 and 2010, Dwek was registered with the Commission as the Ultimate Responsible Person of Pathway Investment Counsel Inc. (“Pathway”). During the period between 2010 and October 12, 2012, Dwek was registered with the Commission as the Ultimate Designated Person (“UDP”) of MineralFields Management Inc. (“MFMI”), Limited Market Dealer Inc. (“LMDI”) and Pathway which comprised a group of companies (the “MineralFields Group”). Between the period between 2002 and October 12, 2012, Dwek was also registered as the Chief Compliance Officer (“CCO”) of MFMI and Pathway.

4. The MineralFields Group was involved in the distribution and management of flow-through limited partnerships. These limited partnerships invested primarily in flow-through shares of junior Canadian resource issuers through private placement issues.

5. MFMI was registered in the category of investment fund manager. It acted as the investment fund manager for flow-through limited partnerships the units of which were sold to investors through prospectuses and offering memoranda under the branding of “MineralFields”, “Pathway”, and “EnergyFields LPs” (the “MineralFields LPs”).

6. LMDI was registered as a dealer in the category of exempt market dealer. LMDI sourced private placement issues of resource companies for the MineralFields LPs to invest in, and received a finder’s fee (in cash and/or warrants) from these resource issuers for its services as an agent/finder. LMDI was also involved in negotiating the terms of the private placement issues with management of the resource issuers in connection with the purchase of securities by the MineralFields LPs.

7. Pathway was registered as an adviser in the category of portfolio manager. It was retained to provide portfolio management services to the MineralFields LPs.

8. Between April 28, 2011 and August 31, 2011, Staff conducted reviews of MFMI, LMDI and Pathway (the “Compliance Reviews”) for the period between April 1, 2010 and March 31, 2011 (the “Review Period”). Compliance Staff of the OSC noted a number of deficiencies

following its review. During the course of the Compliance Reviews, certain matters came to the attention of Staff respecting Dwek.

9. In particular, during the Compliance Reviews, it was revealed that commencing in 2002 and continuing until 2011, it was consistently disclosed in regulatory filings with the Commission that Dwek was the 100% owner of the registered firms within the MineralFields Group. Dwek is and has been the legal owner of 100% of the voting shares of MFMI and LMDI. Another person (the “Undisclosed Partner”) had a beneficial interest in 49.9% of the non-voting shares of MFMI and LMDI since inception of these firms in 2002 and 2004 respectively until after the Compliance Reviews. Dwek had an understanding with the Undisclosed Partner that the Undisclosed Partner would have a 49.9% interest and Dwek would have a 50.1% interest in the companies from the date each company was incorporated. Between 2002 and 2010:

- (a) a document dated March 25, 2002 and signed by Dwek was filed with the Commission certifying that Dwek was the only shareholder of LMDI owning 100% of the shares of LMDI;
- (b) in 2005, a limited market dealer survey questionnaire was signed by Dwek as president of LMDI and submitted to the Commission. It stated that Dwek was the sole director, officer and shareholder of LMDI;
- (c) during a compliance field review conducted by Staff in November 2005 of LMDI, Staff were told by LMDI’s CCO that Dwek was the sole shareholder of LMDI;
- (d) in 2010, the Commission was provided with an ownership chart of MFMI signed by Dwek which stated that “Joe Dwek owns 100% of the shares of MineralFields Fund Management Inc.”; and
- (e) during the Compliance Review of MFMI that commenced on April 28, 2011, Staff sent a books and records request that included a request “for a copy of the Registrant’s current organization chart and employee list with telephone numbers.” In response to this request, Staff received from the CCO and Chief Financial Officer of LMDI an organizational chart showing Dwek (directly and through his companies) as the 100% owner of MFMI and LMDI.

10. The Undisclosed Partner was not registered under the Act in any capacity and was not disclosed as a “permitted individual” within the meaning of National Instrument 33-109-*Registration Information*.

## **B. Inadequate Supervision of Personal Trading and Inappropriate Personal Trading**

11. As the UDP of MFMI, LMDI and Pathway, Dwek was responsible for the compliance functions for the registered firms in the MineralFields Group. This included responsibility for the monitoring of compliance with the MineralFields Group trade pre-clearance policy which required trades to be pre-approved by Dwek or the CCO of LMDI.

12. During the Review Period, Dwek did not monitor and ensure that all trades made by access persons to the MineralFields Group firms were pre-approved and complied with Ontario securities law including provisions related to self-dealing and other conflicts of interest. The UDP was required to ensure that policies and procedures were established, maintained and applied that establish a system of controls and supervision to ensure that trades made by access persons were made in compliance with Ontario securities law. This was not done.

13. During the Review Period, Dwek did not ensure that certain personal trades were pre-cleared with the CCO of LMDI. Dwek sold shares of an issuer at a price more favourable than the price at which the MineralFields LPs sold the shares of the same issuer. Between March 11, 2011 and March 28, 2011, Dwek sold a total of 629,500 shares of an issuer at prices ranging from \$0.657 to \$0.520 per share. On March 28, 2011, Dwek sold 1000 shares at a price of \$0.520. On the same day, one of the MineralFields LPs sold 333,500 shares of the same issuer at an average price of \$0.5077, a price lower than Dwek received.

14. During the Review Period, the CCO of LMDI sold 7,500 shares of an issuer at a price of \$2.57 two days prior to one of the MineralFields LPs selling 100,000 shares of the same issuer at a price of \$2.51. The CCO’s trade was not monitored or pre-approved by Dwek.

## **C. Inadequate Supervision of Compliance Activities**

15. During the Review Period, Dwek failed to meet his UDP and CCO responsibilities to supervise and ensure compliance by the MineralFields Group firms. During the Compliance Review, Staff identified significant deficiencies respecting the MineralFields Group firms.

Dwek informed Staff that he had delegated all compliance duties of MFMI, LMDI, and Pathway to the CCO of LMDI and did not perform any compliance function other than cheque review and signing and review of financial information. Dwek acknowledges that the UDP was obliged to ensure that the MineralFields Group firms were in compliance with Ontario securities law but failed to do so. In particular, no one ensured that:

- (a) individuals conducting registerable activities and acting on behalf of the MineralFields Group were properly registered, approved and/or disclosed to the Commission;
- (b) adequate portfolio management was performed for clients, including ensuring that a registered adviser was determining the investment terms of private placement transactions entered into by the MineralFields LPs and performing adequate due diligence for all investments;
- (c) sufficient know your client (“KYC”) information was collected for all clients and that MineralFields Group properly discharged their suitability obligations;
- (d) the net asset value (“NAV”) of the funds managed by MFMI was computed correctly;
- (e) the impact of the NAV errors were assessed, documented and rectified in a timely manner;
- (f) reliance on prospectus exemptions was appropriate for all clients;
- (g) conflicts of interest among the MineralFields Group were identified and were adequately managed;
- (h) claims and representations made to clients were accurate and could be substantiated;
- (i) the National Registrant Database was updated regarding the business locations and trade names used by the MineralFields Group;
- (j) appropriate steps were taken to protect the confidentiality of clients’ information;
- (k) adequate insurance coverage was maintained by the MineralFields Group; and

- (l) written policies and procedures were complete and adequately addressed key areas related to each of the MineralFields Group's obligations under Ontario securities law.

#### **D. Respondent's Position**

16. The Respondent states that:

- (a) Dwek has served accounting clients as a chartered accountant for over 40 years. Prior to the establishment of the MineralFields Group, he had not worked in the securities industry;
- (b) there is no evidence that the Respondent's conduct contrary to the public interest caused investor losses. The MineralFields Group raised in excess of \$1.1 billion;
- (c) the MineralFields Group received unqualified audit opinions from 2002 to 2010;
- (d) Dwek had his own separate office space, did not share office space with the MineralFields Group and Dwek did not regularly attend at the MineralFields Group office;
- (e) Dwek served to answer all questions from accountants and advisors respecting the proper tax treatment of investments as that was his area of expertise; and
- (f) after the compliance deficiencies at the MineralFields Group were discovered by Compliance Staff, Dwek cooperated with Staff in replacing himself as UDP, replacing the CCO and portfolio manager and appointing a monitor until the assets of the MineralFields Group were transferred to another registrant. The MineralFields Group entities are no longer in business and investors were not harmed.

#### **PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST**

17. By engaging in the conduct described above, Dwek admits that he acted contrary to the public interest.



## PART V - TERMS OF SETTLEMENT

18. Dwek agrees to the terms of settlement listed below.
  
19. The Commission will make an order, pursuant to subsection 127(1) and section 127.1 of the Act, that:
  - (a) the Settlement Agreement is approved;
  - (b) Dwek resign any position he holds as a director of a registrant;
  - (c) Dwek shall be prohibited from becoming or acting as an “ultimate designated person” or a “chief compliance officer” as defined in subsection 1(1) of the Act or, with the exception of a director or owner as described in subparagraph (d) below, a “permitted individual” within the meaning of section 1.1 of *National Instrument 33-109* of a registrant permanently;
  - (d) Dwek shall be prohibited from becoming or acting as a registrant, a director of a registrant or as an individual who has beneficial ownership of, or direct or indirect control over, 10% or more of the voting securities of a registered firm until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek successfully completes, in addition to any applicable proficiency requirements, the Conduct and Practices Handbook Course and, if seeking to become a director of a registered firm, until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes the Directors Education Program;
  - (e) Subject to the satisfaction of (d) and upon becoming registered by the Director under subsection 27(1) of the Act, Dwek’s registration shall be subject to a term and condition requiring he be under the strict supervision of a sponsoring firm for a period of one year;
  - (f) Dwek is reprimanded; and
  - (g) Dwek shall pay the costs of the Commission’s investigation upon the approval of the Settlement Agreement in the amount of \$25,000.

20. For his conduct contrary to the public interest, Dwek undertakes to make a voluntary payment in the amount of \$200,000 to the Commission which is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.

21. Dwek undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all sanctions set out in subparagraphs 19 (b) to (e) above.

## **PART VI - STAFF COMMITMENT**

22. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Dwek in relation to the facts set out in Part III herein, subject to the provisions of paragraph 23 below.

23. If this Settlement Agreement is approved by the Commission, and at any subsequent time Dwek fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Dwek based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

## **PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

24. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Dwek for the scheduling of the hearing to consider the Settlement Agreement.

25. Staff and Dwek agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding their conduct, unless the parties agree that further facts should be submitted at the settlement hearing.

26. If this Settlement Agreement is approved by the Commission, Dwek agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

27. If this Settlement Agreement is approved by the Commission, none of the parties shall make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

28. Whether or not this Settlement Agreement is approved by the Commission, Dwek agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

#### **PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

29. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Dwek leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Dwek; and
- (b) Staff and Dwek shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and the Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

30. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Dwek and Staff or as may be required by law.

#### **PART IX - EXECUTION OF SETTLEMENT AGREEMENT**

31. This Settlement Agreement may be signed on one or more counterparts which together will constitute a binding agreement.

32. A facsimile copy of any signature will be as effective as an original signature.

Signed in the presence of:

*"Brenda Layne"*

*"Joe Dwek"*

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Joe Dwek

*"Brenda Layne"*

\_\_\_\_\_  
(Print Name)

Dated this "25<sup>th</sup>" day of February, 2014

**STAFF OF THE ONTARIO SECURITIES COMMISSION**

*"Tom Atkinson"*

\_\_\_\_\_  
**Tom Atkinson**

Director, Enforcement Branch

Dated this "25<sup>th</sup>" day of February, 2014.



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**Schedule “A”**

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**IN THE MATTER OF JOE DWEK**

**- and -**

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE  
ONTARIO SECURITIES COMMISSION AND JOE DWEK**

**ORDER**

**(Subsections 127(1) and 127(2) and Section 127.1)**

**WHEREAS** the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing (the “Notice of Hearing”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) in connection with a Statement of Allegations filed by Staff of the Commission (“Staff”) to consider whether it is in the public interest to make certain orders against Joe Dwek (“Dwek”);

**AND WHEREAS** Dwek entered into a Settlement Agreement with Staff (the “Settlement Agreement”) in which Dwek and Staff agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND WHEREAS** the Commission has reviewed the Notice of Hearing, the Statement of Allegations and the Settlement Agreement;

**AND WHEREAS** Dwek has entered into an undertaking as part of the Settlement Agreement whereby he shall make a voluntary payment to the Commission in the amount of \$200,000, which will be designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

**AND WHEREAS** Dwek has provided to Staff a certified cheque in full payment of all monetary amounts provided and described in the Order including the above-described voluntary payment;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Dwek resign any position he holds as a director of a registrant or as a chief executive officer, chief financial officer, or chief operating officer of a registrant or the functional equivalent of any of these positions;;
- (c) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a director of a registrant except as described in subparagraph (f) below or from becoming or acting as a chief executive officer, chief financial officer or chief operating officer of a registrant or the functional equivalent of any of these positions permanently;
- (d) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as an “ultimate designated person” or a “chief compliance officer” as defined in subsection 1(1) of the Act permanently;
- (e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a registrant, or as an individual who has beneficial ownership of, or direct or indirect control or direction over 10% or more of the voting securities of a registered firm until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes, in addition to any proficiency requirements, the Conduct and Practices Handbook Course;
- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a director of a registrant until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes the Directors Education Program;

- (g) subject to the satisfaction of subparagraph (e) and pursuant to subsection 127(2) of the Act, upon becoming registered by the Director under subsection 27(1) of the Act, Dwek's registration shall be subject to a term and condition requiring Dwek be under strict supervision of a sponsoring firm for a period of one year;
- (h) pursuant to paragraph 6 of subsection 127(1) of the Act, Dwek is reprimanded;
- (i) the voluntary payment of \$200,000 to the Commission made by Dwek upon the approval of the Settlement Agreement is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and
- (j) pursuant to section 127.1 of the Act, Dwek shall pay the costs of the Commission's investigation upon the approval of the Settlement Agreement in the amount of \$25,000.

**DATED AT TORONTO** this                      day of February, 2014.

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## OSC Proceedings



**PDF Version**

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**IN THE MATTER OF JOE DWEK**

**- and -**

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE  
ONTARIO SECURITIES COMMISSION AND JOE DWEK**

**ORDER  
(Subsections 127(1) and 127(2) and Section 127.1)**

**WHEREAS** the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") to consider whether it is in the public interest to make certain orders against Joe Dwek ("Dwek");

**AND WHEREAS** Dwek entered into a Settlement Agreement with Staff (the "Settlement Agreement") in which Dwek and Staff agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND WHEREAS** the Commission has reviewed the Notice of Hearing, the Statement of Allegations and the Settlement Agreement;

**AND WHEREAS** Dwek has entered into an undertaking as part of the Settlement Agreement whereby he shall make a voluntary payment to the Commission in the amount of \$200,000, which will be designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

**AND WHEREAS** Dwek has provided to Staff a certified cheque in full payment of all monetary amounts provided and described in the Order including the above-described voluntary payment;

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

**IT IS HEREBY ORDERED THAT:**



(a) the Settlement Agreement is approved;

(b) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Dwek resign any position he holds as a director of a registrant or as a chief executive officer, chief financial officer, or chief operating officer of a registrant or the functional equivalent of any of these positions;;

(c) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a director of a registrant except as described in subparagraph (f) below or from becoming or acting as a chief executive officer, chief financial officer or chief operating officer of a registrant or the functional equivalent of any of these positions permanently;

(d) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as an "ultimate designated person" or a "chief compliance officer" as defined in subsection 1(1) of the Act permanently;

(e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a registrant, or as an individual who has beneficial ownership of, or direct or indirect control or direction over 10% or more of the voting securities of a registered firm until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes, in addition to any proficiency requirements, the Conduct and Practices Handbook Course;

(f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Dwek shall be prohibited from becoming or acting as a director of a registrant until the later of a period of three years from the date of the approval of the Settlement Agreement and the date on which Dwek completes the Directors Education Program;

(g) subject to the satisfaction of subparagraph (e) and pursuant to subsection 127(2) of the Act, upon becoming registered by the Director under subsection 27(1) of the Act, Dwek's registration shall be subject to a term and condition requiring Dwek be under strict supervision of a sponsoring firm for a period of one year;

(h) pursuant to paragraph 6 of subsection 127(1) of the Act, Dwek is reprimanded;

(i) the voluntary payment of \$200,000 to the Commission made by Dwek upon the approval of the Settlement Agreement is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(j) pursuant to section 127.1 of the Act, Dwek shall pay the costs of the Commission's investigation upon the approval of the Settlement Agreement in the amount of \$25,000.

**DATED AT TORONTO** this 27<sup>th</sup> day of February, 2014.

" Christopher Portner "  
Christopher Portner

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CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO  
*CHARTERED ACCOUNTANTS ACT, 2010*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **JOE CLEMENT BRIAN DWEK**, a Member, under **Rule 202.1** and **Rule 205** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Joe C. Dwek, CPA, CA  
200 – 1110 Finch Avenue West  
Toronto, ON, M3J 2T2

**AND TO:** The Professional Conduct Committee

**DECISION AND ORDER MADE DECEMBER 15, 2016**

**DECISION**

THAT having seen and considered the evidence, the Discipline Committee finds Joe Clement Brian Dwek guilty of Allegation Nos. 1 and 2, and guilty of professional misconduct.

**ORDER**

IT IS ORDERED in respect of the Allegations:

1. THAT Mr. Dwek be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Dwek be and he is hereby fined the sum of \$10,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT notice of this Decision and Order, disclosing Mr. Dwek's name, be given in the form and manner determined by the Discipline Committee:
  - (a) to all members of CPA Ontario; and
  - (b) to all provincial bodies;and shall be made available to the public.
4. THAT in the event Mr. Dwek fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within three (3) months from the date of his suspension. In the event he does not comply within the three (3) month period, his membership in CPA Ontario shall thereupon be revoked, and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Dwek's employment or residence. All costs associated with this publication shall be borne by Mr. Dwek and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

5. THAT Mr. Dwek be and he is hereby charged costs fixed at \$6,000, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

DATED AT TORONTO THIS 19th DAY OF DECEMBER, 2016  
BY ORDER OF THE DISCIPLINE COMMITTEE



DIANE WILLIAMSON  
ADJUDICATIVE TRIBUNALS SECRETARY

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO  
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)  
*CHARTERED ACCOUNTANTS ACT, 2010*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **JOE CLEMENT BRIAN DWEK**, a Member, under **Rule 202.1** and **Rule 205** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Joe C. Dwek, CPA, CA

**AND TO:** The Professional Conduct Committee

**REASONS**

**(Decision and Order made December 15, 2016)**

1. This tribunal of the Discipline Committee met on December 15, 2016 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Joe Clement Brian Dwek, a Member of CPA Ontario.

2. Ms. Tamara Center appeared on behalf of the Professional Conduct Committee (PCC). Mr. Dwek attended with his counsel Mr. Kevin Richard. Ms. Lisa Braverman attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on December 15, 2016, and the written Decision and Order was sent to the parties on December 19, 2016. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

**Allegations**

4. The following allegations of professional misconduct were made against Mr. Dwek by the Professional Conduct Committee on September 6, 2016:

1. THAT, the said Joe C. Dwek, in or about the period April 1, 2010 to March 31, 2011, while employed as the Ultimate Designated Person ("UDP") of MineralFields Management Inc. ("MFMI"), Limited Market Dealer Inc. ("LMDI") and Pathway Investment Counsel ("Pathway") (collectively, the "MineralFields Group") and as the Chief Compliance Officer ("CCO") of MFMI and Pathway, failed to perform his professional services with due care, contrary to Rule 202.1 of the Rules of Professional Conduct, in that:
  - a. he failed to meet his UDP responsibilities to establish, maintain and apply controls and supervision to ensure that trades made by access persons to the MineralFields Group were pre-approved and complied with Ontario securities law, as described in the Settlement Agreement attached as "Schedule A"; and

- b. he failed to meet his UDP and CCO responsibilities to supervise and ensure MineralFields Group's compliance with Ontario securities law by delegating all compliance duties for the MineralFields Group to the CCO of LMDI, as described in the Settlement Agreement attached as "Schedule A"\*.
- 2. THAT, the said Joe C. Dwek, in or about the period between January 1, 2002 and December 31, 2011, while the sole legal owner of the voting shares of MFMI and LMDI, associated himself with statements and representations which he knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct, in that:
  - a. he disclosed in regulatory filings with the Ontario Securities Commission that he was the sole owner of the registered firms within the Mineral Fields Group, when another individual had a beneficial interest in 49.9% of the non-voting shares of MFMI and LMDI, as described in the Settlement Agreement attached as "Schedule A"\*.

\*Schedule A is not attached to these reasons.

#### **Plea**

- 5. Mr. Dwek entered a plea of not guilty to Allegation Nos. 1 and 2.

#### **The case for the PCC**

- 6. Ms. Center submitted that the facts in this case for the PCC are contained in Schedule A to the allegations, the Settlement Agreement, and in the Document Brief (Exhibit 1). The PCC did not undertake an investigation, relying on the facts agreed to in the Settlement Agreement with the Ontario Securities Commission (OSC) and no witnesses would be called. Mr. Dwek had signed the Settlement Agreement (SA) with the OSC, admitting that he had acted contrary to the public interest.
- 7. Ms. Center stated that Mr. Dwek was registered with the OSC as the Ultimate Designated Person (UDP) for MFMI, LMDI and Pathway, a group of companies known as the MineralFields Group. Between 2002 and 2012, Mr. Dwek was also registered as the Chief Compliance Officer (CCO) of MFMI and Pathway. The MineralFields Group was involved in the distribution and management of flow-through limited partnerships, MFMI was registered as an investment fund manager, LMDI was registered as a dealer and Pathway was registered as a portfolio manager adviser.
- 8. During compliance reviews, it was revealed that from 2002 until 2011, Mr. Dwek was consistently shown as the 100% owner of the registered firms within the MineralFields Group, owning 100% of the voting shares of MFMI and LMDI. The fact that an undisclosed partner had a beneficial interest in 49.9% of the non-voting shares of MFMI and LMDI was not disclosed to the OSC. The undisclosed partner was not registered under the *Securities Act* and was not a "permitted individual".
- 9. Mr. Dwek, as UDP, was responsible for monitoring the compliance functions of the MineralFields Group registered firms. Mr. Dwek failed to monitor and ensure that all trades were pre-approved and complied with Ontario securities law, and failed to ensure that certain personal trades of shares were pre-cleared with the CCO of LMDI. Mr. Dwek, as UDP, was

required to ensure that the MineralFields Group registered firms were in compliance with Ontario securities law but no one including Mr. Dwek ensured appropriate steps were taken to protect the confidentiality of client information and no one including Mr. Dwek ensured adequate insurance coverage was maintained by the MineralFields Group.

10. Ms. Center stated that Mr. Dwek has been a chartered accountant for over 40 years and had not worked in the securities industry prior to the establishment of the MineralFields Group. Mr. Dwek, during this time, had a full-time accounting practice and the proper tax treatment of investments was his area of expertise. There was no evidence of losses to investors and the MineralFields Group raised in excess of \$1.1 billion.

11. Ms. Center stated that under the terms of the SA with the OSC, Mr. Dwek has resigned any position he held as director of a registrant, Mr. Dwek is prohibited from acting as the Ultimate Designated Person or Chief Compliance Officer as defined under the *Securities Act*, Mr. Dwek is prohibited for three years from acting as a director, registrant, or having beneficial ownership of 10% or more of voting securities of a registered firm, Mr. Dwek has been reprimanded and Mr. Dwek has been ordered to pay costs of \$25,000. Mr. Dwek undertook to make a voluntary payment of \$200,000 to the OSC. As part of the terms of the SA, Mr. Dwek is also subject to a one year supervision term and condition and completion of a course and program.

#### **The case for Mr. Dwek**

12. Mr. Richard sought to file as an Exhibit an affidavit containing an OSC Settlement Agreement of the Chief Financial Officer (CFO) of MFMI, LMDI and Pathway and Chief Compliance Officer of LMDI. Ms. Center raised an issue about its relevance. After hearing submissions from Mr. Richard and Ms. Center as to the relevance of this document, including noting Ms. Center's submission that it is only Mr. Dwek's situation that is being considered and dealt with at this hearing, it was allowed to be filed as Exhibit 2. The tribunal determined that the document would be admitted as evidence, noting that the tribunal would give it the appropriate weight in its deliberations.

13. Mr. Richard submitted that while Mr. Dwek did settle with the OSC, made admissions in the SA and agreed to the sanctions proposed, the focus is on whether Mr. Dwek breached the Rules of Professional Conduct. Mr. Richard stated that although the undisclosed partner who had a beneficial interest in non-voting shares was not registered, the issue was if he had to be registered.

14. Mr. Richard stated that Mr. Dwek was not involved in trading that was off side except for one trade when he sold shares at a higher price on the same day. Trades and sale of shares were to be pre-cleared through the CCO of LMDI, which was not done on this trade. The total difference for this trade was \$12.30, which can be considered a trivial amount.

15. Mr. Richard submitted that there was no reliance on Mr. Dwek as a chartered accountant, as he served to answer all questions from accountants and advisors, which had nothing to do with tax treatment or financial planning. Mr. Dwek had delegated all compliance duties to the CCO of LMDI and in his role as UDP, he did not carry out the day to day compliance duties.

16. Mr. Richard submitted that Mr. Dwek maintained an accounting practice in a separate office from the MineralFields Group and rarely attended at their office. He had no involvement in their day-to-day operations.

17. Mr. Richard submitted that this was a very successful enterprise and no investors were harmed. The matters relevant to the OSC were dealt with and resolved, and do not lead to Rule 202.1 or Rule 205 breaches.

18. Mr. Dwek had delegated all compliance duties to the CCO of LMDI who had 16 years of experience as CFO of a mutual fund dealer, placing reliance on that party to perform the work with due care.

19. Mr. Richard referred to and summarized some of the paragraphs in the SA that was part of Exhibit 2.

20. Mr. Richard distributed a Book of Authorities containing definitions from CPA Ontario's Bylaws, Foreword from Rules of Professional Conduct, CPA Ontario Council Interpretations and Rules 202 and 205.

### **Submissions**

21. Ms. Center distributed a Reply Case Brief containing Discipline Committee cases including *Stinson and Delahaye*, noting that as in these cases investors would have relied on Mr. Dwek's designation as a chartered accountant to add credibility.

22. Ms. Center submitted that the evidence was clear, cogent and convincing that Mr. Dwek failed to perform his professional services with due care and associated himself with false or misleading statements. Ms. Center stated that the facts in this case are not in dispute as evidenced by the admissions made in the SA with the OSC. Mr. Dwek had not disclosed to the OSC the true ownership of the group of companies, he did not monitor all trades, he conducted an inappropriate trade, he failed to supervise and he delegated all compliance duties. His conduct was contrary to the public interest.

23. Ms. Center stated that the explanations provided by Mr. Dwek for his conduct are not a defence to the allegations or the matters raised by the OSC, but an attempt to justify his actions or lack thereof. Mr. Dwek was responsible; he should not have delegated his compliance duties. Mr. Dwek had filed incomplete and misleading documents with the OSC.

24. Ms. Center submitted that Mr. Dwek does not get to remove his accountant hat in the performance of his duties with the MineralFields Group. The fact that Mr. Dwek has a chartered accountant designation was relied on by other parties including investors.

25. Mr. Richard submitted that there is no evidence that the OSC relied on Mr. Dwek as being a chartered accountant. Mr. Richard stated that the Foreword to the Rules of Professional Conduct and the Council Interpretations are very broad concerning the performance of professional services. The effect of these documents is that it would cover everything. No reliance was placed on Mr. Dwek as being a member of CPA Ontario and there were no issues with the financial statements or accounting records of the companies. The duties of Mr. Dwek do not fit the definition of professional services.

26. Mr. Richard stated that Mr. Dwek has acknowledged the mistakes he made through the admissions in the SA and has resolved the issues with the OSC.

27. Mr. Richard referenced the *Stinson and Delahaye* cases, noting that clients/investors had relied on the CA designation, which is quite different from the case of Mr. Dwek where there

was no evidence of reliance on his CA designation.

28. Mr. Richard stated that Mr. Dwek had control because he owned 100% of the voting shares and there was no requirement to disclose the partner who had 49.9% of the non-voting shares.

29. Mr. Richard submitted that the PCC wants the tribunal to find there has been a breach of the *Securities Act*, which is not the case.

30. Mr. Richard submitted that the allegations made against Mr. Dwek should be dismissed.

### **Decision**

31. After deliberating, the tribunal found that the allegations had been proven. The tribunal announced the following decision:

THAT having seen and considered the evidence, the Discipline Committee finds Joe Clement Brian Dwek guilty of Allegation Nos. 1 and 2, and guilty of professional misconduct.

### **Reasons for Decision**

32. Having seen and considered the evidence and submissions provided by both parties, the tribunal concluded that the evidence was clear, cogent and convincing and was sufficient to prove Allegations 1 and 2 on the balance of probabilities.

33. The tribunal placed reliance on the SA (Tab 1 of Exhibit 1), correspondence from Mr. Dwek's former counsel in response to queries from CPA Ontario's Director of Standards Enforcement, as well as submissions from both counsel. The primary evidence relied on was the SA, and submissions by counsel were consistent with the admissions set out in the SA. The facts were not in dispute.

34. The tribunal found as facts that Mr. Dwek signed the SA with the OSC and agreed with the "Agreed Facts" as set out in the SA. "Compliance Reviews" by the OSC covering the period April 1, 2010 to March 31, 2011 disclosed a number of deficiencies which occurred between 2002 and 2011 regarding MFMI, LMDI and Pathway (Tab 1 of Exhibit 1).

35. With regard to Allegation No. 1, the tribunal determined that Mr. Dwek was registered with the OSC as the UDP of MFMI, LMDI and Pathway from 2010 to October 12, 2012. Also during the period from 2002 to October 12, 2012, Mr. Dwek was registered with the OSC as the CCO of MFMI and Pathway. The tribunal noted that Allegation No. 1 refers to a period ending March 31, 2011, which is the end of the compliance review period. The SA refers to a period ending October 12, 2012. This discrepancy has no effect since the allegation period ending date is before the ending date in the SA.

36. As the UDP of MFMI, LMDI and Pathway (MineralFields Group), Mr. Dwek was responsible for the monitoring of compliance functions required by Ontario securities law. In particular, Mr. Dwek was responsible for the monitoring of compliance with the MineralFields Group trade pre-clearance policy which required pre-approval of trades by Mr. Dwek or the CCO of LMDI. The tribunal determined that Mr. Dwek did not monitor and ensure compliance with Ontario securities law. Mr. Dwek did not establish, maintain and apply a system of controls



and supervision to ensure that trades made by access persons to the MineralFields Group were pre-approved and complied with Ontario securities law. Mr. Dwek delegated all compliance duties of MFMI, LMDI, and Pathway to the CCO of LMDI and did not perform any compliance function, other than reviewing cheques, and reviewing and signing financial information. Mr. Dwek failed to meet his UDP and CCO responsibilities to supervise and ensure compliance by the MineralFields Group with Ontario securities law. Mr. Dwek acknowledged that the UDP was required to ensure that the MineralFields Group was in compliance with Ontario securities law and failed to do so. The compliance review identified 12 examples of compliance deficiencies.

37. Mr. Richard submitted that there needs to be some reasonable reliance by others for what Mr. Dwek was doing for it to be considered professional services. Mr. Richard submitted that there was no evidence of any reliance by anyone on Mr. Dwek. Ms. Center submitted that Mr. Dwek's conduct was captured within the meaning of professional services. Ms. Center also argued that the companies under his control were entitled to rely on Mr. Dwek as a member of the Institute of Chartered Accountants of Ontario such that he would act with due care. Actual reliance was not required. His CA added credibility to his position as the controlling shareholder and his designation was relied on by the companies, investors and colleagues. The tribunal agreed with Ms. Center's submissions. The tribunal found Allegation No. 1(a) and 1(b) proven.

38. Regarding Allegation No. 2, the SA noted that the OSC compliance reviews revealed evidence that commencing in 2002 and continuing until 2011, regulatory filings with the OSC consistently disclosed that Mr. Dwek was the 100% owner of the shares of registered firms of the MineralFields Group. It was found that Mr. Dwek was the 100% owner of the voting shares of MFMI (from 2002), and LMDI (from 2004). In fact, the shareholdings were that Mr. Dwek owned 50.1% of the total shares issued and another person, the undisclosed partner, owned 49.9%. Mr. Dwek owned all of the voting shares of MFMI and LMDI and another person, the undisclosed partner, owned 49.9% of the non-voting shares of MFMI and LMDI. This meant that Mr. Dwek owned a 50.1% interest and another person, the undisclosed partner, owned a 49.9% interest from the time the companies were incorporated (2002 for MFMI and 2004 for LMDI). During the OSC's compliance review, a corporate organization chart submitted by the CCO and CFO of LMDI to the OSC showed Mr. Dwek as the 100% owner (directly and indirectly through his companies) of MFMI and LMDI. The undisclosed partner owning a 49.9% interest was not disclosed to the OSC. Mr. Dwek signed a document that was filed with the OSC and dated March 25, 2002 certifying that Mr. Dwek was the only shareholder of LMDI owning 100% of the shares. Throughout the period from 2002 to 2011, this false or misleading information was not corrected in four further OSC submissions, two of which were signed by Mr. Dwek. The tribunal found Allegation No. 2 proven.

39. Counsel for Mr. Dwek entered as evidence a copy of the SA between the OSC and Mr. IH, who was the CFO of the MineralFields Group between March 2005 and October 2012. (Tab A of Exhibit 2). Mr. IH was not the directing mind of the MineralFields Group of companies and played no role in establishing their ownership structure. Mr. IH was registered as the CCO and dealing representative with LMDI. During the course of conducting their compliance reviews of the MineralFields Group, certain significant matters were identified which were of a compliance nature involving the provision of incorrect shareholding information as discussed in the previous paragraph. Mr. IH did not know the correct shareholdings and provided incorrect shareholding information to the OSC. Once brought to light he assisted the OSC in making corrective disclosures to the OSC. Additionally, Mr. IH was responsible for the compliance duties as delegated to him by Mr. Dwek, including the establishment, maintenance and application of policies, procedures to ensure compliance with Ontario securities law, which he failed to do. During the review period, Mr. IH made trades of his own shares without obtaining the required

pre-clearance. Mr. IH was sanctioned by the OSC in accordance with the terms of his SA. The tribunal gave little weight to this SA because it related to Mr. IH rather than Mr. Dwek; however it did provide some evidence of compliance issues that were identified. As the UDP, Mr. Dwek was responsible for the supervision of the compliance activities of the MineralFields Group. Mr. Dwek delegated compliance duties to the CCO of LMDI, but failed to provide adequate supervision to ensure the companies within the MineralFields Group complied with the requirements of Ontario securities law.

40. Mr. Dwek's counsel submitted that while Mr. Dwek did settle with the OSC, the focus is on whether Mr. Dwek breached the Rules of Professional Conduct. The issue is whether the owner of the non-voting shares, the undisclosed partner, did or did not have to be registered with the OSC. The tribunal determined the issue was that in 2002 and subsequently, "it was consistently disclosed in regulatory filings with the Commission that Dwek was the 100% owner of the registered firms within the MineralFields Group." (paragraph 9, Tab 1 of Exhibit 1), when in fact Mr. Dwek had a silent, undisclosed partner who owned 49.9% of the issued non-voting shares of two of the companies, MFMI and LMDI. The tribunal determined that, based on the evidence, Mr. Dwek owned 100% of the voting shares but did not own 100% of the MineralFields Group. Mr. Dwek's failure to disclose to the OSC that another person owned 49.9% of the non-voting shares of MFMI and LMDI was a breach of Rule 205 of the Rules of Professional Conduct.

41. Counsel for Mr. Dwek submitted that Mr. Dwek was not involved in trading that was off side except for one trade when he made a trade and the transaction price was higher than another trade on the same day. Counsel for Mr. Dwek stated that the total difference between Mr. Dwek's trade (\$0.52/share) and the other trade (\$0.5077/share) amounted to \$12.30 which can be considered a trivial amount. However, the OSC determined that Mr. Dwek's conduct was contrary to the public interest since this trade by Mr. Dwek was not pre-cleared.

42. Mr. Dwek's counsel submitted that Mr. Dwek delegated compliance responsibilities to the CCO of LMDI who had 16 years of experience as CFO of a mutual fund dealer and placed reliance on him to discharge his duties with due care. Having delegated these compliance responsibilities, Mr. Dwek did not adequately supervise to ensure the firms' compliance system (including the establishment, maintenance and application of policies and procedures to ensure compliance within the MineralFields Group), met the requirements of Ontario securities law.

### **Submissions on Sanction**

43. Ms. Center stated that there was no additional evidence on sanction. Ms. Center, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand, a fine in the amount of \$10,000, and the usual publicity to all members and the public. The PCC also sought an order of costs for two-thirds of the actual costs incurred.

44. Ms. Center submitted that the sanctions recommended by the PCC address specific and general deterrence, while recognizing that Mr. Dwek is capable and deserving of rehabilitation.

45. Ms. Center stated that the aggravating factors included the underlying conduct which involved lack of due care and providing misleading documentation to the OSC. This behaviour took place over many years and involved several misleading documents filed with the OSC. Mr. Dwek is a senior member of the profession and ought to have known that the representations were false or misleading. Mr. Dwek ultimately blamed, Mr. IH, the CFO of the MineralFields Group, and it is unclear whether Mr. Dwek takes responsibility for his actions.

46. Ms. Center stated that the mitigating factors were that Mr. Dwek entered into a SA with the OSC, resulting in sanctions by the OSC which included bans, supervision, reprimand, costs and a voluntary payment. There was no personal benefit to Mr. Dwek, no investor losses or harm to the public. Mr. Dwek has no history before the Discipline Committee, but was admonished on two prior occasions by the PCC, in 1993 and in 1998, for old conduct which occurred many years ago.

47. Ms. Center submitted that the fine proposed and the publicity will deal with the principles of specific and general deterrence for Mr. Dwek and like-minded members. It is very significant to the member to have his name publicized and there are no rare and unusual circumstances not to order publicity.

48. Ms. Center filed a Costs Outline (Exhibit 3) and stated that since there was no investigation the total costs were about \$8,900, and the costs requested by the PCC of \$6,000 represent approximately two-thirds of the actual costs incurred.

49. Ms. Center distributed a Case Brief containing the CPA Ontario Discipline Committee cases of *Sinclair*, *Hoey*, *Lee* and *Chapman*, which deal with OSC matters.

50. Mr. Richard stated that there was no additional evidence on sanction.

51. Mr. Richard stated that Mr. Dwek was not opposed to the sanctions proposed, and does not have an objection or points to raise to suggest what the PCC is seeking in terms of sanctions should be lower. Mr. Richard stated that Mr. Dwek is in agreement with the sanctions proposed by the PCC. Mr. Richard stated that he would not be making any further submissions on sanctions but reserves his right to make submissions if the panel is considering ordering a suspension of Mr. Dwek's membership.

### **Order**

52. After deliberating, the tribunal made the following order:

1. THAT Mr. Dwek be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Dwek be and he is hereby fined the sum of \$10,000, to be remitted to the Chartered Professional Accountants of Ontario ("CPA Ontario") within three (3) months from the date this Decision and Order is made.
3. THAT notice of this Decision and Order, disclosing Mr. Dwek's name, be given in the form and manner determined by the Discipline Committee:
  - (a) to all members of CPA Ontario; and
  - (b) to all provincial bodies;
 and shall be made available to the public.
4. THAT in the event Mr. Dwek fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within three (3) months from the date of his suspension. In the event he does not comply within the three (3) month period, his membership in CPA Ontario shall thereupon be revoked, and notice of

the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Dwek's employment or residence. All costs associated with this publication shall be borne by Mr. Dwek and shall be in addition to any other costs ordered by the committee.

**IT IS FURTHER ORDERED:**

5. THAT Mr. Dwek be and he is hereby charged costs fixed at \$6,000, to be remitted to CPA Ontario within three (3) months from the date this Decision and Order is made.

**Reasons for Sanctions**

53. The tribunal carefully considered the submissions of both counsel and the aggravating and mitigating factors in this case. There were no issues of moral turpitude and Mr. Dwek cooperated with both the OSC staff in their compliance reviews and the PCC by responding to letters from the Director of Standards Enforcement. Counsel for Mr. Dwek submitted that the conduct that was the subject of the OSC SA involved regulatory compliance issues in the securities realm, mistakes by Mr. Dwek. The tribunal disagreed and determined that Mr. Dwek paid little attention to his responsibilities as UDP. Nevertheless, of significance to the tribunal was the fact that the public and investors were not harmed by Mr. Dwek's conduct. The investors were accommodated by the MineralFields Group by the transfer of assets of the MineralFields Group to another registrant on a timely basis after the compliance deficiencies were discovered by OSC staff.

54. The tribunal determined that a written reprimand was necessary to reinforce to Mr. Dwek that his conduct was not acceptable and to serve as a specific deterrent should he contemplate future misconduct.

55. The fine of \$10,000 serves as a specific deterrent to Mr. Dwek and a general deterrent to the members of CPA Ontario. The tribunal determined that the amount of the fine was reasonable in the circumstances and in line with fines in other similar cases. There were no submissions from Mr. Richard regarding Mr. Dwek's ability to pay and he was given three (3) months to pay the fine.

56. Publicity of Mr. Dwek's misconduct is made available to the public and is provided to members of CPA Ontario and all provincial bodies. It serves as a specific and general deterrent to its members, and to advise the public of the high professional standards expected of its members. It also provides transparency of the disciplinary process of CPA Ontario. There were no rare and unusual circumstances that would support withholding Mr. Dwek's name from publication.

57. The tribunal concluded that the sanctions imposed on Mr. Dwek are within the range of previous sanctions imposed on other members in similar cases.

**Reasons for Costs**

58. Ms. Center, on behalf of the PCC, filed a Costs Outline showing total costs of about \$8,900, and requested costs of \$6,000 representing about two-thirds of the actual costs

incurred, to be paid by Mr. Dwek. Mr. Dwek did not dispute the amount of costs being requested. The tribunal determined that \$6,000 was an appropriate amount and was within the range of costs ordered in similar cases.

DATED AT TORONTO THIS 8<sup>TH</sup> DAY OF MAY, 2017  
BY ORDER OF THE DISCIPLINE COMMITTEE



A.D. NICHOLS, FCPA, FCA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

R. CARRINGTON (PUBLIC REPRESENTATIVE)

C. DANCHUK, CPA, CA

A.B. MINTZ, CPA, CA