IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED

- AND -

IN THE MATTER OF
TIMOTHY ADAMS, LOWELL WEIR and CAROL MCLAUGHLIN-WEIR
(collectively the "Respondents")

HEARD BEFORE: Mr. J. Walter Thompson, Q.C.
Mr. John A. Morash, C.A.

LOCATION: Halifax, Nova Scotia

DATES HEARD: October 17, 2012

COUNSEL:

FOR STAFF: Ms. Stephanie Atkinson

FOR THE RESPONDENTS: Mr. Dale Dunlop
Mr. Sean MacDonald

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1. In our written decision dated March 23, 2012 we made certain findings concerning the Respondents, Timothy Adams, Lowell Weir and Carol McLaughlin-Weir.

2. We found with respect to Lowell Weir:

> We are further satisfied that Mr. Weir failed to file a report of status as an insider at all. We are satisfied he made trades in the shares of Helical as an insider from September 3, 2004 through February 2, 2007. We are satisfied that he did not file a report of these trades until March 13, 2008. He thereby violated the *Securities Act*. We are satisfied that it is in the public interest to make an order.

3. We found with respect to Timothy Adams:

> We are therefore satisfied that Timothy Adams is an insider who failed to file a report of his status as such, and then failed to file reports of his trades in the securities of Helical Corporation contrary to sections 113 (1) and (2) respectively of the *Securities Act*. We are also satisfied that in doing so, Mr. Adams acted in a manner contrary to the public interest and undermined investor confidence in the fairness, integrity and efficiency of the capital markets.

4. We found with respect to Carol McLaughlin-Weir:

> In conclusion we are satisfied that Carol McLaughlin-Weir is an insider who failed to file a report of her status as such and then failed to file reports of her trades in the securities of Helical Corporation contrary to sections 113 (1) and (2) respectively of the *Securities Act* and that it is in the public interest that an order be made against her.

5. With respect to both Mr. Adams and Ms. McLaughlin-Weir we said:

> We are satisfied, as stated above, that Mr. Adams and Ms. McLaughlin-Weir violated the *Securities Act* and that it is in the public interest to make an order.

6. With respect to the issue of Administrative Penalties and Costs, in our decision of March 23, 2012, we stated:

> Counsel for the Director made a submission on penalty in her written argument at the conclusion of the hearing. Counsel for the Respondents has challenged the Director on the issue of costs. We ask counsel for the Director and for the Respondents to convene an appropriate date for a hearing on the appropriate penalty and whether costs should also be assessed to the Respondents.

7. The issue before us is the nature of the order to be made with respect to penalties and costs.

8. The Ontario Securities Commission, in considering the sanctions to be imposed *In the Matter of Belteco Holdings Inc.* (December 15, 1998) stated:

> In addition to this principal consideration, we have been referred to decisions of this Commission which indicate that in determining both the nature of the sanctions to be imposed as well as the duration of such sanctions, we should consider the seriousness of the allegations proved; the respondents' experience in the marketplace; the level of a respondent's activity in the marketplace; whether or not there has been a recognition of the seriousness of the improprieties; and whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets.

9. We also rely on the decision of this Commission in *Electronic Benefits Inc., Everett R. Stuckless, and Advantage Financial Group Inc.* (March 12, 2008):

> Counsel for Staff has drawn my attention to the decision of the British Columbia Securities Commission in *Re Ronald Stephen Barker and Double Eagle Investments Inc.* Here the British Columbia Securities Commission referred to an earlier decision, *Re Enron Mortgage Corp.* which sites a non-exhaustive list of factors that are usually relevant to making orders against a person under provisions substantially similar to sections 134 and 135 of the Act. They are:
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> - the seriousness of the person's conduct;
> - the harm suffered by investors as a result of the person's conduct;
> - the damage done to the integrity of the capital markets by the person's conduct;
> - the extent to which the person was enriched;
> - factors that mitigate the person's conduct;
> - the person's past conduct;
> - the risk to investors and the capital markets posed by the person's continued participation in capital markets;
> - the person's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to issuers;

- the need to demonstrate the consequences of inappropriate conduct of those who enjoy the benefits of access to the capital markets;
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and
- orders made by the Commission in similar circumstances in the past.

10. The conduct of Mr. Weir, Ms. McLaughlin-Weir and Mr. Adams, in failing to disclose their status as insiders or their trades as such, was a violation of the *Securities Act* and contrary to the public interest. All were involved in Helical Corporation, a now defunct company. It did not appear that their trades caused much damage to the integrity of the capital markets, and the level of their activities in the marketplace was relatively low. The insider trades were, for the most part, transfers among related parties or with Helical itself. In the ordinary course, penalties would be expected in the order of those imposed on other Helical insiders after settlement agreements, that is to say in the order of $2,500.00 plus costs in the order of $500.00.

11. These three, however, in our view, without compelling arguments, engaged the Staff of the Nova Scotia Securities Commission in a relatively protracted process. They expressed no recognition of their requirements to file as an insider and disclose their Helical trades as such. They seem to have thought the requirements to disclose oneself as an insider and report one's trades as such under the law to be just so much red tape imposed by an overbearing bureaucracy. There has been no recognition by them of the relevance of their conduct to securities law, to say nothing of any "recognition of the seriousness of the improprieties". Even at the penalty hearing, the Respondents persisted in their earlier stratagems and arguments. There are no mitigating factors.

12. We need not elaborate on the necessity of the Commission to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets or of the importance of deterring those who participate in the capital markets from engaging in inappropriate conduct. Insiders, for the fairness and integrity of capital markets, must declare and report and, in any event, it is the law that they do so. To simply slap a wrist in the face of the Respondents' defiance would defeat the goals of securities regulation.

13. The Respondent, Lowell Weir, was the Chief Executive Officer and President of Helical during the period October 18, 1996 to September 15, 2006. He is a chartered accountant. He held the leading role in Helical and was the person most engaged in the securities market and with the compliance requirements of its rules and regulations. He made 29 trades, far more than the other two Respondents. We agree with Staff submissions that an administrative penalty of $20,000.00 be imposed on Mr. Weir pursuant to section 135 of the *Securities Act*, R.S.N.S. 1989, c. 418, as amended. We further agree that, pursuant to section 134(1)(a) of the *Act*, Mr. Weir be ordered to comply with Nova Scotia Securities Laws.

14. The Respondent, Carol McLaughlin-Weir, was the "Chief Financial Officer" of Helical during the period February 4th 1998 - September 20, 2006. Ms. McLaughlin-Weir was an "insider", but we accept that her role in that position, and her engagement in Helical, was less than that of Mr. Weir. Mr. Weir, the leader of Helical, would probably also have been its CFO except for the newer regulatory requirement that the positions not be combined in the one person. She engaged in four trades only. She was a senior person in Helical who performed substantial functions which required of her a detailed knowledge of Helical's financial affairs. She is a chartered accountant. However, she has never acknowledged any responsibility to respect the provisions of the *Securities Act* regarding insiders.

15. We agree with Staff submissions that an administrative penalty of $8,000.00 be imposed on Ms. McLaughlin-Weir pursuant to section 135 of the *Securities Act*. We further agree that, pursuant to section 134(1)(a) of the *Act*, Ms. McLaughlin-Weir be ordered to comply with Nova Scotia Securities Laws.

16. Mr. Adam's role, relative to Mr. Weir, was limited, and so were his trades (four). We accept that while his role with Helical was still significant, his position as Vice-President was also in some measure a matter of Helical's presentation. He described himself to Staff as having been, in effect, simply a consultant to Helical rather than an active investor in it and we see merit in that argument. Staff of the Commission seeks an administrative penalty of $10,000.00. We view such a penalty as being somewhat high. We order that an administrative penalty of $5,000.00 be imposed on Mr. Adams pursuant to section 135 of the *Securities Act*. We further agree that, pursuant to section 134(1)(a) of the *Act*, Mr. Adams be ordered to comply with Nova Scotia Securities Laws.

Costs

17. Section 135 A of the *Securities Act* provides as follows:

> The Commission may, after a hearing, order a person or company convicted of an offence or against whom an order has been made pursuant to Section 133, 134 or 135 to pay costs in connection with the investigation and prosecution of the offence or the investigation and conduct of the proceeding in respect of which the order was made pursuant to Section 133, 134 or 135, such costs not to exceed the costs prescribed in the regulations. 1996, c. 32, s. 9.

18. Staff have submitted that costs be assessed in the aggregate amount of $18,600.00 and divided equally among the three parties. While the calculation of the costs by Staff is not contested, the Respondents do argue, however, that costs should only be assessed in a nominal amount if at all.

19. Staff offered to settle this matter with Mr. Weir and Ms. McLaughlin-Weir in September, 2010 through the payment by Mr. Weir of an administrative penalty of $2,500.00 plus $1000.00 in costs and the payment by Ms. McLaughlin-Weir of the sum of $1,000.00 plus $500.00 in costs. In October, 2010, Staff offered the same terms to Mr. Adams as they had for Ms. McLaughlin-Weir. The offers were not accepted and this proceeding ensued. Costs before the Commission follow from an acceptance of responsibility for a default by a respondent in any event, but it is proper, as it would be in any civil case, that the party who had refused a more favourable offer pay the costs. That was certainly so in this case.

20. We are satisfied, having heard the evidence and reviewed the submissions, that costs, rather than being shared, ought to be split pro rata according to the penalties imposed. Mr. Weir was responsible for most defaults and also, in our view, the leader of the litigation. The aggregate of costs is $18,600.00. The aggregate of penalties is $33,000.00. Mr. Weir's share in round numbers is 60%, Ms. McLaughlin-Weir's share is 25% and Mr. Adams' share is 15%. We assess costs as follows:

- Mr. Weir - $11,160.00
- Ms. McLaughlin-Weir - $4,650.00
- Mr. Adams - $2,790.00

21. We ask Staff counsel to please prepare an Order, have Mr. Dunlop consent to its form, and deliver the Order to the Commission.

Dated at Halifax, Nova Scotia this 19th day of November, 2012.

J. Walter Thompson, Q.C.

John A. Morash, C.A.