

# 2005 BCSECCOM 416

**Fatir Hussain Siddiqi**

**Sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418**

## **Hearing**

|              |                     |              |
|--------------|---------------------|--------------|
| <b>Panel</b> | Brent W. Aitken     | Vice Chair   |
|              | Marc A. Foreman     | Commissioner |
|              | Robert J. Milbourne | Commissioner |

**Dates of Hearing** February 7-9, 16 and 17, 2005

**Date of Findings** June 15, 2005

## **Appearing**

H. Roderick Anderson For Fatir Hussain Siddiqi

Peter J. Brady For the Executive Director

## **Findings**

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- ¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 In an amended notice of hearing dated February 3, 2005, the Executive Director alleges that in September and October of 2000 Fatir Hussain Siddiqi:
1. traded securities of AIS Resources Limited with knowledge of material facts and material changes about AIS that had not been generally disclosed, contrary to section 86(1) of the Act;
  2. traded securities of AIS, knowing that his trading activities resulted in or contributed to a misleading appearance of trading in, and an artificial price for, securities of AIS, contrary to section 57(a);
  3. sold shares of AIS short without declaring the short position, contrary to section 56(1);
  4. distributed securities from his position as a control person of AIS without filing a prospectus, contrary to section 61(1);
  5. acquired a controlling interest in AIS without filing an early warning report, contrary to section 111(1); and
  6. acted contrary to the public interest by contravening those sections of the Act.

(There is a typographical error in the notice of hearing – it refers to AIS as “AIS Resources Inc.”)

### **I. Adjournment Application**

- ¶ 3 The Executive Director issued the original notice of hearing on May 2, 2003. The original notice of hearing included allegations against two parties not named in the amended notice of hearing: Fatir Siddiqi’s wife, Saba, and his father, Shakir.
- ¶ 4 The parties agreed on dates for the hearing and it was set to be heard starting on June 14, 2004. On May 26, 2004, the Siddiqis applied for an adjournment because of the illness of Fatir’s and Saba’s child. The Siddiqis, who live in the United Kingdom, provided evidence from the family’s doctor that he had “strongly advised” Siddiqi not to leave the UK for the next 6 months because Saba needed his support while the child’s illness persisted.
- ¶ 5 Staff consented to the application and we adjourned the case to February 7, 2005.

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- ¶ 6 Over the ensuing months, Commission staff corresponded with counsel for the respondents in the ordinary course of preparing for the hearing. On January 28, 2005, Commission staff wrote Siddiqi's counsel, asking whether he or the Siddiqis would be attending the hearing, and asking for disclosure in accordance with BC Policy 15-601.
- ¶ 7 On February 2, 2005, three business days before the hearing was due to start, Siddiqi asked for a hearing to consider an adjournment application. It was not feasible to schedule a hearing in the time available before the start of the hearing. We told Siddiqi that we would hear his application at the outset of the hearing, and that he should be prepared to proceed with the hearing in the event we dismissed the application. At the outset of the hearing on February 7, 2005, Siddiqi made his application to adjourn the hearing.
- ¶ 8 On February 3, 2005 the Executive Director issued the amended notice of hearing. The main amendments were removing the allegations against Saba and Shakir Siddiqi and eliminating them as parties.
- ¶ 9 Siddiqi's adjournment application this time was due to Saba's illness. The record includes a letter dated February 4, 2005 from Saba, explaining that she has been chronically ill since shortly after the birth of her second child in January 2004. The letter says she depends on Fatir to care for their children at night. The letter says the Siddiqis cannot afford child care and family members are unable to help. The letter also says that both of her children are unwell.
- ¶ 10 The only other information we have about Saba's medical condition is a physician's note dated December 22, 2004 confirming that Saba "is at present undergoing medical treatment and is unfit to attend court". This note is not helpful to us because it speaks only to Saba's inability to attend the hearing – a matter not relevant, given that Saba is no longer a party.
- ¶ 11 It is clear from Saba's February 4 letter that her medical problems persisted throughout 2004 and 2005 up to the date of the letter. It seems to us, given the apparently chronic nature of her condition, that the Siddiqis would have known for a considerable time in advance of the hearing that she was unlikely to be well at the time the hearing was to be held, and therefore the child care issues described in the letter would have to be dealt with. Yet Siddiqi did not apply for the adjournment until three business days before the hearing was due to start.
- ¶ 12 The letter also implies that the Siddiqis made no effort to make alternate arrangements to care for the children so that Siddiqi could attend the hearing, because it states that there is no one able to do so. The letter says other family

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members cannot do so, and that the Siddiqis cannot afford to hire someone, but there is no evidence before us to support those assertions.

- ¶ 13 Siddiqi suggested no new dates on which the hearing could be held. If we were to adjourn the hearing because Siddiqi has to stay at home (accepting that no other child care arrangements are feasible), then it would amount to an indefinite adjournment. The hearing would proceed, it would seem, only once Saba's health (and that of her children) improved significantly. We have no evidence as to when that could be. In all likelihood no one knows, which is probably why Siddiqi was not in a position to suggest new dates.
- ¶ 14 Meanwhile, the conduct that is the subject of this hearing took place in the fall of 2000. The first adjournment was for 8 months. Expecting to proceed on February 7, staff did the necessary preparation and scheduled witnesses. Although Siddiqi perhaps was unable to be present in person, he was represented by counsel and we could have explored means of hearing his evidence had he wished to testify. (In fact, when requested to do so in the hearing, we were prepared to consider a means by which he could testify by affidavit and be cross-examined by teleconference, but in the end he chose not to do so.)
- ¶ 15 Therefore, considering the evidence before us, the balance of convenience between the parties, fairness to the respondent, and the public interest in having hearings under the Act held without undue delay, we dismissed the application.

## II. Background

### A. Synopsis

- ¶ 16 The allegations against Siddiqi all have to do with events that occurred in roughly a one-month period between mid-September and mid-October 2000.
- ¶ 17 Siddiqi was in the business of assisting public companies in raising capital. In the spring of 1999 Siddiqi was approached by Canop Worldwide Corp. to help it raise capital to fund the exploration of an oil and gas property in Tanzania. Siddiqi was not interested at first but about a year later he began doing research on Canop and the Tanzanian property to see if the deal made sense. By the fall he was negotiating with Canop (through one of its directors, Al Smith) about ways to fund the deal. Siddiqi did not think that Canop would be a suitable vehicle for the financing. He and Smith agreed that the funding would be done through AIS. Both Canop and AIS were listed on the Canadian Venture Exchange (CDNX, now the TSX Venture Exchange).
- ¶ 18 In the September-October 2000 time frame, two related transactions took place. First, Canop and Siddiqi reached an agreement about exploration funding for the

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Tanzanian property using AIS as a vehicle. Second, Siddiqi and related parties acquired control of Floral Holdings Ltd., a company that owned about 49% of the shares of AIS, from Smith and a business associate of Smith's. During this period, Siddiqi traded shares of AIS.

- ¶ 19 The Executive Director says that Siddiqi traded AIS with knowledge of undisclosed material facts and changes, and that he manipulated the market in AIS shares. The Executive Director's other allegations also flow from Siddiqi's trading activities. Commission staff interviewed Siddiqi under oath on October 3, 2002. He was represented by counsel at that interview.
- ¶ 20 Ultimately, neither of the agreements held. On October 13, 2000 the Exchange halted trading in the shares of AIS. The halt remained in place for several weeks and by the end of the year Siddiqi decided it made no sense to proceed with the project. The parties negotiated a settlement and the transactions were unwound. (The trading halt was not lifted until June 2001.)

### **B. The AIS-Canop farmout agreement**

- ¶ 21 In 1997 a Canop subsidiary agreed with Tanzania Petroleum Development Corporation, the state oil company of Tanzania, to undertake seismic work and drill three exploration wells on property in Tanzania. In 1998 Canop agreed with Paladin Expro Limited, a UK company, to allow Paladin to earn a 20% interest in the property in exchange for funding 40% of the seismic costs. By early 1999 the exploration of the Tanzania project was Canop's only business. Essentially all of its cash was committed to the seismic program (by September 2000 its cash balance had fallen to about \$27,000), and it was looking for ways to fund the drilling of the three exploration wells, estimated to cost about \$7 million each.
- ¶ 22 In May 1999 Siddiqi was approached on behalf of Canop by Jon Stucky, a Calgary businessman. Stucky wanted to know if Siddiqi would help Canop raise funds or find a joint venture partner for the exploration program. At the time, Siddiqi was not interested. Stucky called again in the fall, but again Siddiqi showed no interest.
- ¶ 23 Stucky contacted Siddiqi again in April 2000 and this time Siddiqi decided to consider the Tanzanian project. He asked some people he considered knowledgeable to look into it. They told him that the project "looked good" but they thought it carried too much exploration and financial risk.
- ¶ 24 Nevertheless, Siddiqi decided to pursue the matter further and began doing basic research on Canop in April and May. In June, he met Al Smith, a Canop director. From this point forward, Siddiqi dealt primarily with Smith. In July Smith mentioned to Siddiqi that AIS might be a possible vehicle for funding the Tanzania project.

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- ¶ 25 AIS was related to Canop. The two companies had several common directors and officers, and AIS also owned about 833,000 Canop shares. (Canop had about 30 million shares outstanding at the time.) AIS had about 4 million shares outstanding and about \$1.4 million in cash and short term investments. Smith was also a director of AIS and, together with another AIS director, owned indirectly 49% of its shares.
- ¶ 26 Siddiqi's interest in the Tanzania project continued to grow and he asked Smith to tell him what terms Canop would be seeking in a joint venture. In August, Stucky gave Siddiqi a farmout proposal under which AIS would earn an interest in Canop's Tanzania property in exchange for funding the drilling of the three exploration wells. Siddiqi did not think the proposed terms were reasonable but remained interested and asked for a technical report on the property, which Canop provided within a few days.
- ¶ 27 When Siddiqi received the technical report he sent it to a geologist resident in the UK called Barry Wood. After reviewing the report, Wood told Siddiqi he thought the project was "good" but he needed to see the raw data.
- ¶ 28 On September 13 Siddiqi met Smith in Calgary to discuss the deal. Siddiqi told Smith that he did not think the deal could be funded through Canop because it had too many shares outstanding. Smith mentioned to Siddiqi that he was going to London, England the following week to see a presentation by Tanzania Petroleum, to meet with Paladin, and to seek financing for Canop. Siddiqi was also planning to be in London that week and they agreed to meet there.
- ¶ 29 On Monday September 18 Smith, Siddiqi and Wood all attended the Tanzania Petroleum presentation. On the 19th Smith and Siddiqi met with some insurance firms to discuss insurance policies for the operations in Tanzania. (Smith's recollection is that the insurance meeting was on the 18th and the presentation on the 19th, but nothing turns on this discrepancy.)
- ¶ 30 On September 20 Smith and Siddiqi met with a London brokerage firm to discuss financing for Canop, but the firm was not interested.
- ¶ 31 On September 21, Siddiqi and Wood met with Paladin to discuss the project. Meanwhile, Wood reviewed the raw data he had requested few weeks earlier. That same day, Siddiqi called Smith to discuss the farmout for the Tanzanian project. They met and began to draft a letter of intent but did not reach an agreement.

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- ¶ 32 On Friday September 22 Smith and Siddiqi met in London. Smith recalls they met all day; Siddiqi's recollection is that they met only in the morning. Siddiqi says that they did not meet again until after October 1, when Siddiqi returned to Canada. A Commission staff investigator interviewed Smith by telephone in June 2002. The notes of that interview cast no light on the timing of the negotiations, other than this statement: "While in London and shortly after, Mr. Smith and Fatir agreed to a 'hand shake deal' or letter of intent." It is not clear from the notes whether this relates to the financing of the project, the acquisition of Floral, or both.
- ¶ 33 Another staff investigator interviewed Alan Smith and William Smith, counsel for AIS, in July 2002. They were not sworn and there is no transcript – the only record of the interview is the investigator's notes. These are the relevant excerpts from the notes:
- September 21, 2000, Siddiqi called Alan regarding the possibilities of a farm out option for Canop's Tanzanian property. Alan and Siddiqi began drafting the letter of intent (LOI). The LOI at this point was only a draft and was not agreed upon. . . .
- September 22, 2000, Alan and Siddiqi were involved in all day meetings in London. A diner [*sic*] with Saba, Siddiqi and Alan followed this meeting. According to Alan, business was not discussed with Saba. Alan presented Siddiqi with the option of using [Floral] as an investment in AIS.
- . . .
- October 5, 2000, Alan and William met with Siddiqi in Calgary to discuss the LOI. The discussion included financing and the terms of the LOI. Siddiqi attempted to change the deal; however it was not changed. Also on this day they signed the [Floral] Share Purchase Agreement . . . .
- ¶ 34 Smith says that on Thursday October 5 he and counsel for AIS met with Siddiqi to discuss the letter of intent for the farmout. He says that on October 6 the AIS board met to ratify the letter of intent and Jan Alsen, President of AIS, signed it. According to Smith, that same afternoon Canop's board met and wanted more information on Siddiqi. On Monday October 10 Canop signed the letter of intent. From now on, we refer to the letter of intent as the farmout agreement.
- ¶ 35 The date "September 21, 2000" is typewritten at the top of the farmout agreement but this has been crossed out and "October 6, 2000" appears underneath in handwriting. The acceptance block for Canop's signature contemplated a date in September in the typewritten version, but this has been crossed out and "October 10, 2000" substituted in handwriting. There are no other alterations.

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### **C. The acquisition of Floral Holdings**

- ¶ 36 Floral Holdings Ltd. is a Barbados company that owned about 49% of the shares of AIS. Floral was owned by two companies, one controlled by Smith, the other by Wilfrid Roach, a business associate of Smith's and an AIS director.
- ¶ 37 Siddiqi had been aware of Floral and its holdings in AIS since the middle of 2000, when he began his due diligence on Canop and AIS. It is not clear when Siddiqi began to think about buying control of Floral, although he says he might have asked Smith to sell control of Floral in July. Siddiqi says that it was "probably" at the meeting that he and Smith had with the brokerage firm in London on September 20 when he decided that AIS would be the financing vehicle for the Tanzania project. He is certain he asked Smith to sell him control of Floral while in London, and says that between September 23 and October 1 he did not talk to Smith but was "thinking" about acquiring control of Floral from Smith.
- ¶ 38 As noted above, Siddiqi signed the agreement to acquire the shares of Floral when he met with the Smiths on October 5.
- ¶ 39 Under the Floral agreement the sellers were the two companies controlled by Smith and Roach. Floral had outstanding about 1.26 million non-voting shares and 20,000 voting shares. The buyers were Fatir Siddiqi, Saba Siddiqi, Shakir Siddiqi and Jeffrey Eng, a personal friend of Fatir. Under the agreement each of the buyers was buying 25% of the non-voting shares. Saba was also buying all of the voting shares. The purchase price for all the shares was about \$867,000, payable in a series of promissory notes, all signed by Siddiqi, due beginning in February 2001. Based on the 1,970,200 AIS shares owned by Floral, this price for the Floral block imputed a per share price to AIS of about \$0.44.
- ¶ 40 Siddiqi says he acted as the lead for the purchasers and that Saba was involved in the pricing negotiations and the review of the legal documents. It appears that the roles of Eng and Shakir were peripheral. Eng had never seen the share purchase agreement and never signed it. In any event, the transaction was unwound and neither he nor Shakir ever put up any money.
- ¶ 41 According to the notes of the interview of the Smiths, William Smith said Saba was the sole shareholder of the voting shares "because as a lawyer, she was better qualified".

### **D. Disclosures by AIS**

- ¶ 42 During the period, AIS issued news releases and its counsel made disclosures to the Exchange.

*September 18*



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- ¶ 43 On September 18 counsel for AIS wrote the Exchange notifying it that AIS was in negotiations with an individual to assume the presidency of AIS.

### *September 21*

- ¶ 44 On September 21, 2000 AIS announced the appointment of Jan B. Alsen as president. Siddiqi did not know Alsen and understood he was hired by Smith. The following are the relevant excerpts from this announcement:

Mr. C. Alan Smith reports Jan B. Alsen has been appointed as president and a director, effective immediately.

Mr. Alsen has extensive experience in international oil and gas exploration and development, most recently in Kuwait and prior thereto in Colombia. .

..

C. Alan Smith, chairman of AIS, stated: “The addition of Mr. Alsen to our management team heralds a new focus for the company in the oil and gas business where it has long been active. The company is well-positioned to take advantage of the increasing interest in oil and gas activity around the world.”

...

- ¶ 45 Before this announcement, from September 14 through 20, there were 6 trades in AIS shares totaling 13,000 shares. During this period the price rose from \$0.65 to \$0.85. Siddiqi was the buyer in 3 of these trades. The weighted average trading price of AIS shares during this period was \$0.70.
- ¶ 46 On Friday September 22, after the announcement, there were 4 trades in AIS shares totaling 23,000 shares at prices ranging from \$0.75 to \$0.85. The closing price was \$0.80. Siddiqi was the buyer in 2 of these trades. On Monday September 25, there were 7 trades in AIS shares totaling 52,000 shares, all at \$1.00. All but one of these trades (the first, for 2000 shares) involved Siddiqi, who was the seller. The weighted average trading price over this 2-day period was \$0.94.

### *September 25*

- ¶ 47 On September 25 counsel for AIS wrote the Exchange notifying it, among other things, of the change of control of Floral. This is the relevant excerpt from that letter:

Effective on September 21, 2000 the shareholders of the holding company which holds approximately 49% of the outstanding shares of AIS agreed to sell the shares of that company. The effective price of the transaction was

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\$0.44 per AIS share. The transaction has not yet closed although closing is anticipated this week. . . .

### *September 27 – 29*

- ¶ 48 On September 27 AIS asked the Exchange to halt trading in its stock pending an announcement and issued a news release disclosing that. The next day, September 28, AIS issued a news release. These are the relevant excerpts:

. . . AIS has recently announced the engagement of Mr. Jan Alsen as President and a Director of AIS. AIS has also been advised that the owners of a significant shareholder, Floral Holdings Ltd., are in negotiations with an investor group with respect to acquiring the shares of Floral Holdings. . . . AIS has not been advised as to the timing of the closing of any possible transaction involving Floral Holdings and will make further announcements as appropriate. . . .

AIS is also exploring business activities, primarily in the area of international oil and gas and is engaged in discussions with respect to possible transactions. In the event that AIS enters into a transaction a further press release will be made at that time.

AIS cautions investors that neither of the discussions in which it is engaged or the possible transaction involving Floral Holdings Ltd., have reached the point that any assurance can be given that such transactions will become effective.

- ¶ 49 On Friday September 29 the shares in AIS resumed trading and AIS issued a news release disclosing that.
- ¶ 50 Before the September 28 announcement, on September 26 and 27 there were 11 trades in AIS shares totaling 23,000 shares at prices ranging from \$1.02 to \$1.41. Siddiqi was both buyer and seller on one of these trades (for 2,000 shares at \$1.15). Excluding this trade, the weighted average trading price of the AIS shares over this two-day period was \$1.23.
- ¶ 51 On September 29 the only trading in AIS shares was between Siddiqi and himself and his father. They traded 25,000 shares at \$1.00 and 1,000 shares at \$1.45.
- ¶ 52 From Monday October 2 through October 5 there were 20 trades in AIS shares totaling 47,715 shares at prices starting at \$1.40 and rising to \$2.00 (there was one trade of 15 shares at \$1.20). Siddiqi was a party, either as buyer or seller, to 11 of these trades. During this period the weighted average trading price of the AIS shares was \$1.64.

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### *October 5*

- ¶ 53 On October 5 counsel for AIS wrote the Exchange notifying it as follows:

We wish to advise the Exchange that [Floral] . . . recently sold their 49% interest in [AIS] to a group of investors. All of the voting shares of Floral are held by Saba Siddiqi. Therefore we wish to file with the Exchange the completed Personal Information Form for Saba Siddiqi.

- ¶ 54 The first sentence of the letter mischaracterizes the transaction as a sale of AIS shares, rather than a sale of Floral shares. The sentences that follow are consistent with what really happened.

- ¶ 55 On October 5, after the close of market, AIS issued a news release disclosing the change of ownership in Floral Holdings. These are the relevant excerpts:

[AIS] . . . has been advised that Floral Holdings Ltd. . . . has been acquired by a group of investors. The shares of Floral Holdings were acquired for investment purposes and no formal take over bid for the shares of AIS is contemplated. The price paid for the shares of Floral Holdings, when considered relative to the shares of AIS held by Floral, reflects a significant discount from the current market price of AIS.

Changes to the Board of Directors of AIS have taken place as a result of the Floral Holdings transaction. Two directors of the Company have resigned and two new individuals have joined the Board. These new Board members are Mr. Jon Stucky, a Businessman in Calgary, Alberta and Mr. Barry Wood, a Geologist and Businessman residing in London, England. . . .

- ¶ 56 On Friday October 6 and Tuesday the 10th there were 13 trades in AIS shares totaling 55,200 shares at prices ranging from \$1.80 to \$2.15. Siddiqi was a party, either as buyer or seller, to 5 of these trades. The weighted average trading price of the AIS shares over these two days was \$1.99.

### *October 10*

- ¶ 57 On October 10 AIS and Canop issued a joint news release announcing the farm-out agreement. These are the relevant excerpts:

[AIS and Canop] . . . have entered into an agreement whereby AIS will farm-in to Canop's 80% interest in a Tanzanian Production Sharing Agreement. AIS has agreed with Canop Tanzania Limited, a wholly-owned subsidiary of Canop Worldwide Corp., that AIS will assume all of

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Canop's obligations pursuant to the Production Sharing Agreement, including the drilling of three "Earning Wells" prior to September, 2001. AIS has committed to commencing the drilling of the first well early in 2001. Canop will retain a net carried interest of 15% of all hydrocarbons produced from the Production Sharing Agreement lands after taking into account the production share of the Tanzanian Petroleum Development Corporation. The transaction is subject to regulatory approval.

- ¶ 58 On October 11 and 12 there were 13 trades in AIS shares totaling 15,000 shares at prices ranging from \$2.05 to \$2.25. Siddiqi was the buyer in 7 of these trades. The weighted average trading price of the AIS shares over this 2-day period was \$2.16.

### E. Siddiqi's trading

- ¶ 59 Siddiqi placed orders to buy and sell, and bought and sold, AIS shares through several accounts at four British Columbia dealers. All of these accounts were in his own name, except for two in the name of his father Shakir. Siddiqi had trading authority over his father's accounts. In these findings, when we describe trading and order activity by Siddiqi, we are referring to all accounts controlled by Siddiqi.
- ¶ 60 Siddiqi placed buy or sell orders for, or bought and sold, AIS shares on every trading day from September 14 through October 12, 2000, except September 28. The following table, which excerpts information from Commission staff analysis entered into evidence at the hearing, summarizes his orders and trades:

|                         |                     | UNFILLED ORDERS <sup>1</sup> |      |      |     | TRADES |                      |      |       |
|-------------------------|---------------------|------------------------------|------|------|-----|--------|----------------------|------|-------|
|                         |                     | BUY                          |      | SELL |     | BUY    |                      | SELL |       |
| DATE                    | BROKER <sup>2</sup> | QTY                          | BID  | QTY  | ASK | QTY    | PRICE <sup>3,4</sup> | QTY  | PRICE |
| September 14            | Wolverton Haywood   |                              |      |      |     | 5,000  | 0.65 <sup>3,4</sup>  |      |       |
|                         | Wolverton           | 10,000                       | 0.50 |      |     |        |                      |      |       |
|                         | Wolverton           | 10,000                       | 0.55 |      |     |        |                      |      |       |
| September 15            | Wolverton           | 15,000                       | 0.58 |      |     |        |                      |      |       |
| Market closed Sep 16-17 |                     |                              |      |      |     |        |                      |      |       |
| September 18            | Wolverton           | 10,000                       | 0.50 |      |     |        |                      |      |       |
|                         | Wolverton           | 2,000                        | 0.70 |      |     |        |                      |      |       |
| September 19            | Wolverton           | 5,000                        | 0.58 |      |     |        |                      |      |       |
| September 20            | Wolverton           | 5,000                        | 0.65 |      |     |        |                      |      |       |
|                         | Wolverton           | 2,000                        | 0.75 |      |     |        |                      |      |       |

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|                               |                      | UNFILLED ORDERS <sup>1</sup> |      |       |      | TRADES             |                      |        |       |
|-------------------------------|----------------------|------------------------------|------|-------|------|--------------------|----------------------|--------|-------|
|                               |                      | BUY                          |      | SELL  |      | BUY                |                      | SELL   |       |
| DATE                          | BROKER <sup>2</sup>  | QTY                          | BID  | QTY   | ASK  | QTY                | PRICE <sup>3,4</sup> | QTY    | PRICE |
|                               | Wolverton<br>Haywood |                              |      |       |      | 1,000              | 0.85 <sup>3,4</sup>  |        |       |
|                               | Wolverton            |                              |      | 1,000 | 1.00 |                    |                      |        |       |
| September<br>21               | Wolverton            | 5,000                        | 0.75 |       |      |                    |                      |        |       |
|                               | Wolverton            |                              |      | 1,000 | 1.00 |                    |                      |        |       |
|                               | Wolverton            | 2,000                        | 0.80 |       |      |                    |                      |        |       |
| September<br>22               | Wolverton            |                              |      | 1,000 | 1.00 |                    |                      |        |       |
|                               | Wolverton<br>Yorkton |                              |      |       |      | 5,000              | 0.75                 |        |       |
|                               | Wolverton            | 5,000                        | 0.70 |       |      |                    |                      |        |       |
|                               | Wolverton<br>Yorkton |                              |      |       |      | 14,000             | 0.80 <sup>3</sup>    |        |       |
|                               | Yorkton              | 5,000                        | 0.71 |       |      |                    |                      |        |       |
|                               | Wolverton            | 5,000                        | 0.75 |       |      |                    |                      |        |       |
|                               | Yorkton              | 3,000                        | 0.76 |       |      |                    |                      |        |       |
| Market<br>closed<br>Oct 23-24 |                      |                              |      |       |      |                    |                      |        |       |
| September<br>25               | Wolverton            | 5,000                        | 0.70 |       |      |                    |                      |        |       |
|                               | Yorkton<br>Wolverton |                              |      |       |      |                    |                      | 50,000 | 1.00  |
|                               | Yorkton              | 5,000                        | 0.75 |       |      |                    |                      |        |       |
|                               | Yorkton              | 10,000                       | 0.85 |       |      |                    |                      |        |       |
|                               | Yorkton              | 2,000                        | 0.90 |       |      |                    |                      |        |       |
|                               | Yorkton              |                              |      | 2,000 | 1.10 |                    |                      |        |       |
|                               | Yorkton              | 5,000                        | 1.00 |       |      |                    |                      |        |       |
|                               | Yorkton              | 3,000                        | 0.91 |       |      |                    |                      |        |       |
| September<br>26               | Wolverton            |                              |      |       |      |                    |                      |        |       |
|                               | Yorkton              |                              |      | 2,000 | 1.10 |                    |                      |        |       |
|                               | Yorkton              | 1,000                        | 0.90 |       |      |                    |                      |        |       |
|                               | Yorkton              | 2,000                        | 0.85 |       |      |                    |                      |        |       |
|                               | Canaccord<br>Yorkton |                              |      |       |      | 2,000 <sup>5</sup> | 1.15 <sup>3,4</sup>  | 2,000  | 1.15  |
|                               | Yorkton              |                              |      | 2,000 | 1.25 |                    |                      |        |       |
|                               | TD<br>Yorkton        |                              |      |       |      |                    |                      | 1,500  | 1.25  |
|                               | Yorkton              | 1,000                        | 1.01 |       |      |                    |                      |        |       |
|                               | Yorkton              |                              |      | 1,500 | 1.30 |                    |                      |        |       |
|                               | Wolverton            | 10,000                       | 1.00 |       |      |                    |                      |        |       |
|                               | Yorkton<br>Wolverton |                              |      |       |      | 2,000              | 1.10                 |        |       |

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| DATE                                 | BROKER <sup>2</sup>    | UNFILLED ORDERS <sup>1</sup> |      |       |      | TRADES              |                     |        |                     |
|--------------------------------------|------------------------|------------------------------|------|-------|------|---------------------|---------------------|--------|---------------------|
|                                      |                        | BUY                          |      | SELL  |      | BUY                 |                     | SELL   |                     |
|                                      |                        | QTY                          | BID  | QTY   | ASK  | QTY                 | PRICE               | QTY    | PRICE               |
|                                      | Yorkton<br>RBC/Yorkton |                              |      |       |      |                     |                     | 9,000  | 1.20                |
|                                      | Yorkton<br>Wolverton   |                              |      |       |      | 1,000               | 1.30 <sup>3,4</sup> |        |                     |
|                                      | Yorkton                | 1,000                        | 1.10 |       |      |                     |                     |        |                     |
| September<br>27                      | Yorkton                | 1,000                        | 1.25 | 2,000 | 1.40 |                     |                     |        |                     |
|                                      | Yorkton                | 1,000                        | 1.15 |       |      |                     |                     |        |                     |
|                                      | Yorkton<br>Dominick    |                              |      |       |      | 500                 | 1.30                |        |                     |
|                                      | Yorkton<br>Yorkton     |                              |      |       |      |                     |                     | 2,000  | 1.40 <sup>3,4</sup> |
|                                      | Yorkton                |                              |      | 2,000 | 1.55 |                     |                     |        |                     |
|                                      | Yorkton                | 1,000                        | 1.30 |       |      |                     |                     |        |                     |
|                                      | Scotia<br>Yorkton      |                              |      |       |      |                     |                     | 3,000  | 1.41 <sup>3,4</sup> |
| September<br>29                      | Yorkton                | 1,000                        | 1.20 | 1,000 | 1.50 |                     |                     |        |                     |
|                                      | Yorkton                | 2,000                        | 1.00 |       |      |                     |                     |        |                     |
|                                      | Wolverton<br>Yorkton   |                              |      |       |      | 25,000 <sup>5</sup> | 1.00                | 25,000 | 1.00                |
|                                      | Yorkton                | 1,000                        | 1.10 |       |      |                     |                     |        |                     |
|                                      | Research<br>Canaccord  |                              |      |       |      | 1,000 <sup>6</sup>  | 1.45 <sup>3,4</sup> | 1,000  | 1.45                |
|                                      | Yorkton                | 2,000                        | 1.22 |       |      |                     |                     |        |                     |
| Market<br>closed<br>Sep 30-<br>Oct 1 |                        |                              |      |       |      |                     |                     |        |                     |
| October 2                            | Yorkton                | 1,000                        | 1.25 |       |      |                     |                     |        |                     |
|                                      | Yorkton                | 2,000                        | 1.00 |       |      |                     |                     |        |                     |
|                                      | Yorkton<br>RBC         |                              |      |       |      | 600                 | 1.40                |        |                     |
|                                      | Yorkton                | 2,000                        | 1.30 |       |      |                     |                     |        |                     |
|                                      | Research<br>Yorkton    |                              |      |       |      | 2,500               | 1.50 <sup>3,4</sup> |        |                     |
|                                      | Yorkton<br>Yorkton     |                              |      |       |      | 2,000               | 1.42                |        |                     |
|                                      | Yorkton                | 2,000                        | 1.40 |       |      |                     |                     |        |                     |
|                                      | Yorkton<br>Wolverton   |                              |      |       |      | 500                 | 1.60 <sup>3,4</sup> |        |                     |
| October 3                            | Yorkton<br>RBC         |                              |      |       |      | 4,000               | 1.55                |        |                     |
|                                      | Yorkton<br>Yorkton     |                              |      |       |      | 2,000               | 1.50                |        |                     |
|                                      | Scotia<br>Yorkton      |                              |      |       |      |                     |                     | 5,000  | 1.55                |
|                                      | Yorkton                | 2,000                        | 1.50 |       |      |                     |                     |        |                     |

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| DATE                        | BROKER <sup>2</sup>              | UNFILLED ORDERS <sup>1</sup> |      |       |      | TRADES |                     |        |                     |
|-----------------------------|----------------------------------|------------------------------|------|-------|------|--------|---------------------|--------|---------------------|
|                             |                                  | BUY                          |      | SELL  |      | BUY    |                     | SELL   |                     |
|                             |                                  | QTY                          | BID  | QTY   | ASK  | QTY    | PRICE               | QTY    | PRICE               |
|                             | Canaccord<br>Yorkton             |                              |      |       |      |        |                     | 8,000  | 1.70 <sup>3,4</sup> |
|                             | Wolverton                        |                              |      | 1,000 | 2.00 |        |                     |        |                     |
| October 4                   | Yorkton                          | 1,000                        | 1.50 |       |      |        |                     |        |                     |
|                             | Yorkton                          |                              |      | 1,000 | 2.00 |        |                     |        |                     |
|                             | Yorkton                          | 2,000                        | 1.44 |       |      |        |                     |        |                     |
|                             | Yorkton                          | 5,000                        | 1.40 |       |      |        |                     |        |                     |
|                             | Yorkton                          | 2,000                        | 1.35 |       |      |        |                     |        |                     |
|                             | Yorkton                          | 10,000                       | 1.30 |       |      |        |                     |        |                     |
|                             | Yorkton<br>Canaccord             |                              |      |       |      | 3,000  | 1.75                |        |                     |
| October 5                   | Goepel<br>Yorkton                |                              |      |       |      |        |                     | 1,100  | 2.00 <sup>3,4</sup> |
|                             | Yorkton                          | 2,000                        | 1.71 |       |      |        |                     |        |                     |
| October 6                   | Yorkton                          | 1,000                        | 1.60 |       |      |        |                     |        |                     |
|                             | Yorkton<br>Scotia                |                              |      |       |      | 500    | 1.95 <sup>3</sup>   |        |                     |
|                             | Yorkton<br>Scotia/Merrill        |                              |      |       |      | 1,500  | 2.00 <sup>3</sup>   |        |                     |
|                             | Yorkton                          | 5,000                        | 1.75 |       |      |        |                     |        |                     |
|                             | Yorkton                          |                              |      | 1,000 | 2.10 |        |                     |        |                     |
| Market<br>closed<br>Oct 7-9 |                                  |                              |      |       |      |        |                     |        |                     |
| October<br>10               | Yorkton                          |                              |      | 1,000 | 2.20 |        |                     |        |                     |
|                             | Yorkton                          | 3,000                        | 1.90 |       |      |        |                     |        |                     |
|                             | Yorkton                          | 5,000                        | 1.80 |       |      |        |                     |        |                     |
|                             | Yorkton                          | 10,000                       | 1.75 |       |      |        |                     |        |                     |
|                             | Wolverton<br>Research            |                              |      |       |      |        |                     | 28,000 | 2.00                |
|                             | Yorkton                          |                              |      |       |      | 3,000  | 2.00                |        |                     |
| October<br>11               | Yorkton                          | 1,000                        | 1.90 |       |      |        |                     |        |                     |
|                             | Yorkton                          | 2,000                        | 2.00 |       |      |        |                     |        |                     |
|                             | Yorkton<br>Yorkton               |                              |      |       |      | 1,000  | 2.00                |        |                     |
|                             | Yorkton<br>Yorkton               |                              |      |       |      | 2,000  | 2.25 <sup>3,4</sup> |        |                     |
|                             | Yorkton                          | 2,000                        | 2.00 |       |      |        |                     |        |                     |
|                             | Yorkton /<br>Research<br>Yorkton |                              |      |       |      | 3,000  | 2.10                |        |                     |
|                             | Wolverton                        |                              |      | 1,000 | 2.30 |        |                     |        |                     |
|                             | Wolverton                        |                              |      | 1,000 | 2.35 |        |                     |        |                     |

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|               |                       | UNFILLED ORDERS <sup>1</sup> |      |       |      | TRADES |                   |      |       |
|---------------|-----------------------|------------------------------|------|-------|------|--------|-------------------|------|-------|
|               |                       | BUY                          |      | SELL  |      | BUY    |                   | SELL |       |
| DATE          | BROKER <sup>2</sup>   | QTY                          | BID  | QTY   | ASK  | QTY    | PRICE             | QTY  | PRICE |
|               | Yorkton               |                              |      | 1,000 | 2.50 |        |                   |      |       |
|               | Yorkton<br>NB         |                              |      |       |      | 800    | 2.05              |      |       |
| October<br>12 | Yorkton               | 2,000                        | 2.00 |       |      |        |                   |      |       |
|               | Yorkton               | 5,000                        | 1.95 |       |      |        |                   |      |       |
|               | Yorkton               | 10,000                       | 1.85 |       |      |        |                   |      |       |
|               | Yorkton               | 10,000                       | 1.75 |       |      |        |                   |      |       |
|               | Yorkton<br>Desjardins |                              |      |       |      | 200    | 2.10              |      |       |
|               | Yorkton<br>Yorkton    |                              |      |       |      | 1,000  | 2.25 <sup>3</sup> |      |       |
|               | Yorkton               | 2,000                        | 2.35 |       |      |        |                   |      |       |
|               |                       |                              |      |       |      |        |                   |      |       |

**Notes:**

1. Unfilled at end of day; excludes change orders.
2. For trades, buying broker(s) listed first.
3. Uptick
4. New high
5. Wash trade.
6. Wash trade. Seller was Siddiqi; buyer was Shakir Siddiqi.

***Alleged pre-arranged trade***

¶ 61 Staff alleges that Siddiqi's sale of 50,000 shares on September 25th was pre-arranged. Siddiqi denies that it was a pre-arranged trade. The broker involved was Garnet Ferguson. Ferguson was interviewed, apparently not under oath, on April 16, 2002 by Market Regulation Services Inc. (RS). In that interview he said this about the trade:

Q [Referring to the buy orders totaling 50,000 shares entered just before 0800 on September 25]  
From 7:54 . . . to 8 o'clock you inputted orders . . . Maybe you can explain to me, is that timing pre-arranged?

A That was not pre-arranged. I mean, I had indicated that I was going to participate in the play. I had talked to him on the phone, not that day . . .

Q And he – Siddiqi did indicate that you should closely watch the market?

A Yes, he did.

Q And can you explain why he would indicate that?



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- A Well, he knew that I was looking to buy some stock.
- Q So did you reach agreement upon the timing of these orders?
- A No. . . .
- ... .
- Q And then within less – a half a minute later from entering the last bid, Siddiqi hit it.
- A I didn't know that it was him. Anybody could have been watching the market. It didn't trade very much.
- ... .
- Q Well, [Siddiqi] said to watch the market. Siddiqi said that?
- A Yes.
- Q Okay, but you didn't have any discussions about arranging this trade with Siddiqi?
- A No, I did not, no. I put my bids in. I'm sure he was watching the market. I don't know that those – the sell – the sell side was even him. I don't know where the sell – where stock came from.

¶ 62 Ferguson entered into a settlement dated November 6, 2003 with RS. The settlement included an agreed statement of facts. The following are the relevant excerpts from these documents.

¶ 63 From the settlement:

7. Ferguson purchased securities in AIS . . . in a pre-arranged, new high trade with a known promoter where he knew or ought to have known that the effect of such a purchase would be to unduly disturb the normal position of the market and to create an abnormal market condition in which market prices did not fairly reflect current market values . . .

¶ 64 From the agreed statement of facts:

15. In a pre-arranged transaction with the Promoter, on September 25, 2000 at 08:01, Ferguson purchased a total of 50,000 AIS shares at \$1.00 per share for six clients . . . . This trade upticked the price of AIS materially from \$.85 to \$1.00 per share.

¶ 65 It is common ground that the person referred to in these paragraphs as the promoter is Siddiqi.

¶ 66 It appears from the trading analysis prepared by Commission staff and entered into evidence at the hearing that the settlement and the agreed statement of facts are incorrect in characterizing this trade as an uptick that established a new high.

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This trade occurred at 08:01. There was an earlier trade, at 07:54, for 2,000 shares at \$1.00, and it was that trade that was the uptick trade that established a new high. (Siddiqi was not a party to the earlier trade.)

### *The wash trades*

¶ 67 Staff alleges that the three trades identified in the table above as wash trades are evidence of Siddiqi's contravention of section 57(a). This is how Siddiqi explained these trades in his interview:

Q . . . Let's move forward to the next trade. We have September 26th. . . . Where you were . . . both trying to sell and trying to buy? Can you explain that to me?

A I think that's probably a – was an error on my part, because not realizing that might have been my offer.

. . .

Q So you forgot that you inputted –

A Probably that's what happened there.

Q So within an hour – an hour's time, you forgot you inputted an order, where you placed an order through Yorkton?

A Yeah.

Q Okay, moving on to the 29th. . . . The first one looks like 25,000 shares from Yorkton –

A Right.

Q – to your Wolverton account.

A Right.

Q At a dollar.

A Mm-hmm.

Q Now, that's a lot less than the prior trade, and it was from yourself to yourself. And I think you have a story on that.

A The broker pressured me that he needed to – I needed to cover that short position . . . at Wolverton.

. . .

Q Why a dollar?

A Because that would cover the – be enough to cover the position. If I – if it was done at any higher price, that would have left a cash short position in the account.

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- Q [Referring to the wash trade of 1,000 shares on September 29] Okay, a second trade here. A buy and sell for 1,000 shares . . . from your Canaccord account . . . and a buy into your father's Research Capital account. . . you made the decision to buy shares on your own?
- A Yes.
- Q Did you again forget that you had placed a sell order from your Canaccord account?
- A No.
- Q Was it your intent that the sell order from your Canaccord account would be filled by your father's buy order through the Research Capital account?
- A Probably.
- ...  
Q . . . then ten minutes later, you put in the purchase order through your father's account, or at least the trade happened at ten minutes later through your father's account at \$1.45. Why did you choose \$1.45 on that buy order?
- A Oh, I don't know.
- Q Would it have been to re-establish the market price back to the original \$1.40 region that it closed off on September 27th?
- A I'm not sure if that was the reason.

### *Siddiqi's other trading and order activity*

- ¶ 68 A commission staff analysis entered into evidence shows that between September 14 and October 12, 2000 Siddiqi's trading accounted for:
- 33% of the buy volume of AIS shares traded (84,100 out of 254,195)
  - 53% of the sell volume (135,600 out of 154, 195)
  - 43% of the total volume (219,700 out of 508,390 shares traded)
  - 37% of the buy trades (28 out of 76)
  - 26% of the sell trades (20 out of 76)
  - 63% of the total trades (48 out of 76)
  - 52% of the unfilled orders (71 out of 137)
- ¶ 69 Siddiqi's buy trades also accounted for 41% of the buy trade upticks (11 out of 27) and 39% of the buy trade new highs (7 out of 18).

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¶ 70 Siddiqi's buys total 84,100 shares for \$101,715 and his sells total 135,600 shares for \$178,005. This represents a surplus for Siddiqi (before commissions and taxes) of \$76,290.

¶ 71 Siddiqi says that during September, the purpose of his trading activity was to accumulate a position in AIS stock. He explained as follows in his interview:

Q Now why did you buy AIS on the 14th of September?

A Well, I think I thought AIS, you know, was a good shell company at that time. It had lots of cash in the treasury. They were – they would probably do something sooner rather than later, and I thought probably it would be a good investment.

...

Q Why did you decide to place a buy order September 20?

A I don't know. . . .

Q Well there was no trade activity by yourself on the 21st. So the next buy trades, because they happened to be buy trades, September 22nd, one order for 5,000 shares at 75 cents, and I presume it's a second order because the price is different, 80 cents, the second one for 14,000 shares.

A I think what I recall, because I was trying to buy the stock, my broker had phoned me and says, "There's a block of stock offered, do you want to buy it?" I said, "Sure."

...

Q So you must have told him that you wanted to accumulate a bigger position in AIS?

A Yes.

...

Q When did you call your broker to say, to inform him that you had an interest in accumulating more AIS stock?

A Well, I think that was before I left . . . for London.

Q The 14th?

A Yes.

...

Q You just produced that on the 22nd that your broker contacted you knowing that you wanted to accumulate shares of AIS, and the 22nd was a Friday. Come Monday morning you decide to sell 50,000 shares at a dollar?

A I just put out the offer to see if anybody else would sell more stock.

...

Q Why would you do that?

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...

A Well, generally, if, you know, if I want to accumulate stock, then, to get a position, you know, maybe some people get scared to see if there's a big offer out there and they might sell – they decide to sell cheaper.

¶ 72 Siddiqi says that his trading activity in October was to make a market for the shares of AIS. He explained it as follows in his interview:

Q Again we're talking about the trading activity here, and if I can get you to focus on October 2nd, 3rd, 4th, and 5th, and again the trading activity seems to be buying and selling stock the same day.

A Right.

Q Is there any reason for that, since there was a press release that came out and you came back to Canada?

A Oh, I just wanted to make the market.

Q You wanted to make the market.

A Yeah, just general maintenance of the market. I think that's how I can explain this erratic trading.

Q Were you a market maker for AIS?

A Well, no. Not officially, no.

...

Q . . . You said your trading in this period of time that we've been discussing here from September 14th through October 2nd, say, you were trying to maintain the market?

A Well, eventually I wanted to buy the stock in the company, and – and then it became maintenance.

Q And what was your motivation for maintaining the market?

A Well, just to have an orderly market.

Q And how would that be beneficial to you?

A It wouldn't be beneficial to me.

Q Well, then, why would you want to do it?

A Because, you know, I'm asking AI to sell me the company, the Floral Holding.

Q Okay, so you wanted . . . to maintain the market during this period of time because you knew that you – there was a likelihood that

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you would become the owner of a significant block of shares of AIS at a point in the future?

A There's a possibility, yeah.

¶ 73 When asked about the impact of his trading activity on the market for AIS shares, Siddiqi had this to say:

Q . . . I just want to make sure that you understand this, that the actions that you took in that time period, buying, selling, sometimes doing both, obviously affected the price of AIS, compared to had you not been involved in the market that day.

A Right.

Q So, your decision to, in your own words, maintain the market, created a difference in how that stock traded that week, had you chosen not to be in the market? And . . . based on how much of the volume of each trade that you were either on the buy or the sell side of?

A Right.

¶ 74 Siddiqi does not concede that all of his orders and trades were made on his instructions. He says that because he had an uncovered short position at Yorkton Securities Ltd., the Yorkton broker, Brian Kaufman, may have entered buy orders in Siddiqi's accounts to cover the short position.

¶ 75 Yorkton's compliance staff became aware of Siddiqi's short position and spoke to Kaufman about it on September 29. Short sales in the account continued through October 5, when the short position stood at about 43,000 shares. Siddiqi says that after that, at least some of the buy orders were entered by Kaufman to cover the short position. Kaufman testified that he bought some of the shares to cover the short position, but only after discussing it with Siddiqi. He said that although he did not believe it was necessary to get a client's concurrence to enter these orders for the purpose of covering a short position, he would generally do so as a courtesy to the client.

### *Siddiqi's short sales*

¶ 76 In his interview, commission staff asked Siddiqi about his short sales. These are the relevant excerpts:

Q [Referring to the sale on September 25]  
So it filled . . . 50,000 shares sold. . . Now you're short 25,000.

A Correct.

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- Q Did you have a plan as to how you would cover this?  
A Well, in my general market experience, what I've seen, a lot of these stocks go up, they come down. So I thought, you know, if they come back down, I'd buy it back.
- ...
- Q [Referring to the sale on September 26]  
Now, going back – you sold 1,500 shares at \$1.25.  
A Right.
- Q And that would be, I suppose a short position because you don't have 1,500 shares to sell at that time.  
A Right.
- Q Did you give any thought to how you might cover that position in three days, because this was worked in cash account, I believe.  
A Did I give any thought? Yes and no, it didn't cross my mind at that time.
- ...
- Q When you put the sell instructions through Yorkton, how did you represent the selling to Brian Kaufman?  
[Counsel for Siddiqi:]  
What you want to know is whether he told them it was short or not, is that what you mean?  
Q Yes. Yes.  
A I can't remember what I said to him
- Q [Referring to the two sales on September 27]  
When you placed those sells, were you aware that you were building a larger and larger short position at Yorkton?  
A Yes.
- Q . . . how did you intend on covering that short?  
A Well, like I say, in my general market experience, I've seen a lot of these stocks go up and they come down. So when they come down, I cover it.
- Q So it was indeed a short position then?  
A Yeah, probably.

¶ 77 Brian Kaufman, the Yorkton broker that Siddiqi dealt with, testified that Siddiqi did not declare any of his trades as short sales.

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¶ 78 Siddiqi covered his short position by November 6 with shares he acquired from Floral's holdings.

### III. Analysis and Findings

¶ 79 The Executive Director alleges that Siddiqi:

1. traded securities of AIS with knowledge of material facts and material changes about AIS that had not been generally disclosed, contrary to section 86(1);
2. traded securities of AIS, knowing that his trading activities resulted in or contributed to a misleading appearance of trading in, and an artificial price for, securities of AIS, contrary to section 57(a);
3. sold shares of AIS short without declaring the short position, contrary to section 56(1);
4. distributed securities from his position as a control person of AIS without filing a prospectus, contrary to section 61(1);
5. acquired a controlling interest in AIS without filing an early warning report, contrary to section 111(1); and
6. acted contrary to the public interest by those contraventions of the Act.

¶ 80 All of the statutory sections cited below refer to the Act and the *Securities Rules*, BC Reg 194/97 as they read in September and October 2000.

#### A. Trading on inside information

¶ 81 Section 86(1) says:

**86** (1) A person that

(a) is in a special relationship with a reporting issuer, and

(b) knows of a material fact or material change with respect to that reporting issuer, which material fact or material change has not been generally disclosed,

must not purchase or sell

(c) securities of that reporting issuer

...



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¶ 82 The Executive Director alleges that Siddiqi contravened section 86(1) when he purchased and sold AIS shares between September 14 and October 12, 2000. If we are to find that he did so, we must first find that, during that period:

1. There was a material fact or material change with respect to AIS that had not been generally disclosed;
2. Siddiqi knew of that undisclosed material fact or material change;
3. Siddiqi purchased or sold securities of AIS while he knew of the material fact or material change during the period that the material fact or material change had not been generally disclosed; and
4. Siddiqi was in a special relationship with AIS.

¶ 83 In the discussion that follows, we sometimes use the phrase “material information” to refer to either material facts, material changes, or both. We use the phrase “inside information” to refer to material information that has not been generally disclosed.

### *1. Was there inside information relating to AIS?*

¶ 84 Section 1(1) defines “material change” and “material fact”:

**“material change”** means, if used in relation to the affairs of an issuer, a change in the business, operations, assets or ownership of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, and includes a decision to implement that change made by

(a) senior management of the issuer who believe that confirmation of the decision by the directors is probable, or

(b) the directors of the issuer;

**“material fact”** means, where used in relation to securities issued or proposed to be issued, a fact that significantly affects, or could reasonably be expected to significantly affect, the market price or value of those securities;

¶ 85 Section 86(1) does not prohibit trading in securities while in possession of any information about the issuer that has not been generally disclosed. The prohibition only applies if the information is material information – information that is a material fact or material change relating to the issuer.

¶ 86 The events that the Executive Director alleges are material facts or material changes about AIS are the Tanzanian project farmout agreement, the negotiations

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leading up to that agreement, the acquisition of Floral by the Siddiqi group, and the negotiations leading up to that acquisition. For each of these, we have to decide whether the event was a material fact or material change, and if so, when it happened and when it was disclosed.

- ¶ 87 Whether information is material depends on the facts of each case. The test is the expected impact the information would have on the market price or value of the issuer's securities. Where transactions are involved, it is not enough to consider only the materiality of the transaction itself, but also the materiality of the information that negotiations are underway that could lead to a possible transaction. In some cases, the existence of negotiations would or could reasonably be expected to affect the stock price, and is therefore material. (Of course, the existence of negotiations about a proposed transaction can be material only if the underlying transaction itself, if completed, would be material.)
- ¶ 88 Whether information about negotiations is material requires a consideration of the uncertainty of outcome inherent in any negotiation process. This depends on both the likelihood that the event will happen, and the expected impact of the event on the market price or value of the issuer's securities if it were to happen. For example, at the outset of negotiations it is usually uncertain whether the transaction will occur. As a result, information about negotiations at their early stage may not be material because the potential materiality of the transaction is offset by the uncertainty of whether it will happen. The evidence that is relevant to the issue of when negotiations reach the point that the information becomes material includes the evidence of parties and observers to the negotiations and the surrounding circumstances, including the parties' conduct.
- ¶ 89 In this case, we also have the disclosures that AIS made. There being no evidence to the contrary, we must assume that AIS complied with its obligation to disclose material changes accurately and on a timely basis as required by stock exchange rules and under section 85 of the Act. We recognize, however, that public companies will sometimes, out of an abundance of caution, issue news releases about information that may not be "material" as defined. Therefore, we do not always infer that an event is material just because AIS chose to issue a news release about it.
- ¶ 90 We must first determine whether the farmout agreement itself was a material change or a material fact relating to AIS. The agreement obligated AIS to drill three exploration wells at an estimated cost of about \$21 million. At the end of 1999, AIS had total assets of about \$2.1 million, of which \$1.6 million was cash. In 1999 it incurred a loss from operations of \$97,000 on revenues of \$114,000. Clearly, a commitment of this magnitude for a company with these resources was a material change. To comply with the agreement, AIS would have had to raise

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about \$20 million in new capital. In our opinion, that was a change in its business that would reasonably be expected to significantly affect the market price or value of its securities. It would also be a material fact because it was a fact that could reasonably be expected to affect the market price or value of its securities. We therefore find that the farmout agreement was both a material change and a material fact relating to AIS.

¶ 91 The next step is to consider whether the acquisition of Floral was a material change or a material fact relating to AIS. Floral owned 49% of AIS and therefore controlled AIS. A change of ownership of Floral would therefore constitute a change of control of AIS. A change of control of a public company is an event that would, in general, reasonably be expected to have a significant effect on the market price or value of its shares and Siddiqi concedes that the acquisition of Floral was material. We therefore find that the acquisition of Floral was a material change in the ownership of AIS.

¶ 92 Since the AIS farmout agreement and the acquisition of Floral were both material events, the negotiations leading up to those events would at some point have become material information. The question is when. This summarizes the relevant evidence:

- Siddiqi became aware of Floral and its holdings in early 2000. Siddiqi says he might have asked Smith to sell control of Floral as early as July.
- Siddiqi says that it was probably at the meeting with the brokerage firm in London on September 20 when he decided that AIS would be the financing vehicle for the Tanzanian project. This evidence is not contradicted.
- Siddiqi was not prepared to proceed with the project until Wood reviewed the raw technical data. Wood was not able to do this until September 21. Although Siddiqi and Smith apparently began to discuss terms that day, we doubt that Siddiqi would have been in a position to enter serious negotiations that soon. Wood still needed time to review the data and to brief Siddiqi on his conclusions. There is no evidence as to when Wood and Siddiqi discussed this matter, or that it happened in time for Siddiqi to decide on the 21<sup>st</sup> to go ahead with the project.
- On Friday, September 22 Siddiqi and Smith met again. The evidence conflicts as to whether they met all day or for only a portion of it.
- On Monday, September 25 counsel for AIS told the Exchange about the Floral transaction. The letter suggests that by that date the agreement for the change of control of Floral was in place. (The letter says this agreement was “effective September 21” but that language is ambiguous. It could mean either the date the parties agreed or merely the date that the parties wished the agreement to have legal effect.)

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- However, the AIS September 28 news release says that AIS “has been advised” that the owners of Floral “are in negotiations with an investor group with respect to acquiring the shares of Floral Holdings.” The release goes on to say that AIS was not aware of the timing and it could give no assurance that the transaction would become effective. This disclosure obviously conflicts with the information in the September 25 letter to the Exchange.
- The AIS September 28 news release also said that AIS was “exploring business activities, primarily in the area of international oil and gas and is engaged in discussions with respect to possible transactions.” Although this disclosure does not specifically identify the possible farmout with Canop, from the evidence it appears that the disclosure can only be a reference to the farmout agreement negotiations. The news release went on to caution that the discussions had not “reached the point that any assurance can be given that such transactions will become effective”. It appears that by September 28, the negotiations had advanced to the point where AIS felt it necessary to make some disclosure, indicating that it was its judgment that the information about the negotiations had become material by this date.
- Siddiqi and Smith did not discuss the deals between September 22 and Thursday, October 5. On that day, Siddiqi signed the Floral share purchase agreement. The letter of intent on the farmout agreement was signed on October 6.

- ¶ 93 The evidence is consistent that Siddiqi and Smith did not discuss the deal after September 22 until October 5, yet matters had progressed to the point where AIS felt it necessary to disclose it to the Exchange on September 25 and to the public on September 28. Furthermore, the Floral share purchase agreement was signed October 5 and the farmout agreement on October 6. Based on that timing, it must be that the negotiations had become serious at an earlier date. September 22 is the only date prior to October 5 on which the parties met and that was late enough for Siddiqi to have obtained Wood’s advice after Wood’s review of the technical data.
- ¶ 94 The evidence does not explain the anomaly between the AIS September 28 news release and the September 25 letter to the Exchange, but whatever the explanation, the letter is consistent with the finding that by September 22 the negotiations were on fairly solid ground, and the news release is not inconsistent with that fact.
- ¶ 95 Considering this evidence together, we find that on September 22 the negotiations between Siddiqi and Smith over the AIS farmout agreement and the acquisition of Floral reached the degree of certainty that made those negotiations material information.

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- ¶ 96 We therefore find that there was material information that was not generally disclosed about the negotiations which ultimately led to the AIS farmout agreement and the acquisition of Floral from September 22 until September 28, when AIS disclosed the negotiations.
- ¶ 97 We also find that after the September 28 news release, there was no new material information to disclose about the Floral acquisition until October 5, when the Floral acquisition agreement was signed. AIS disclosed that event on the day it occurred, so there was no period of time when the information about the signing of the Floral agreement was not generally disclosed.
- ¶ 98 The letter of intent for the farmout agreement was approved by the AIS board on Friday, October 6 and AIS signed it that day. The Canop board reviewed it that day but needed more information and did not sign until Tuesday, October 10. We find that after the September 28 news release, there was no new material information to disclose about the farmout agreement until it was approved and signed by Canop, which happened on October 10. AIS and Canop issued a news release disclosing the agreement that day, so there was no period of time when the information about the signing of the farmout agreement was not generally disclosed.

### ***2. Did Siddiqi have knowledge of inside information relating to AIS?***

- ¶ 99 We have found that between September 22 and September 28 there was material information about AIS that had not been generally disclosed, that being the negotiations surrounding the farmout agreement and the acquisition of Floral. Since Siddiqi was a party to those negotiations, he clearly had knowledge of this undisclosed material information, and we so find.

### ***3. Did Siddiqi purchase or sell securities of AIS with knowledge of inside information relating to AIS?***

- ¶ 100 As set out in the Background section above, Siddiqi traded AIS shares as follows between September 22 and September 28:

|               |  |
|---------------|--|
| September 22: | 19,000 shares in 2 trades, both as buyer   |
| September 25  | 50,000 shares in 6 trades, all as seller   |
| September 26  | 15,500 shares in 6 trades, 2 as buyer, 3 as seller, and 1 as both buyer and seller |
| September 27  | <u>5,500</u> shares in 3 trades, 1 as buyer and 2 as seller                        |
| Total         | <u>90,000</u> shares   |

- ¶ 101 Siddiqi concedes that he traded on September 25, 26 and 27 while he knew material information about the Floral acquisition that had not been generally

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disclosed. We have found that there was material information relating to AIS about both the Floral acquisition and the farmout agreement that had not been generally disclosed starting on September 22, although we did not make a finding as to what time of day on the 22nd. However, Siddiqi's evidence is that he did not meet with Smith after mid-day, so that would mean that the information became material in the morning of the 22nd, London time. Siddiqi's trades on the 22nd were after 0700 Vancouver time, which was afternoon in London. Therefore, we find that Siddiqi's trades on September 22 he also made while he knew undisclosed material information.

¶ 102 Although Siddiqi traded in AIS shares from September 14 through September 20 with knowledge of the undisclosed information that AIS was the most likely vehicle for the Canop farmout agreement, this information was not material information until September 22 and therefore Siddiqi's trading prior to September 22 was not contrary to section 86(1).

#### **4. Was Siddiqi in a special relationship with AIS?**

¶ 103 Section 3 describes special relationships:

**3** For the purposes of sections 86 and 136, a person is in a special relationship with a reporting issuer if the person

(a) is an insider, affiliate or associate of

(i) the reporting issuer,

(ii) a person that is proposing to make a take over bid, as defined in section 92, for the securities of the reporting issuer, or

(iii) a person that is proposing

(A) to become a party to a reorganization,

amalgamation, merger, arrangement or similar business combination with the reporting issuer, or

(B) to acquire a substantial portion of the property of the reporting issuer,

(b) is engaging in or is proposing to engage in any business or professional activity with or on behalf of the reporting issuer or with or on behalf of a person described in paragraph (a) (ii) or (iii),

(c) is a director, officer or employee of the reporting issuer or of a person described in paragraph (a) (ii) or (iii) or (b),

(d) knows of a material fact or of a material change with respect to the reporting issuer, having acquired the knowledge while in a

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relationship described in paragraph (a), (b) or (c) with the reporting issuer, or

(e) knows of a material fact or of a material change with respect to the reporting issuer, having acquired the knowledge from another person at a time when

(i) that other person was in a special relationship with the reporting issuer, whether under this paragraph or any of paragraphs (a) to (d), and

(ii) the person that acquired knowledge of the material fact or material change from that other person knew or reasonably ought to have known of the special relationship referred to in subparagraph (i).

¶ 104 Section 1(1) defines “insider” as follows:

“**insider**” means, if used in relation to an issuer,

(a) a director or senior officer of the issuer

...

¶ 105 The Executive Director argues that Siddiqi was a person in a special relationship with AIS under section 3(e).

¶ 106 We agree. Smith was a director of AIS and therefore an insider of AIS. This makes Smith a person in a special relationship with AIS under section 3(a). Smith is also included under section 3(c). Siddiqi was negotiating both transactions with Smith, whom he knew to be a director of AIS. (Whether Smith told him that is unclear, but Siddiqi says he spent time doing due diligence on AIS and therefore must have known the identities of its directors). Siddiqi therefore acquired his knowledge of the material information about AIS from Smith, and thus himself became a person in a special relationship with AIS under section 3(e), and we so find.

¶ 107 Siddiqi was also a person in a special relationship with AIS under (a) section 3(a)(ii), because he was, through the Floral transaction, a person proposing to make a takeover bid for AIS, and (b) section 3(d), because while negotiating the acquisition of Floral (and therefore a person described in section 3(a)(ii)), he acquired material information about the farmout agreement negotiations.

¶ 108 We therefore find that Siddiqi contravened section 86(1) through his purchases and sales of 90,000 shares of AIS between September 22 and 27, 2000, while

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being a person in a special relationship with AIS and having knowledge of material information about AIS that had not been generally disclosed.

### **B. Manipulation**

¶ 109 The Executive Director alleges that Siddiqi contravened section 57, which says:

**57** A person in or outside British Columbia must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security or a trade in an exchange contract if the person knows, or ought reasonably to know, that the transaction or series of transactions

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, any security or exchange contract traded in British Columbia,

...

¶ 110 If we are to find that Siddiqi contravened section 57(a), we must find that:

1. Siddiqi directly or indirectly engaged or participated in a transaction or series of transactions relating to a trade in or acquisition of the securities in question, in this case, the shares of AIS;
2. The shares of AIS traded in British Columbia; and
3. The transaction or series of transactions results in or contributes to a misleading appearance of trading activity in, or an artificial price for, the shares of AIS; and
4. Siddiqi knew, or ought reasonably to have known, that the transactions he engaged in would have the effect described in paragraph 3.

#### **1. Siddiqi's trading and orders**

¶ 111 As summarized in the Background section, it is clear that Siddiqi bought and sold shares of AIS between September 14 and October 12, 2000. He also placed buy and sell orders during this period. Orders are transactions relating to a trade in or acquisition of a security. He traded and placed orders directly with British Columbia securities dealers. We therefore find that Siddiqi directly engaged in a series of transactions relating to a trade in or acquisition of shares of AIS.

#### **2. Trading of shares of AIS in British Columbia**

¶ 112 There is no issue here. AIS traded on the Canadian Venture Exchange which is located in British Columbia, and Siddiqi traded AIS shares through securities dealers located in British Columbia. We find that the shares of AIS traded in British Columbia.



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### 3. *Misleading appearance of trading and artificial price*

¶ 113 The Executive Director says there are five aspects of Siddiqi's trading and orders that resulted in a misleading appearance of trading in, and an artificial price for, the shares of AIS:

- The alleged pre-arranged trade for 50,000 AIS shares on September 25;
- Wash trades on September 26 and 29;
- Uneconomic trades on September 26 and 29;
- Siddiqi's trading volume and his trades that represented upticks and new highs; and
- Siddiqi's order activity.

¶ 114 The conduct described in section 57(a) is commonly referred to as market manipulation. The following are recognized hallmarks of an attempt to manipulate the market:

- Wash trades (trades with no change of beneficial ownership)
- Trading with the object of inducing others to purchase
- Trades or orders that lead to an artificial price for a security
- Trades or orders that create a misleading appearance of trading activity
- Orders made without a bona fide intention to deliver the cash or securities necessary to settle the trade
- Trades through nominee accounts
- Pre-arranged trades
- Market domination
- Uptick trades
- Involvement in opening and closing trades
- High closing
- Uneconomic trading

¶ 115 Two Commission decisions involving market manipulation are *Sirianni*, [1991 40 BCSC Weekly Summary 7 and *Atlantic Trust Management Group* [1995] 14 BCSC Weekly Summary 54.

¶ 116 In *Sirianni*, the Commission found that the respondents contravened the predecessor section to section 57(a) after considering the following factors:

- Market domination (43% of the buying and 35% of the selling)
- Active trading (only one day during the relevant period when the Siriannis did not trade)

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- Use of multiple accounts (made 54 trades for a total of 81,700 shares among these accounts)
- Uneconomic trading
- Little change in holdings during the period

¶ 117 In *Atlantic*, the Commission found that the respondents contravened the predecessor section to section 57(a) after considering the following factors:

- Market domination (35% of buys and 45% of sales of one stock, 29% of both buys and sells of another)
- Wash trading (135 trades in one stock, 63 in another)
- Trades resulting in upticks and new highs (about 70% of the upticks and 77% of the new highs in one stock, 43% of the upticks and 46% of the new highs in another)

¶ 118 As is clear from these authorities, a person manipulating the market might use a variety of tools to do the job. Some of these tools are not inherently illegitimate trading practices – they only become so when employed with the intention of manipulating the market. It is also necessary to consider the conduct of the alleged manipulator as a whole. Some trading and order activity may not seem manipulative when viewed in isolation, but is clearly so when considered along with all of the manipulator’s other conduct.

¶ 119 We will discuss the alleged pre-arranged trade and the wash trades before considering Siddiqi’s trading and order activity more generally.

(a) The alleged pre-arranged trade

¶ 120 We note that there is nothing inherently wrong with pre-arranged trades. What makes a pre-arranged trade improper is that it is made with the intention of manipulating the market. Therefore, simply proving that a pre-arranged trade occurred is not enough. The evidence must also show that the pre-arranged trade was made for the purposes of manipulation.

¶ 121 However, Siddiqi says the trade for 50,000 AIS shares on September 25 was not pre-arranged. There is conflicting evidence on this point from Ferguson, the Yorkton broker who bought the shares. In his interview with RS in April 2002 he said the trade was not pre-arranged. However, in his November 2003 settlement with RS, he said it was pre-arranged, and admitted that he knew or ought to have known that the effect of the trade would “unduly disturb the normal position of the market”.

¶ 122 The Executive Director says we should rely on the text of Ferguson’s settlement.

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- ¶ 123 Siddiqi says we should be careful about accepting the settlement on its face when Ferguson's interview contradicts it. He says that the reality of the settlement process is that sometimes people will sign an agreed statement of facts that contains what they believe to be inaccuracies in order to reach a settlement. We also note that the settlement contained at least one rather significant error (that the 50,000 share trade was the uptick trade that established the new high, when in fact it was not), although whether Ferguson was aware of it at the time he signed the settlement is unclear.
- ¶ 124 Any person who settles regulatory proceedings on the basis of an agreed statement of facts must be taken to have admitted all of those facts, and cannot in future deny those facts as they relate to that person. However, Siddiqi is not a party to that settlement. Facts in a settlement, although relevant, do not automatically bind persons who are not parties to the settlement.
- ¶ 125 We do not rely on Siddiqi's argument about the dynamics of the settlement process in assessing the evidence on this point, but there is no way for us to determine which version of the facts (Siddiqi's, Ferguson's interview, or Ferguson's settlement) to accept. Neither Siddiqi nor Ferguson testified so we have no criteria on which to determine the relative credibility of the evidence before us. We therefore make no finding as to whether Siddiqi's 50,000 share trade was pre-arranged or a contravention of section 57(a) for that reason. However, this trade remains relevant for the purposes of considering the overall volume of Siddiqi's trading, discussed below.
- (b) Wash trades
- ¶ 126 Siddiqi made three wash trades in AIS shares: one for 2,000 shares at \$1.15 on September 26, one for 25,000 shares at \$1.00 on September 29, and one for 1,000 shares at \$1.45, also on September 29. (We are treating trades involving Shakir Siddiqi's accounts as Siddiqi's.) As noted above, Siddiqi says he made the September 26 trade in error. He says he made the 25,000 share trade on September 29 to cover his short position at his account at Wolverton. Siddiqi also says that these trades did not have a significant impact on the market for AIS shares.
- ¶ 127 In our opinion, a wash trade is rarely justified. Siddiqi offered explanations for these two trades that may be relevant when it comes time to consider sanctions for his conduct, but these trades are relevant in determining whether Siddiqi contravened section 57(a).
- ¶ 128 As for the 1,000 share trade at \$1.45 on September 29 involving his father's account, Commission staff asked Siddiqi in his interview if the objective of that

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trade was to re-establish the market price at the \$1.40-range it was at before the 25,000 share wash trade at \$1.00. Siddiqi replied that he was “not sure if that was the reason”. We have also taken this trade into account in considering Siddiqi’s trading as a whole in determining whether he contravened section 57(a).

(c) Siddiqi’s trading and order activity

- ¶ 129 Siddiqi’s trading and order activity bears many of the hallmarks of market manipulation. Applying the factors that indicate market manipulation to his activities, we note the following.
- ¶ 130 *Siddiqi dominated the market.* Siddiqi’s buy trades represented 37% of the buy trades and 33 % of the buy volume in AIS shares. His sell trades represented 26% of the sell trades and 53% of the sell volume. Overall, his activity represented 63% of all trades, 43% of the trading volume, and 52% of the unfilled orders.
- ¶ 131 *Siddiqi was very active in the market for AIS shares.* Siddiqi either traded in, or entered orders for, AIS shares on every trading day but one from September 14 through October 12.
- ¶ 132 *Siddiqi’s trades involved many upticks and new highs.* Siddiqi’s buy trades accounted for 41% of the buy trade upticks and 39% of the new high trades.
- ¶ 133 *Siddiqi used multiple accounts.* Siddiqi traded through several accounts at four British Columbia dealers (most of the trading occurred through three accounts at three separate dealers).
- ¶ 134 *The Shakir Siddiqi wash trade set a new high.* Siddiqi says he is “not sure” whether he made this trade to restore the AIS share price to its earlier levels after his 25,000 wash trade at \$1.00, but offers no evidence or explanation as to any other purpose. This trade through his father’s account set a new high of \$1.45.
- ¶ 135 *Siddiqi made at least one uneconomic trade.* On September 26, he sold 9,000 shares at \$1.20 and bought 1,000 shares back at \$1.30 immediately afterward.
- ¶ 136 The Executive Director also cites the 25,000 share wash trade on September 29 as an example of uneconomic trading activity, because the trade took place at \$1.00 when the previous day’s close was \$1.41. Siddiqi explained that this trade was to cover a short position at another dealer and the price was chosen so as not to create a short in the cash position in that account. However, more importantly, it was a wash trade – by definition, Siddiqi was the beneficial owner on both sides of the trade. The trade therefore had no economic consequence whatsoever to Siddiqi.

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- ¶ 137 *The price of the AIS shares rose throughout the period.* From September 14 to October 12, the AIS share price rose from \$0.65 to \$2.25 – an increase of 246%. The rise in the AIS share price cannot be attributed with certainty only to Siddiqi’s market activity. AIS was making public disclosures about the farmout agreement and the Floral acquisition in the same general time frame, and that may have had some impact on its share price.
- ¶ 138 However, we are skeptical that an increase of this magnitude could reasonably be attributed solely to the material changes relating to AIS. To begin with, AIS made no announcements between September 14 and September 21, yet in that time frame the stock price rose from \$0.65 to \$0.85, an increase of 30%. During this period Siddiqi traded 46% of the AIS shares traded (6,000 out of 13,000).
- ¶ 139 On September, 22, the day after the September 21 announcement (relating to the appointment of a new president), the stock price was essentially unchanged, closing at \$0.80.
- ¶ 140 The next announcement was not until September 28, yet from September 22 to September 27 the stock price arose from \$0.80 to \$1.41, an increase of 76%. During this period, Siddiqi traded 92% of the AIS shares traded (90,000 out of 98,000).
- ¶ 141 The major announcement came on September 28, when AIS announced the potential change of control and (somewhat obliquely) the potential farmout agreement. The following week the share price climbed from \$1.41 to \$2.00, an increase of 42%. From September 29 to October 6, Siddiqi traded 59% of the AIS shares traded (56,700 out of 96,200).
- ¶ 142 We do not think it is reasonable to conclude that all of this appreciation was attributable to the September 28 announcement. First of all, to the extent the change of control was material, it was so only because it was going to enable the farmout agreement. So the potential farmout agreement was the biggest news. However, the news release disclosed no details about the agreement (not even that it was a potential farmout agreement). Even if it had, AIS could not possibly perform its obligations under the farmout without raising considerable new financing – it would have had to find new capital to fund almost the entirety of its obligation under the agreement. (It was for this reason that Siddiqi argued that the farmout agreement was not a material fact or change relating to AIS.) It is therefore highly unlikely that the market would reward this news with a 42% increase in the stock price.
- ¶ 143 The inescapable conclusion is that, given Siddiqi’s trading and order activity in the market in AIS shares, including the significant percentage of upticks and new

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highs that his buy orders represented, his activities had a substantial impact on the AIS share price, and we so find.

- ¶ 144 Siddiqi says that his trading was not intended to be manipulative. He says that his early trades were merely to acquire a position, and at some point he decided to make a market in AIS shares.
- ¶ 145 Those may have been Siddiqi's goals, but the trader's goals are not relevant to whether there has been a contravention of section 57(a). Regardless of the goal, the prohibition in section 57(a) is to ensure that the normal operation of the market is not interfered with. So even accepting that Siddiqi's initial goal was simply to acquire a position in the stock, his obligation was to do so in a manner that would not result in his knowingly creating a misleading appearance of trading activity in, or an artificial price for, the stock.
- ¶ 146 The same goes for his stated goal of making a market in the AIS shares. Also relevant to this point is CDNX Policy 3.4 *Investor Relations, Promotional and Market-Making Activities*, which provided guidance to those intending to engage in market-making activities. That policy set out general guidelines "to help distinguish between proper market-making activities and market manipulation or market control" (section 2.2). These are relevant excerpts:
- 2.3 Proper market making corrects temporary imbalances in the supply of and demand for an Issuer's securities. The market should be allowed to rise and fall naturally, with the market-making activity operating primarily to smooth out these imbalances . . . .
  - 2.4 . . . a Person engaged in market-making normally would not buy all securities offered at the posted price, but rather, would buy a portion of the securities at the posted price and allow the price to drop before making further purchases. This allows the market to find its own level at a stable rate. . . .
  - 2.5 Persons involved in market-making activities should either trade through one account only for a particular security, or if more than one account is used, ensure that trading does not create misleading appearances of investor participation in the marketplace. . . .
- ¶ 147 The policy goes on to list activities that the Exchange considers improper market-making activity that are similar to the indicators of market manipulation described above.

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- ¶ 148 Siddiqi's so-called market-making activities exhibited few of the traits that CDNX Policy 3.4 described as acceptable, and many of those that are associated with market manipulation and described in the policy as unacceptable.
- ¶ 149 We therefore find that Siddiqi's trading and order activity between September 14 and October 12, 2000 resulted in a misleading appearance of trading activity in, and an artificial price for, the shares of AIS.
- ¶ 150 In making this finding, we accept that some of Siddiqi's buy orders in October may have been entered in an attempt to cover his short position.
- ¶ 151 If this was a factor, however, it was so only after October 5, because Siddiqi was still entering sell orders through his account at Yorkton as late as that date. It does not make sense to conclude that Yorkton would be accepting sell orders from Siddiqi while it was in the market attempting to cover his short position.
- ¶ 152 However, even if we accept that Kaufman placed some orders to do so after October 6, there is evidence inconsistent with the theory that Yorkton was directing activity in the account solely to cover the short position. For example, Siddiqi entered sell orders through his Yorkton account on October 6, 10 and 11 while the account was still short.
- ¶ 153 In addition, it is important to consider Siddiqi's conduct during this period. He was still active in the market through his other accounts. On October 10 Siddiqi sold 28,000 shares through his Research Capital account, and on October 11 he bought 2000 shares through that account and entered two sell orders for 1,000 shares each through his Wolverton account. From October 6 through 12 Siddiqi added to his overall short position, selling short into a rising market at prices ranging from \$2.00 to \$2.25. When he eventually covered his short position in November, he did so with shares he acquired through Floral at an effective price of \$0.44. Siddiqi also says that during this period he was trying to "make a market" for AIS shares.
- ¶ 154 In our opinion, even if some of the buy orders in Siddiqi's account (whether entered on his initiative or Kaufman's) were for the purpose of covering the short position, this does not explain away the rest of his activity that we have found to have contravened section 57(a). However, even if we were to ignore all of the activity in Siddiqi's Yorkton account on and after October 6, his remaining activity is sufficient to establish that Siddiqi contravened section 57(a).

#### ***4. Did Siddiqi know, or ought he to have known the effect of his trades and orders?***

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¶ 155 Siddiqi is experienced in matters of the market. His answers to several questions in his interview about his trading activity show that he was a sophisticated trader. For example, he explained how, when attempting to acquire a position in a stock, entering sell orders in a certain way can flush out new sellers, which will assist in accumulating the position. He also said his experience in covering short positions was that quite often the market would provide the opportunity to cover the short position at an attractive price.

¶ 156 Siddiqi also admitted that his activities affected the market in, and price of, the AIS stock:

Q . . . I just want to make sure that you understand this, that the actions that you took in that time period, buying, selling, sometimes doing both, obviously affected the price of AIS, compared to had you not been involved in the market that day.

A Right.

Q So, your decision to, in your own words, maintain the market, created a difference in how that stock traded that week, had you chosen not to be in the market? And . . . based on how much of the volume of each trade that you were either on the buy or the sell side of?

A Right.

¶ 157 Considering those factors, as well as Siddiqi's domination of the market, his trading and order activity, the significant percentage of upticks and new highs represented by his trading, his use of multiple accounts, his wash trades, his uneconomic trade, and the rising price of AIS stock during the period, Siddiqi must have known the impact that his activity had on the price and volume of AIS shares.

¶ 158 We therefore find that Siddiqi contravened section 57(a) when he placed buy and sell orders for, and bought and sold, shares of AIS from September 14 through October 12, 2000 in British Columbia while knowing that those activities resulted in a misleading appearance of trading activity in, and an artificial price for, the shares of AIS.

### **C. Failure to declare short position**

¶ 159 The Executive Director alleges that Siddiqi contravened section 56(1), which says:

**56 (1)** A person who places an order for the sale of a security through a registered dealer acting on the person's behalf and who



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(a) does not own the security, or

(b) if the person is acting as agent knows that the person's principal does not own the security,

must, at the time of placing the order to sell, declare to the registered dealer that the person or the person's principal, as the case may be, does not own the security, and that fact must be disclosed by the dealer in the written confirmation of sale.

(2) Subject to the regulations, for the purposes of subsection (1), a person does not own a security that

(a) has been borrowed by that person,

(b) is subject to any restriction on its sale, or

(c) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange or any other means.

¶ 160 Kaufman testified that Siddiqi did not declare his short sales, and Siddiqi concedes that he made undeclared short sales from his Yorkton account totaling 56,500 shares on September 26, 27, 29 and October 3. We therefore find that Siddiqi contravened section 56(1) in placing sell orders for these undeclared short sales.

### **D. Distributing securities without filing a prospectus**

¶ 161 The Executive Director alleges that Siddiqi contravened section 61(1), which says “. . . a person must not distribute a security unless . . . a preliminary prospectus and a prospectus respecting the security have been filed with the executive director” and the Executive Director has issued receipts for them.

¶ 162 Section 1(1) defines “distribution” and “trade”:

**“distribution”** means, if used in relation to trading securities,

(a) a trade in a security of an issuer that has not been previously issued

. . .

(c) a trade in a previously issued security of an issuer from the holdings of a control person

. . .

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**“trade”** includes

(a) a disposition of a security for valuable consideration . . . but does not include a purchase of a security . . .

¶ 163 Sections 128 and 136 of the Rules provide that a prospectus is not required for a distribution by a control person if the person files a Form 23 at least seven days before the first trade.

¶ 164 The AIS shares that Siddiqi sold were previously issued securities, so his trading in AIS shares was not a distribution unless, at the time he was trading, he was a control person of AIS.

¶ 165 Section 1(1) defines “control person”:

**“control person”** means

(a) a person who holds a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer, or

(b) each person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding, which holds in total a sufficient number of the voting rights attached to all outstanding voting securities of an issuer to affect materially the control of the issuer,

and, if a person or combination of persons holds more than 20% of the voting rights attached to all outstanding voting securities of an issuer, the person or combination of persons is deemed, in the absence of evidence to the contrary, to hold a sufficient number of the voting rights to affect materially the control of the issuer;

¶ 166 Floral was clearly a control person of AIS. By reason of its 49% of the outstanding AIS shares, it is deemed to be a control person of AIS, and there was no evidence before us to rebut that presumption.

¶ 167 Was Siddiqi also a control person of AIS after October 5 or 6, when the Floral acquisition was completed? Siddiqi says that he could not be a control person of AIS until October 31, when Floral authorized him to deal with the AIS shares owned by Floral, because he owned no voting shares of Floral and therefore had no power to exercise control over AIS until then.

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- ¶ 168 It is trite law that a shareholder of a corporation has no direct claim on the assets of the corporation, so Siddiqi would not be described by paragraph (a) of the definition – the person owing the AIS shares was Floral, not Siddiqi. Therefore it does not follow automatically that if Siddiqi controlled Floral, he would be a control person of AIS.
- ¶ 169 However, we do not agree that Siddiqi could not have been a control person before the Floral board authorized him to deal with the AIS shares owned by Floral.
- ¶ 170 Siddiqi would also be a control person of AIS if he was “a person in a combination of persons, acting in concert by virtue of an agreement, arrangement, commitment or understanding” as described in paragraph (b) of the definition. For the same reason mentioned in the previous paragraph, the persons other than Siddiqi that would have to be part of the combination would have to include Floral.
- ¶ 171 Was there a combination of persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, and did that combination of persons include Floral?
- ¶ 172 The relevant date for this issue is the date that the Siddiqi group acquired the shares of Floral. The share purchase agreement was signed on October 5, but there is no direct evidence of when the shares were registered in the names of the purchasers. However, the disclosures made to the public and to the Exchange consistently identify October 5 as the date of the acquisition. This conflicts somewhat with the fact that next to Siddiqi’s signature on each of the promissory notes that were payment for the shares, “6/10/00” has been written. This seems to indicate that the transaction was not completed until October 6. This apparent discrepancy is of no consequence, however, because Siddiqi’s first sale of AIS shares after October 5 was not until October 10.
- ¶ 173 We note at the outset that although Saba Siddiqi owned the voting shares of Floral, it appears that Siddiqi was the beneficial owner, because he signed all of the promissory notes tendered in payment of all of the shares, including the voting shares.
- ¶ 174 The evidence is clear that neither Jeffery Eng, nor Siddiqi’s father Shakir had anything to do with the affairs of Floral, and Saba’s role was minor. Siddiqi negotiated the terms of the Floral acquisition with Smith to the point where the deal was substantially complete; Saba’s participation was apparently only at the very end. The voting shares were held in Saba’s name but there is no evidence to

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suggest that it was their intention that Saba would have sole control over the voting shares of Floral; to the contrary, as noted above, the circumstances suggest that if anyone was intended to have the power to direct the affairs of Floral, it was Siddiqi.

- ¶ 175 Between them therefore, Siddiqi and Saba had control over all of the voting shares of Floral, and therefore the power to direct Floral to do anything. They did not own enough AIS shares directly to affect materially the control of AIS, but they did have control over 49% of the AIS shares through their control of Floral. If they were to exercise their powers of control they would have had to act, and clearly would have acted, through Floral. Therefore, we find that Siddiqi, Saba and Floral were a combination of persons acting in concert that held a sufficient number of AIS shares to materially affect its control.
- ¶ 176 We therefore find that Siddiqi was a control person of AIS on and after October 6, 2000.
- ¶ 177 The notice of hearing does not specify the time frame in which the Executive Director alleges that Siddiqi sold shares after he became a control person of AIS, except that his dispositions occurred after October 5. In argument, the Executive Director referred to three occasions that Siddiqi disposed of securities as a control person, but only one of these, a sale of 28,000 shares on October 10, occurred before the Exchange halted trading in AIS shares. This is the only trade that we consider relevant to this allegation, given the intent and purpose of this aspect of the legislation. (The other two trades were made by Siddiqi among his accounts.)
- ¶ 178 The intent and purpose of paragraph (c) of the definition of distribution, and sections 128 and 136 of the Rules, is to ensure that the market receives notice of an intended sale by a control person. It is not to ensure that control persons file prospectuses for those distributions; imposing the prospectus requirement on control persons is merely the mechanism through which the legislation compels those persons to file the disclosure notice in Form 23. Therefore, since the regime is there to provide the market with notice of intended sales, we do not think trades made by Siddiqi among his accounts are relevant while trading in the shares of AIS was halted.
- ¶ 179 Siddiqi was a control person of AIS when he sold shares on October 10. He was therefore subject to the prospectus requirement unless he filed a Form 23. He did not, so we find that Siddiqi, as a control person of AIS, contravened section 61(1) when he distributed 28,000 shares of AIS on October 10, 2000 without having filed a prospectus or a Form 23. We note that as it happened, the Exchange halted trading in the AIS shares three days later, 4 days before the expiry of the 7-day period required by the rules, so this contravention is of little practical significance.

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### **E. Failure to file an early warning report**

¶ 180 The Executive Director alleges that Siddiqi contravened section 111(1), which says:

**111** (1) Every offeror that, except pursuant to a formal bid, acquires beneficial ownership of, or the power to exercise control or direction over, or securities convertible into, voting or equity securities of any class of a reporting issuer that, together with such offeror's securities of that class, would constitute 10% or more of the outstanding securities of that class,

(a) must immediately issue and file a press release containing the information prescribed by the regulations, and

(b) must, within 2 business days, file a report containing the same information as is contained in the press release issued under paragraph (a).

¶ 181 Section 92(1) defines “offeror” to include, for the purposes of section 111, “a person who acquires a security, whether or not by way of a take over bid, issuer bid or offer to acquire”. It also defines “equity security” as “any security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, its assets”.

¶ 182 As noted under the above discussion of Siddiqi’s role as a control person, he was a person who acquired the power to exercise control or direction over the equity shares of AIS. He was therefore an “offeror” within the meaning of section 111(1). Since he had the power to exercise control or direction over 49% of the shares of AIS, section 111(1) clearly applies.

¶ 183 Siddiqi does not contest that he contravened section 111(1) and we so find, although we note that the market was otherwise well-informed of the change of control in AIS and so the contravention is of little significance.

### **IV. Summary of Findings**

¶ 184 We find that Siddiqi:

1. contravened section 86(1) of the Act when he purchased and sold shares of AIS while being a person in a special relationship with AIS and having knowledge of material information about AIS that had not been generally disclosed;

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2. contravened section 57(a) when he placed buy and sell orders for, and bought and sold, shares of AIS while knowing that those activities resulted in a misleading appearance of trading in, and an artificial price for, the shares of AIS;
3. contravened section 56(1) when he sold short shares of AIS without declaring those sales as short sales;
4. contravened section 61(1) when he distributed shares of AIS while being a control person of AIS without having filed a prospectus or having the benefit of an exemption from that section; and
5. contravened section 111(1) when he acquired control of more than 10% of the equity securities of AIS without filing the press release and report required by that section.

¶ 185 We have not found that Siddiqi acted contrary to the public interest. This allegation was redundant in the notice of hearing because it was based on no conduct other than already-alleged contraventions of the Act.

### **V. Submissions on Sanctions**

¶ 186 We direct the parties to make their submissions on sanctions as follows:

- |              |  |
|--------------|--|
| By July 8    | The Executive Director delivers submissions to Siddiqi and the Secretary to the Commission                                 |
| By July 29   | Siddiqi delivers response submissions to the Executive Director and the Secretary to the Commission                        |
| By August 12 | The Executive Director delivers reply submissions (if any) to Siddiqi and the Secretary to the Commission                  |
| By August 19 | Any party wishing an oral hearing on the issue of sanctions so advises the other party and the Secretary to the Commission |

¶ 187 June 15, 2005

¶ 188 **For the Commission**

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Brent W. Aitken  
Vice Chair

Marc A. Foreman  
Commissioner

Robert J. Milbourne  
Commissioner