

# 2012 BCSECCOM 411

## Gibraltar Global Securities Inc.

### *Securities Act, RSBC 1996, c. 418*

#### Hearing

<b>Panel</b>	Bradley Doney Brent W. Aitken	Commissioner Vice Chair
<b>Date of Hearing</b>	September 26, 2012	
<b>Date of Decision</b>	October 31, 2012	
<b>Appearing</b>		
Mila A. Pivnenko	For the Executive Director	
Ronald N. Pelletier	For Gibraltar Global Securities Inc.	

#### Decision

##### **I Introduction**

- ¶ 1 This is the sanctions part of a hearing under sections 161(1) and 162 of the *Securities Act, RSBC 1996, c. 418*. Our Findings on liability made on May 22, 2012 (2012 BCSECCOM 194) are part of this decision.
- ¶ 2 We found that:
- Gibraltar held itself out as being in the business of trading and advising in securities in British Columbia and carried out both activities without being registered to do so, contrary to section 34 of the Act
  - Gibraltar's continued refusal to provide the commission with the names, account information and account statements for all British Columbia residents who have beneficially held accounts with it makes Gibraltar unsuitable to engage in securities related activities in, or connected with, British Columbia

##### **II Positions of the parties**

- ¶ 3 The executive director seeks orders under sections 161(1) and 162:
- permanently prohibiting Gibraltar from participating in the capital markets
  - requiring Gibraltar to disclose on its website that it is permanently prohibited from having clients who are resident in British Columbia

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- imposing an administrative penalty in the range of \$150,000 - \$200,000 (including the \$48,250 in registration fees Gibraltar avoided from failing to register)
- requiring Gibraltar to disgorge to the commission (a) \$248,908.14 (calculated by the executive director to be the minimum profits made by it in commissions generated in the Global accounts), and (b) the amount frozen in the Global accounts (approximately \$1.1 million)

¶ 4 Gibraltar proposes that the appropriate sanction should include continuation of the cease trade order included in our Findings, until Gibraltar is appropriately registered, that Gibraltar be reprimanded and that, while an administrative penalty is not necessarily warranted, it be no more than approximately \$50,000.

### **III Orders**

#### ***Cease trade order***

¶ 5 Gibraltar has consented to the continuation of the cease trade order included in our Findings. Consistent with our Findings, “that Gibraltar’s continued refusal to provide the commission with the names, account information, and account statements for all British Columbia residents who have beneficially held accounts is contrary to the public interest”, we are making orders permanently prohibiting Gibraltar from participating in the capital markets of British Columbia, except that Gibraltar may direct Global Securities Corporation to sell any securities held in Gibraltar’s accounts at Global, provided Global continues to hold the proceeds of any sale.

#### ***Disgorgement order***

¶ 6 The executive director seeks a disgorgement order of \$248,908.14. This is the amount of commissions Global charged Gibraltar for the trading conducted in the accounts. The executive director says it is reasonable to conclude that the commissions Gibraltar charged its clients is no less than the commissions it paid to Global, and so must represent Gibraltar’s minimum profits from the trades. We disagree. Gibraltar is likely to have recovered its trading costs from its clients, but that tells us nothing about any profit it earned from its clients after recovering its costs.

¶ 7 Accordingly, we are not ordering disgorgement.

#### ***Administrative Penalty***

¶ 8 The executive director cited various IIROC decisions that dealt with registrants who refused to provide information or failed to cooperate with an investigation. None of these is helpful in these circumstances. Nor are there any previous commission decisions involving breaches of section 34 with similar facts.

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- ¶ 9 There have been a number of settlements involving firms acting without registration. These settlements generally included sanctions that referenced ex post facto registration fees and some additional sanction. These settlements ranged from \$35,000 in *Re Interbank FX, LLC*, 2007 BCSECCOM 375, to \$142,500 in *Re Forex Capital Markets, LLC*, 2005 BCSECCOM 118.
- ¶ 10 Gibraltar is a registered securities dealer under securities legislation in the Bahamas. It would have us believe that it was unaware that it was required to register under section 34 of the Act when it carried on business in British Columbia, but that is irrelevant. There is no credible jurisdiction anywhere in the world that does not require the registration of securities dealers. Anyone with even a passing familiarity with the business knows that. Gibraltar had to have known that its activities in British Columbia were likely to be subject to registration. Yet it took no credible steps to ensure that it would be in compliance with British Columbia requirements.
- ¶ 11 Gibraltar also refused to give the commission staff information it requested about its business activities. It continues to refuse. As noted in our Findings, the privacy laws of the Bahamas are no basis for that refusal.
- ¶ 12 Gibraltar failed to register and to provide information as required. Its conduct is contrary to the public interest because it violates two of the most fundamental means of regulating dealers to protect the public interest. We have therefore imposed an administrative penalty intended to deter Gibraltar from future misconduct and to demonstrate to other dealers the consequences of participating in our capital markets without complying with the Act and attempting to shield their activities from regulatory scrutiny through reliance on the privacy laws of offshore jurisdictions.
- ¶ 13 We are imposing an administrative penalty of \$300,000, which includes \$48,250 in registration fees that Gibraltar avoided by failing to register. The balance is an amount approximately equal to the commissions Gibraltar paid to Global. In our opinion, this is a suitable basis for this portion of the administrative penalty because it is a measure of the scale of Gibraltar's illegal trading activity in British Columbia. It also serves as a deterrent because it offsets the cost-recovery component of whatever Gibraltar charged its clients, and therefore it likely more than offsets any profit Gibraltar made on its trades here.

### ***Freeze Order***

- ¶ 14 The executive director and Gibraltar made proposals in their submissions to vary the freeze order. We decline to do so, at least until Gibraltar pays the administrative penalty we have ordered under section 162. In *Samji* 2012 BCSECCOM 91 the Commission described the purpose of a freeze order as follows:

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“35 The potential statutory claims referred to by the *Amswiss* panel that warrant the protection of a freeze order include not just those arising out of rights of rescission and damages (the example given by the panel) but also those arising out of orders made by the Commission under sections 161(1)(g) (disgorgement of ill-gotten gains) or 162 (administrative penalty), or made by the court under section 157 (compliance).”

### **IV Decision**

¶ 15 Therefore, considering it to be in the public interest, we order:

1. under section 161(1)(b) of the Act, that Gibraltar permanently cease trading in, and is prohibited from purchasing, any securities, except that Gibraltar may direct Global Securities Corporation to sell any securities held in Gibraltar’s accounts at Global, provided Global continues to hold the proceeds of any sale;
2. under section 161(1)(d)(iii) of the Act, that Gibraltar is prohibited from becoming or acting as a registrant, investment fund manager or promoter;
3. under section 161(1)(v) of the Act, that Gibraltar is permanently prohibited from engaging in investor relations activities;
4. under section 161(1)(e)(ii) of the Act, that Gibraltar disseminate on its website that it is permanently prohibited from having clients who are resident in British Columbia; and
5. under section 162 of the Act, that Gibraltar pay to the Commission an administrative penalty of \$300,000.

¶ 16 October 31, 2012

¶ 17 **For the Commission**

Bradley Doney  
Commissioner

Brent Aitken  
Vice Chair