

## Corporate Securities Law

April 8, 2015

### OSC Applies Insider Trading Principles to a Non-Reporting Issuer as a Matter of “Public Interest”

The Ontario Securities Commission (OSC) issued an Order approving a settlement agreement between OSC staff (“**Staff**”) and Anand Hariharan in connection with insider trading allegations against Hariharan regarding his trading of a non-reporting issuer’s option contracts (the “**Settlement Agreement**”). Notably, in deciding to issue the Order, the OSC applied insider trading principles contemplated by Ontario’s *Securities Act* (the “**Act**”) to a non-reporting issuer as a matter of “public interest” pursuant to sections 127 and 127.1 of the Act. The OSC found Hariharan’s misuse of material confidential information impugned the integrity and fairness of the capital markets, notwithstanding his conduct did not technically contravene the insider trading prohibitions set out in section 76(1) of the Act because the option contracts were not those of an Ontario reporting issuer.

This decision could indicate a trend by the OSC to cast a wider net of circumstances it views should be subject to insider trading prohibitions even where there has been no technical contravention of the rules or regulations. The decision also further enhances and solidifies the OSC’s ability to police the misuse of material, confidential information in a variety of circumstances, including with respect to non-reporting issuers, rather than leave such policing efforts to the person(s) to whom that information belongs.

The decision serves as a reminder to all market participants of the importance of maintaining the confidentiality of material non-public information in

respect of all issuers, whether public or non-reporting, and the seriousness with which Canadian securities regulators will treat violations of the tipping and insider trading prohibitions and the principles underlying such prohibitions.

#### Background

Hariharan’s conduct involved the purchase and subsequent sale of option contracts of a non-reporting issuer called Loral Space & Communications Inc. (Loral). The trades were made based on a tip from Hariharan’s close childhood friend Satish Talawdekar who disclosed material, non-public information concerning the purchase of Loral’s major subsidiary by MacDonald, Dettwiler & Associates Inc. (MDA), a reporting issuer and, at the relevant time, Talawdekar’s employer.

The acquisition, publically announced on June 26, 2012, was transformative for MDA and Loral and resulted in significant market impact on the trading value of each company’s stock. Hariharan’s purchase of Loral’s option contracts immediately before the bid announcement, and his subsequent sale of such contracts immediately following the acquisition announcement, resulted in a net profit to Hariharan of over \$68,000, or a 623% return in one day.

On March 11, 2015, Staff and Hariharan entered into the Settlement Agreement. The Settlement Agreement prohibited Hariharan from trading in any securities (absent certain limited exceptions) for a period of 10 years, and required Hariharan to make a voluntary payment to the OSC of \$35,000 (plus \$5,000 in costs). Staff recommended the OSC grant an Order approving the Settlement Agreement. On March 31, 2015, the OSC held a hearing to consider whether, pursuant to sections 127 and 127.1 of the Act, it would be in the public interest for the OSC to issue the Order.

# Goodmans<sup>LLP</sup> Update

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## **The OSC Decision**

The OSC determined that while Hariharan's trading of the Loral call option contracts did not technically contravene section 76(1) of the Act (because Loral was not an Ontario reporting issuer), his conduct impugned the integrity and fairness of the capital markets because he misused material, confidential information obtained from Talawdekar. Consequently, the OSC held that Hariharan's conduct was contrary to the public interest pursuant to sections 127 and 127.1 of Ontario's *Securities Act* and issued the Order approving the Settlement Agreement and the penalties and payments set forth therein.

Please contact any member of our Corporate Securities Group to discuss the implications of the Decision.