[39] By entering into the Settlement Agreement the Respondents have recognized the very serious nature of their misconduct and have admitted that they engaged in conduct that was contrary to the public interest.

[40] Before I turn to the form of the order we will issue, I will briefly refer to the law as it applies to the approval of a settlement agreement entered into by Staff of the Commission with a respondent.

[41] The Commission's mandate as set out in section 1.1 of the Act is:

(1) to provide protection to investors from unfair, improper or fraudulent practices; and

(2) to foster fair and efficient capital markets and confidence in the capital markets.

[42] One of the primary means by which the Commission fulfils these statutory objectives is by enforcing requirements for timely and accurate disclosure of material information. Disclosure serves to level the playing field so that all investors have access to the same information upon which to make investment decisions. Disclosure is the cornerstone principle of securities regulation. All investors should have equal access to information that may affect their investment decisions. (See, for instance, *Re Philip Services Corp.* (2006), 29 O.S.C.B. 3941 at para. 7.)

[43] Much of the responsibility for compliance with an issuer's disclosure obligations rests with the Chief Executive Officer and CFO. A reporting issuer's directors also bear responsibility for appropriate oversight of compliance by a company with its disclosure obligations.

[44] The Commission's role in imposing sanctions is not to penalize; our objective is to identify and prevent inappropriate and illegal conduct and ensure that market participants understand that misconduct will not be tolerated (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611). Deterrence is, however, an important objective of the Commission. The types of factors the Commission should consider in imposing sanctions are identified in *Re M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743. The factors that we considered most relevant in this case are:

(1) the seriousness of the allegations and their effect on shareholders and investors;

(2) the failure of appropriate board oversight;

(3) the fact that a restatement of financial statements was required;

(4) the period over which the misconduct occurred;

(5) the recognition on the part of the Respondents of the seriousness of their misconduct;

(6) the seniority and high public regard for the individuals involved;

(7) the amount of the financial benefits obtained; and

(8) the mitigating factors identified below.

[45] In every case, the appropriateness of sanctions is to be determined based on all of the circumstances. It is important to understand that it is not this Panel's role to substitute its view of what the appropriate sanctions should be. We were advised that the Settlement Agreement was very heavily negotiated between Staff and the Respondents. In considering the terms of settlement, we must give significant weight to the agreement reached between adversarial parties, as a balancing of factors and interests will have already taken place in reaching the agreement. The Commission, in its reasons for approving the settlement agreement in *Re Melnyk* (2007), 30 O.S.C.B. 5253, commented on its role as follows:

> [w]e note that our role is not to renegotiate the terms of the Settlement Agreement or to suggest changes to the facts, statements or sanctions set forth in the Settlement Agreement. Our role is to decide whether to approve the Settlement Agreement, as a whole, on the terms presented to us.
>
> (*Re Melnyk, supra,* at para. 15)

[46] Accordingly, the sanctions that we must address are the sanctions set forth in the Settlement Agreement to which the parties have agreed. Our job is to determine whether or not we believe, in all of the circumstances, that the sanctions are within a reasonable range and represent an appropriate balancing of the relevant considerations before us. (*Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691)

[47] In this case there are a number of mitigating factors that we have taken into consideration in approving the Settlement Agreement. The mitigating factors include the following:

(1) RIM and the Individual Respondents co-operated with Staff's investigation;

(2) an internal review was voluntarily initiated by RIM and RIM has taken a number of remediation steps to prevent a recurrence, to improve RIM's corporate culture, and to ensure sound financial reporting. Steps taken by RIM included the immediate suspension of Option grants upon the commencement of the internal review;

(3) all directors and so-called "C level officers" have returned the improper financial benefits they received from the options that were incorrectly priced;

(4) there has been restitution to RIM in the aggregate amount of approximately $8.5 million, including interest to the date of payment, from directors, C level officers and vice-presidents. Approximately $15 million has been recovered by RIM through repricing of options;

(5) Balsillie voluntarily stepped down as chairman of RIM's Board on March 2, 2007, and John Richardson became lead director;

(6) an oversight committee comprised exclusively of independent directors was established on March 2, 2007;

(7) Cork and Wright voluntarily resigned from all committees of the Board and determined not to stand for re-election as directors of RIM; and

(8) in March 2007, Kavelman agreed to step down as RIM's CFO and from any financial reporting function. At the same time, Loberto agreed to step down as Vice-President, Finance and he no longer has a financial reporting function.

[48] In addition, the Board has adopted a new formal policy for granting equity awards. In July 2007, the Board determined that non-management Board members would not be granted Options. We considered this a relevant factor in considering the terms of this settlement.

[49] RIM has incurred costs of approximately $45 million to investigate and deal with incorrect Options granting practices. Balsillie and Lazaridis have paid a total of $15 million towards those costs.

[50] The sanctions that have been negotiated reflect the different roles and responsibilities of the individuals involved in the misconduct that took place including those who, as non-management directors, had oversight responsibility with respect to it. Balsillie and Kavelman, by virtue of their management roles, have particular responsibility in the circumstances.

[51] One of the guiding principles that we consider important in considering sanctions is that no individual should benefit as a result of his or her misconduct or the breach of regulatory requirements. The other important principle in this case is that RIM will be made whole for all of the costs and expenses incurred as a result of the misconduct that occurred here. In considering the sanctions, we were influenced by the fact that the terms of settlement do not cause further harm to RIM and its shareholders. Financial sanctions have been proposed only against certain of the Individual Respondents and RIM will recoup substantial amounts as a result of the settlement.

[52] We also note that consideration was also given in the terms of settlement to ensuring that RIM would not suffer as a result of losing the services of Balsillie or Lazaridis.

[53] There will be substantial financial sanctions imposed on Balsillie, Lazaridis and Kavelman. We note, in particular, that as part of the sanctions the Individual Respondents against whom financial sanctions are to be ordered have agreed not to be indemnified by RIM for the amounts that they have agreed to pay. Accordingly, corporate indemnification will not be available to Individual Respondents in respect of this settlement. That is appropriate and consistent with the objective of not causing further harm to RIM and its shareholders.

[54] In addition to the financial sanctions, certain of the Individual Respondents will pay a substantial portion of the Commission's costs in investigating this matter.

[55] We believe that the Settlement Agreement appropriately reflects credit for co-operation under the policies of this Commission. Respondents who co-operate with Staff should generally be entitled to more lenient treatment as a result.

[56] Let me then turn to the specific sanctions that will be imposed under the terms of the Settlement Agreement.

[57] Undertakings have been given by the Individual Respondents with respect to certain of the proposed sanctions. The legal distinction is that the Individual Respondents are agreeing in the Settlement Agreement to comply with their undertakings under the Settlement Agreement which

may relate to matters that cannot be directly ordered by the Commission. The other sanctions will be imposed pursuant to a formal order of the Commission.

[58] The Individual Respondents have undertaken as follows:

(1) Balsillie undertakes not to act as a director of any reporting issuer until the later of (a) twelve months from the date of the Commission order, and (b) RIM's compliance with paragraphs 17 and 18 of the Governance Assessment document attached as Schedule "C" to the Settlement Agreement;

(2) Balsillie, Lazaridis and Kavelman undertake to contribute $38.3 million (which includes interest of $5.3 million) to RIM in respect of the outstanding benefit arising from incorrectly priced Options granted to all employees from 1996 to 2006;

(3) Balsillie, Lazaridis and Kavelman undertake to contribute $44.8 million to RIM to defray costs incurred by RIM in the investigation and remediation of Options granting practices and related governance practices at RIM, which will be reduced by $15 million as credit for amounts already paid by Balsillie and Lazaridis in respect of costs incurred;

(4) as determined by the Board of Directors of RIM to be in the best interests of RIM (with the Individual Respondents abstaining), the amounts described in clauses (2) and (3) above, may be settled by Balsillie, Lazaridis and Kavelman agreeing not to exercise certain vested Options that collectively have a fair value equal to the amounts described in clauses (2) and (3) above. The fair value of such Options is to be determined on a Black-Scholes calculation based on the last trading day prior to the issuance of a Notice of Hearing in this matter;

(5) Lazaridis undertakes to complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the Commission order; and

(6) each of Loberto, Cork, Wright, Estill and Fregin undertakes that he has repaid to RIM any increased benefit he received from the allocation to him of incorrectly priced Options.

[59] In addition to the undertakings of the Individual Respondents, we will issue an order that provides as follows:

(1) the settlement is approved;

(2) RIM shall submit to a review of its practices and procedures pursuant to section 127(1)(4) of the Act by an independent person agreed to by Staff of the Commission and RIM and paid for by RIM, as set out in Schedule "C" to the Settlement Agreement;

(3) Balsillie:

(i) shall pay an administrative penalty of $5 million to be allocated for the benefit of third parties by the Commission pursuant to section 3.4(2) of the Act;

(ii) shall pay $700,000 to the Commission towards the costs of its investigation; and

(iii) shall be reprimanded by the Commission;

(4) Lazaridis:

(i) shall pay an administrative penalty of $1.5 million to be allocated for the benefit of third parties by the Commission pursuant to section 3.4(2) of the Act;

(ii) shall pay $150,000 to the Commission towards the costs of its investigation; and

(iii) shall be reprimanded by the Commission;

(5) Kavelman:

(i) is prohibited from becoming or acting as a director or officer of any reporting issuer until the later of (a) five years from the date of the order, and (b) the date he completes a course acceptable to Staff of the Commission regarding the duties of directors and officers of public companies;

(ii) shall pay an administrative penalty of $1.5 million to be allocated for the benefit of third parties by the Commission pursuant to section 3.4(2) of the Act;

(iii) shall pay $150,000 to the Commission towards the costs of its investigation; and

(iv) shall be reprimanded by the Commission;

(6) Loberto:

(i) is prohibited from becoming or acting as a director or officer of any reporting issuer until he has completed a course acceptable to Staff regarding the duties of directors and officers of public companies;

(ii) shall pay $50,000 to the Commission towards the costs of its investigation; and

(iii) shall be reprimanded by the Commission;

(7) Cork:

(i) shall complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the order, failing which he will be prohibited from acting as a director pending completion of such course; and

(ii) shall be reprimanded by the Commission;

(8) Wright:

(i) shall complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the order, failing which he will be prohibited from acting as a director pending completion of such course; and

(ii) shall be reprimanded by the Commission;

(9) Estill:

(i) shall complete a course acceptable to Staff regarding the duties of directors and officers of public companies within twelve months from the date of the order, failing which he will be prohibited from acting as a director pending completion of such course; and

(ii) shall be reprimanded by the Commission;

(10) Fregin shall complete a course acceptable to Staff regarding the duties of directors and officers within twelve months from the date of the order, failing which he will be prohibited from acting as a director of a reporting issuer pending completion of such a course; and

(11) the Individual Respondents will not seek, accept, or be offered indemnification from or through RIM for any of the payments associated with or paid by the Individual Respondents as a result of this settlement and the order.

[60] Although the regulatory sanctions agreed to in the Settlement Agreement may not be what we would have imposed after a hearing on the merits, this was not a hearing on the merits and there can be no certainty as to what the outcome of any such hearing would have been. One of the significant benefits of entering into a settlement agreement is in establishing certainty as to the regulatory outcome of a matter. In this case, that benefits both the Commission and the Respondents. As we have noted above, we believe that the Respondents have been given substantial credit for their co-operation with Staff. We also believe that the sanctions imposed under the Settlement Agreement are consistent with the principles we have referred to above applicable to the imposition of sanctions.

[61] In conclusion, we consider the misconduct here to have been extremely serious and we believe the sanctions imposed are very substantial and reflect that view. At the same time, the sanctions imposed on each Individual Respondent are commensurate with his conduct, role or

responsibility in the improper backdating or repricing of Options. We find that, when considered together, the sanctions imposed with respect to each Respondent are within a reasonable range and represent an appropriate balancing of the relevant considerations. We believe that such sanctions will deter others from similar misconduct.

[62] Accordingly, we approve the Settlement Agreement as being in the public interest and we issue a Commission order giving effect to it.

Approved by the Chair of the Panel on May 21st, 2009.

*"James E.A. Turner"*

James E.A. Turner

# Tab 27

U.S. Securities and Exchange Commission

**U.S. SECURITIES AND EXCHANGE COMMISSION**

**Litigation Release No. 20902 / February 17, 2009**

**Accounting and Auditing Release No. 2937 / February 17, 2009**

***Securities and Exchange Commission v. Research in Motion Limited, Dennis Kavelman, Arcangelo Loberto, James Balsillie and Mihal Lazaridis*, 1:09-cv-00301 (RBW) (D.D.C.)**

**SEC CHARGES RESEARCH IN MOTION AND FOUR OF ITS SENIOR EXECUTIVES WITH STOCK OPTION BACKDATING**

The Securities and Exchange Commission today charged Ontario, Canada, BlackBerry maker Research in Motion Limited (RIM) and four of its senior executives with stock option backdating.

The SEC's complaint alleges that RIM, its former Chief Financial Officer Dennis Kavelman, former Vice President of Finance Angelo Loberto, and Co-Chief Executive Officers James Balsillie and Mike Lazaridis illegally granted undisclosed, in-the-money options to RIM executives and employees by backdating millions of stock options over an eight-year period from 1998 through 2006. The complaint alleges that the defendants made false and misleading disclosures about how RIM priced and accounted for options, and that the illicit backdating provided the executives and other employees with millions of dollars in undisclosed compensation. In addition, according to the complaint, the backdating violated the terms of RIM's stock option plan and a listing requirement of the Toronto Stock Exchange. RIM's stock is listed on both the NASDAQ Stock Market and the Toronto Stock Exchange.

As alleged in the complaint, Kavelman, Loberto, Balsillie and Lazaridis backdated option agreements and offer letters, which concealed the fact that the options were granted in-the-money. The complaint also alleges that Kavelman and Loberto took steps to hide the backdating from regulators, RIM's independent auditor and outside lawyer. The complaint further alleges that after all four executives were aware of backdating issues that had come to light at other companies, they attended RIM's July 2006 annual shareholder meeting where Kavelman misled investors by denying that RIM was backdating options.

The SEC's complaint, filed in federal court in the District of Columbia, contains the following additional allegations:

- From 1998 through 2006, RIM, Kavelman, Loberto, Balsillie and Lazaridis backdated approximately 1,400 stock option grants for a total of nearly seven million shares, including new hire, group,

promotional and periodic grants.

- Balsillie initially ran RIM's stock option program and directed others to backdate his own and other employees' options. Kavelman assumed increasing responsibility for the option program and approved backdating many grants. Loberto helped carry out the backdating and selected prior dates with low prices for a number of grants. Lazaridis requested that options for certain new hires and employees be backdated.

- At times, when RIM's stock price dropped after employees had received options, the four executives re-priced the same options at substantially lower backdated prices.

- To one new hire, Kavelman expressed a concern about an "optics issue" with the regulators if the new hire's start date did not match the grant date for his options. Nevertheless, Kavelman and Balsillie agreed to backdate the options to the lowest price before the new hire's start date.

- Kavelman and Loberto usually picked low strike prices within reporting periods and in some instances avoided the lowest price so regulators would not detect the backdating. In addition, Kavelman asked a manager not to document improper pricing in e-mails. Kavelman wrote, "FYI, it is a major breach of protocol to be discussing (and documenting via email) using option pricing other than that allowable by the Ontario Securities Commission and the SEC in the US."

- Kavelman and Loberto received numerous documents from RIM's outside lawyer, RIM's auditor, the securities industry and RIM's own finance department explaining the accounting for options and options pricing, but they ignored all of the information and advice they received.

- The defendants' misconduct caused RIM, from fiscal year 1999 to the first quarter of fiscal year 2007: (i) to falsely disclose in its annual and other reports, management information circulars and registration statements that RIM's options were granted at exercise prices equal to the fair market value of RIM's common stock at the date of the grants; and (ii) to file materially false and misleading financial statements that understated RIM's compensation expenses and overstated its quarterly and annual net income or understated its net losses.

All defendants have agreed to settle this matter, without admitting or denying the allegations in the SEC's complaint, on the following terms:

RIM consented to the entry of an order permanently enjoining it from violating the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, and the reporting, books and records and internal controls provisions of Sections 13 (a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1 and 13a-16. The settlement with RIM takes into

account RIM's cooperation during the SEC's investigation.

Kavelman and Loberto consented to an order permanently enjoining them from violating the antifraud provisions of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, the internal controls and books and records provisions of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1, the misrepresentations to auditors provision of Exchange Act Rule 13b2-2; and from aiding and abetting RIM's violations of the reporting, books and records and internal controls provisions. Kavelman also consented to an order permanently enjoining him from violating the certification provision of Exchange Act Rule 13a-14. Kavelman and Loberto agreed to be barred for a period of five years from serving as officers or directors of any issuer that has a class of securities registered with the SEC or that is required to file reports with the SEC. In addition, Kavelman and Loberto agreed to resolve an anticipated administrative proceeding by consenting to an SEC order prohibiting them from appearing or practicing before the SEC as accountants for five years.

Balsillie and Lazaridis consented to the entry of an order permanently enjoining them from violating the antifraud provisions of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and the internal controls and books and records provisions of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1; and from aiding and abetting RIM's violations of the reporting, books and records and internal controls provisions.

The individual defendants will pay civil penalties in the following amounts: $500,000 for Kavelman; $425,000 for Loberto; $350,000 for Balsillie; and $150,000 for Lazaridis. The individual defendants also agreed to disgorge the in-the-money value of backdated options they had exercised ($132,914.60 for Kavelman, $47,950.56 for Loberto, $334,250 for Balsillie and $328,300 for Lazaridis) plus interest. Their disgorgement will be deemed satisfied by their previous payment of these amounts to RIM.

The settlements in the civil injunctive action are subject to the approval of the U.S. District Court for the District of Columbia.

On February 5, 2009, the Ontario Securities Commission brought a related settled action against RIM, Balsillie, Lazaridis, Kavelman, Loberto and certain other directors which included the total payment in Canadian dollars of $76.85 million and other sanctions. The SEC acknowledges the assistance of the Ontario Securities Commission in this matter.

➢ SEC Complaint

*http://www.sec.gov/litigation/litreleases/2009/lr20902.htm*

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

**SECURITIES AND EXCHANGE COMMISSION**
**100 F Street, NE**
**Washington, DC 20549,**

**Plaintiff,**

**v.**

**RESEARCH IN MOTION LIMITED, DENNIS KAVELMAN, ARCANGELO LOBERTO, JAMES BALSILLIE and MIHAL LAZARIDIS,**

**Defendants.**

Case: 1:09-cv-00301
Assigned To : Walton, Reggie B.
Assign. Date : 2/17/2009
Description: General Civil

## COMPLAINT

Plaintiff Securities and Exchange Commission ("Plaintiff" or "Commission") alleges for its Complaint, as follows:

## SUMMARY

1. From 1998 through 2006, Research In Motion Limited ("RIM" or the "Company"), the maker of BlackBerry wireless devices, and four of its senior executives illegally granted undisclosed, in-the-money options to RIM executives and employees, by backdating approximately 1,400 stock option grants to coincide with historically low closing prices for the Company's stock. The executives failed to disclose that RIM was not recording material compensation expenses and was materially overstating its net income or understating its net losses. The illicit backdating provided the executives and other employees with millions of dollars in undisclosed compensation.

2. Co-Chief Executive Officer James Balsillie ("Balsillie") initially ran RIM's stock option program and directed others to assign previous dates with low prices for his own and

other employees' options. Chief Financial Officer Dennis Kavelman ("Kavelman") assumed increasing responsibility for the option program and approved backdating many grants. Vice President of Finance Angelo Loberto ("Loberto") helped carry out the backdating and selected prior dates with low prices for a number of grants. Co-CEO Mike Lazaridis ("Lazaridis") requested that options for certain new hires and employees be backdated.

3. These executives backdated all types of option grants, including new hire, group, promotional and periodic grants. At times, when RIM's stock price dropped after employees had received options, these executives re-priced the same options at substantially lower backdated prices. RIM failed to record any compensation expense for the millions of backdated (and, in some instances, also repriced) in-the-money options it granted. The backdating violated the terms of RIM's stock option plan and also a Toronto Stock Exchange ("TSE") rule, which required options to be priced at fair market value as of the grant date.

4. The executives backdated documents reflecting grants, such as option agreements and offer letters, which concealed the fact that the options were granted in-the-money. Kavelman and Loberto took steps to hide the backdating from RIM's independent auditor, outside counsel, and U.S. and Canadian regulators. Kavelman also misled investors at RIM's July 2006 annual shareholder meeting by denying that RIM was backdating options.

5. The defendants' misconduct caused RIM from fiscal year 1999 to the first quarter of fiscal year 2007: (i) to falsely disclose in its annual reports on Form 40-F, reports on Form 6-K that included quarterly financial statements and earnings releases, management information circulars and registration statements that RIM's options were granted at exercise prices equal to the fair market value of RIM's common stock at the date of the grants; and (ii) to file materially false and misleading financial statements that understated RIM's compensation expenses, and

overstated its quarterly and annual net income or understated its net losses. Kavelman, Loberto, Balsillie and Lazaridis prepared, reviewed, signed and/or certified RIM's filings with the Commission.

6. On September 28, 2006, RIM announced that a committee of independent directors was conducting a review of its option granting practices (the "Internal Review") and that it would need to restate as much as $45 million in compensation expenses for options issued between fiscal years 1998 and 2006. That same day, RIM informed the Commission about its Internal Review. Following the Internal Review, in May 2007, RIM restated a total of $248 million in additional charges for fiscal years 1999 through 2006 (the "Restatement"). The size of the Restatement was in part due to the Company's change from intrinsic accounting to variable accounting for certain options including repriced options.

7. By engaging in the conduct described in this Complaint, RIM violated the antifraud provisions of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], and the reporting, books and records and internal controls provisions of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16].

8. By engaging in the conduct described in this Complaint, Kavelman and Loberto violated the antifraud provisions of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5], the internal controls and books and records provisions of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1]

and the misrepresentations to auditors provision of Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2]; and aided and abetted RIM's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16]. In addition, Kavelman violated the certification provision of Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

9. By engaging in the conduct described in this Complaint, Balsillie and Lazaridis violated the antifraud provisions of Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)], and the internal controls and books and records provisions of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. §§ 240.13b2-1]; and aided and abetted RIM's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16].

10. The Commission seeks an order enjoining RIM, Kavelman, Loberto, Balsillie and Lazaridis from future violations of the above provisions, requiring the individual defendants to disgorge any ill-gotten gains derived as a result of their violations and prejudgment interest thereon and to pay appropriate civil money penalties. In addition, the Commission seeks an order prohibiting Kavelman and Loberto from acting as officers or directors of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)].

## JURISDICTION AND VENUE

11. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

12. The defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, transactions, practices, and courses of business alleged herein.

13. Venue is proper pursuant to Section 22(a) of the Securities Act and Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa] because certain of the acts alleged herein constituting violations of the Securities Act and the Exchange Act occurred in this District, including RIM's filing of materially false and misleading reports, registration statements and other documents with the Commission in the District of Columbia.

## DEFENDANTS

14. **Defendant Research in Motion Limited ("RIM"),** an Ontario, Canada corporation, is the designer, manufacturer and marketer of the BlackBerry and other wireless handheld devices sold worldwide. Founded in 1984 and headquartered in Waterloo, Ontario, Canada, RIM operates offices in the United States, Europe and Asia. RIM's stock is listed on the NASDAQ Stock Market under the symbol "RIMM" and the TSE under the symbol "RIM." Before July 31, 2006, RIM's common shares were registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)]. Since then, RIM's common shares have been registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)].

15. As a foreign private issuer, RIM files with the Commission annual reports and Exchange Act registration statements on Form 40-F and Securities Act registration statements on Form F-10. In addition, RIM furnishes to the Commission on Form 6-K all information that it makes public or files with other regulators, including quarterly financial information, earnings releases and management information circulars (the Canadian equivalent of a proxy statement).

16. RIM's fiscal year ends on the last Saturday in February or the first Saturday in March. From fiscal years 1999 to 2004, RIM reported its financial results in accordance with Canadian Generally Accepted Accounting Principles ("Canadian GAAP") and reconciled to U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). During fiscal years 2004 and 2005, RIM reported in U.S. GAAP and reconciled to Canadian GAAP. Starting with fiscal year 2006, RIM has reported only in U.S. GAAP.

17. As a Canadian reporting company, RIM also is subject to Canadian securities regulations governing stock option awards. These regulations require, among other things, that RIM file with the Ontario Securities Commission ("OSC") insider reports of the Company's option grants to insiders within ten days of the date of a stock option grant. In addition, RIM is required to file with the TSE monthly reports of all option grants.

18. **Defendant Dennis Kavelman,** age 38, is a resident of Waterloo, Ontario, Canada. He was RIM's Vice President of Finance from February 1995 through 1997 and its CFO from 1997 through March 2007. He also was RIM's Corporate Secretary from 2004. Kavelman is a chartered accountant and, prior to joining RIM, worked as an auditor at KPMG in Canada. In March 2007, as a result of the internal review, Kavelman stepped down from his position as CFO. He has remained at the Company as Chief Operating Officer, Administration and Operations.

19. **Defendant Arcangelo Loberto (commonly known as Angelo Loberto)**, age 37, resides in Cambridge, Ontario, Canada. Loberto joined RIM in 1997 and was RIM's Director of Finance until 2001, when he was given the title of Vice President of Finance. Loberto is a chartered accountant and worked as an auditor at KPMG in Canada before joining RIM. In March 2007, as a result of the internal review, Loberto stepped down from his position as Vice President of Finance. He has remained at the Company as Vice President, Corporate Operations.

20. **Defendant James Balsillie**, age 47, is a resident of Waterloo, Ontario, Canada. Balsillie has been a co-CEO and Board member of RIM since 1993, and is responsible for business development, marketing, sales and financial matters. He was a member of the compensation committee through 2000. Balsillie completed the qualifications of a chartered accountant, but has never been licensed as a public accountant. In March 2007, when RIM announced it would restate its financial results because of problems with its stock option grants, Balsillie stepped down as Chairman of the Board. However, he remains a member of the Board and co-CEO.

21. **Defendant Mihal Lazaridis (commonly known as Mike Lazaridis)**, age 47, is a resident of Waterloo, Ontario, Canada. Lazaridis is the founder, president, a Board member, and a co-CEO of RIM. He is responsible for product strategy, research and development, and manufacturing.

## FACTS

**Accounting for Options under U.S. GAAP**

22. From fiscal year 1999 to the first quarter of fiscal year 2007, RIM told investors in its filings that it accounted for stock options using the intrinsic value method described in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees"

("APB 25"). Under APB 25, employers were required to record as an expense on their financial statements the "intrinsic value" of a fixed stock option on its "measurement date." The measurement date, as defined by APB 25, is the first date on which the following information is known: (i) the number of options that an individual employee is entitled to receive, and (ii) the exercise price. An option that was in-the-money on the measurement date had intrinsic value, and the difference between its exercise price and the underlying security's market price was required to be recorded as compensation expense over the vesting period of the option. Options that were at-the-money on the measurement date had no intrinsic value and therefore no amount was required to be expensed.

23. In addition, under Financial Accounting Standards Board Interpretation No. 44 (FIN 44), companies were generally required to apply variable accounting and recognize compensation expenses if they repriced an employee's options. Variable accounting requires that compensation expenses be adjusted from period to period, based on variations in the market price of the stock.

**The Option Granting Process at RIM**

24. Balsillie helped set up RIM's stock option program in the mid-1990s. Initially, Balsillie approved all option grants, with the exception of grants for himself and Lazaridis, which were approved by the Board or the compensation committee of the Board. As the Company grew, Balsillie delegated more responsibility for granting options to Kavelman. However, Balsillie continued to be involved in grants for key new hires and certain employees. Lazaridis recommended to Balsillie or Kavelman that options be granted for new hires and employees in departments he oversaw. After March 2003, the compensation committee also approved stock option grants for RIM's Chief Operating Officers and its CFO.

25. Kavelman supervised Loberto and the rest of the finance department, as well as the human resources department (which RIM called organizational development). Initially, Loberto's direct reports in the finance department prepared option agreements and kept track of option grants. In 2001, human resources employees took over the administration of the stock option program. Loberto continued to provide guidance and input into the process. Until 2003, Loberto was responsible for preparing the option disclosures in filings with the Commission and RIM's Canadian regulators, though he continued to play a role in preparing the filings until March 2007.

**RIM's Stock Option Plans Prohibited Backdating**

26. In early 1998, shortly after RIM was listed on the TSE, an investment banking firm hired by RIM to advise the Company on its stock option plan advised Kavelman in writing that the plan needed to comply with the TSE's rule that the exercise price of stock option grants cannot be less than the market price at the time the options are granted. One of RIM's outside lawyers gave Kavelman the same advice. RIM revised its stock option plan in 1998 to incorporate this requirement.

27. Since 1998, RIM granted stock options to its employees pursuant to at least five stock option plans. As members of the Board, Balsillie and Lazaridis reviewed and approved RIM's stock option plans. Kavelman and Loberto received copies of the plans.

28. Consistent with the advice given to Kavelman, each of the plans since 1998 has required that options be granted at a price no lower than the closing price of the common shares on the last trading day before the date the option grant was approved. The defendants, however, routinely failed to comply with this pricing provision.

**Kavelman and Loberto Received Numerous Documents**
**Explaining the Accounting for Options and Options Pricing**

29. RIM's obligation to file annual reports with the Commission and reconcile its financial statements from Canadian GAAP to U.S. GAAP started when RIM's common stock began trading in the United States in early 1999. In anticipation of this change, in August and December 1998, RIM's outside auditor provided Kavelman and Loberto with a description of the U.S. GAAP requirements for stock option accounting under APB 25. This description became part of the annual reports on Form 40-F that RIM filed with the Commission and certain reports on Form 6-K that RIM furnished to the Commission.

30. From 2000 to at least 2004, Kavelman and Loberto received numerous additional documents from RIM's lawyer, auditor, the securities industry and RIM's own finance department explaining that the Company was required to record compensation expenses for in-the-money options.

31. During the same period, Kavelman and Loberto also received a number of documents detailing how to price options. One such document was RIM's own summary of its stock options program, which Loberto edited on July 25, 2001. That document stated that the TSE required that options be priced at fair market value (i.e. the closing price prior to the grant date), and that for all new hires, the grant date is the employee's start date.

32. Kavelman and Loberto understood the concept of in-the-money options and sent or received e-mails calculating the potential in-the-money value of certain options. For instance, on November 23, 1999, Kavelman e-mailed a RIM employee (copying Balsillie) to explain that using a exercise price from November 1, 1999 (which was lower than the then current stock price by C$30), would create an in-the-money value of approximately C$600,000 for 20,000 options. ("C$" refers to Canadian dollars.)

33. In December 2000, Loberto received an e-mail from a RIM finance employee calculating potential in-the-money values of RIM's pre-IPO options.

34. In addition, from May 2000 until at least 2002, Kavelman and Loberto repeatedly received articles making clear that companies were required to apply variable accounting and recognize compensation expenses if they repriced an employee's options. For instance, Kavelman received an article in May 2000 titled "Stock-Option Nightmare," which cautioned: "FASB, the accounting police, dictates that companies now have to report options repricings as a compensation expense on their income statements, which would eat into the bottom line so many Internet companies are desperately trying to turn into a positive number." In August 2000, Kavelman and Loberto received another article warning, "re-pricing options trigger rules that force companies to record big expenses for their option grants."

35. Kavelman and Loberto, both chartered accountants, were responsible for RIM's financial statements and its accounting treatment of options. They ignored all of the information and advice they received and recorded no compensation expense for the millions of backdated in-the-money options RIM granted and/or repriced.

**The Defendants Routinely Backdated Options**

36. RIM relied heavily on stock options to recruit and retain employees, especially because RIM was rapidly growing. RIM expanded from approximately 200 employees in 1998 to nearly 5,000 employees by 2006. As RIM often provided lower salaries and fewer benefits than other technology companies did, stock option grants were a particularly important component of RIM's compensation packages.

37. Until February 2002, RIM granted options to almost every new hire. After February 2002, RIM limited its new hire grants to executives. RIM also granted options to current employees each year.

38. From 1998 through 2006, RIM backdated approximately 1,400 option grants to coincide with low closing prices for a total of nearly seven million shares.

**Backdated Stock Option Grants to New Hires**

39. From 1998 through at least 2005, Balsillie, Kavelman, Loberto and Lazaridis were involved in backdating grants for new hires.

40. Balsillie repeatedly told prospective employees that there was "flexibility" in pricing their options. Some new hires were given the lowest price between their offer and start dates. Others received low prices that preceded their offer dates. Balsillie promised at least one new hire options that were C$30 in-the-money. Kavelman and Loberto also selected past low prices for grants to new hires. Lazaridis requested that options for certain key new hires be backdated.

41. If a grant date was chosen and the price of the stock subsequently fell, Kavelman and Loberto, with the approval or knowledge of Balsillie or Lazaridis, frequently repriced the options to another backdated date with a lower price.

42. For instance, in order to recruit a chief information officer (the "CIO Candidate"), the four executives backdated his options and then repriced the options to an even lower backdated price after RIM's stock price had declined. In early May 2000, Balsillie and Lazaridis offered the CIO Candidate 100,000 options backdated to C$53.50, the "lowest recent close on April 24." On May 2, 2000, Lazaridis prepared and signed a backdated offer letter and had a backdated option agreement prepared. Then, in late May 2000, before the CIO Candidate started

work, RIM's stock price fell significantly and the CIO Candidate asked for a lower exercise price. After Kavelman confirmed with outside counsel that the Company had not filed any information with the OSC regarding the CIO Candidate's grant, Balsillie and Kavelman decided that after the CIO Candidate started work, they would reprice and backdate the CIO Candidate's options to the lowest price before his June 5, 2000 start date. Loberto was kept apprised of these developments. In pricing the options at the low, Kavelman disregarded explicit advice from RIM's outside counsel that the Company could price the options on either the date the CIO Candidate accepted his employment offer or on his start date. Kavelman also ignored the lawyer's previous warning not to reprice options.

43. When the CIO Candidate started work on June 5, 2000, Kavelman expressed concern regarding the TSE's pricing requirements, writing to Loberto, "I wanted to look at pricing before we agreed to take the bottom – will look much too cute with the TSE." Kavelman conveyed to the CIO Candidate his concern about an "optics issue" with the regulators if the CIO Candidate's start date did not match the grant date for his options. Nevertheless, Kavelman and Balsillie agreed to backdate the options to the lowest price before the CIO Candidate's start date, C$35.45, which was the close on May 29, 2000.

44. On or after June 7, 2000, Loberto had a new option agreement prepared and backdated to May 30, 2000. Against the suggestion of RIM's outside lawyer, Loberto omitted the CIO Candidate's exercise price and date when Loberto submitted the insider report to be filed with the OSC. As a result, RIM's Canadian regulators and the public would not know that these options were backdated. The CIO Candidate's options were more than C$2.53 million in-the-money.

45. Another example of repricing and backdating options for a new hire involved a key employee RIM hired in 2000 (the "Key Employee"). The Key Employee had received options priced at C$143.05 in March 2000, but two months later, Lazaridis recommended to Balsillie that they give the Key Employee the same benefit they had just given the CIO Candidate. The Key Employee's options were repriced from C$143.05 to C$53.50 and Loberto assured Lazaridis that he would prepare a new options agreement backdated to April 25, 2000. In early June 2000, in order to keep the Key Employee happy, Lazaridis directed Kavelman to give the Key Employee equal treatment to the CIO Candidate. Accordingly, in June 2000, the Key Employee's options were repriced a second time to a past low price of C$35.45 as of May 30, 2000. Loberto prepared another new option agreement for the Key Employee to reflect this change. The Key Employee's options were over C$1 million in-the-money.

46. Also in mid-2000, Lazaridis directed Kavelman to reprice options for other new hires to "make sure [RIM did not] lose anyone because of blind timing."

47. In another example, in May 2001, an employee complained that her option agreement provided a high exercise price as of her start date in October 2000, but she had been promised a lower exercise price from September 2000. The employee's supervisor asked that the option agreement be changed to give the employee the lower price. On May 3, 2001, Loberto, who at the time was preparing option disclosures for RIM's annual report, responded to the supervisor by e-mail (copying Kavelman), "I can NOT have continual changes in the stock price. I have disclosures to be made to the TSE, SEC and in RIM's annual report. These reports have already been prepared. I can NOT continually change history." Nevertheless, the employee's option agreement was changed and she was given the lower backdated exercise price.

48. Later that same day (May 3, 2001), in response to another employee's complaint that he was not given the backdated exercise price that he was promised at the time he was hired, Loberto noted (copying Kavelman), "This will change ALL my disclosures in the annual report....Our lawyer recommends that we use the start date for pricing. Thus, the company policy is that pricing is determined on the start date." Loberto nonetheless gave the employee the backdated price that preceded his start date and agreed to fix the agreements.

**Backdated Stock Option Grants to Existing Employees**

49. In addition to backdating options for new hires, RIM also routinely backdated option grants to existing employees. Between 1999 and 2006, Balsillie and Kavelman approved option grants to individuals or groups of employees periodically, upon promotions or based on performance. Balsillie and Kavelman frequently chose or authorized others to choose a date with a low exercise price that preceded approval of the grant or that preceded finalization of the list of employees and the number of options they would receive. Loberto carried out the backdating and chose grant dates for a number of the employees. Lazaridis was aware of the backdating and requested that options be backdated for certain employees in departments he oversaw.

50. In 1999 and each year between 2001 and 2004, Balsillie and Lazaridis themselves received 100,000 backdated options. Generally, once a year, Balsillie made recommendations to the compensation committee for a certain number of options for himself and Lazaridis. Sometimes, the compensation committee took these recommendations to the Board for approval. After the grant amounts were approved, Balsillie used hindsight to choose favorable low prices for these grants. Lazaridis knew that his own options were backdated. Balsillie and Lazaridis each received backdated options that were C$2,264,000 in-the-money.

51. For example, around March 30, 1999, Balsillie directed Kavelman to issue grants for Balsillie and Lazaridis at the lowest March price. Kavelman then directed Loberto to create option agreements granting 100,000 options each to Balsillie and Lazaridis "at lowest March price (March 3rd, 11.55)." The exercise price was the lowest closing price for RIM stock in March and the lowest since mid-January 1999. Balsillie and Lazaridis signed and backdated their option agreements to March 3, 1999. Kavelman signed their backdated option agreements as a witness.

52. From 1999 through 2004, Kavelman received six backdated option grants. Balsillie approved these grants and repeatedly gave Kavelman the same backdated exercise price that Balsillie and Lazaridis received. Kavelman knew that at least some of his own options were backdated. Kavelman's options were C$2,594,700 in-the-money.

53. From 2000 through 2004, Loberto received four backdated option grants. The number of options Loberto received was sometimes recommended by Kavelman to Balsillie for approval and other times approved by Kavelman (who also approved grants to the rest of the finance group). Loberto knew that at least some of his own options were backdated. Loberto's options were C$517,100 in-the-money.

54. Between fiscal years 1999 and 2006, Kavelman, Loberto, Balsillie and Lazaridis exercised some of the backdated options they received. As a result of the Internal Review, they each paid RIM the in-the-money portion of the options that they exercised plus interest, and their unexercised options were repriced to the correct measurement dates. In addition, Balsillie and Lazaridis each agreed to pay $4.7 million (C$5 million) to cover some of the costs of the Internal Review.

55. From 1999 through 2006, RIM also backdated group grants to employees each year.

56. For instance, after RIM managers expressed concern that a large number of employees would leave the Company because their existing options were out-of-the-money due to RIM's declining stock price, Kavelman, Loberto, Balsillie and Lazaridis participated in issuing 654,670 backdated options to 639 employees in late 2001. As early as March and April 2001, managers had begun assembling lists of employees who would receive the new options. Kavelman and Loberto waited until the Fall of 2001 to start finalizing the details of the group grant because RIM's stock price continued to decline. On November 7, Balsillie directed Kavelman to pick "the lowest possible price over this past month," for one employee's options. That date was November 1, 2001. Loberto, with Kavelman's knowledge, then used this November 1 date to price the options for the rest of the employees, despite the fact that the date bore no relation to the dates when lists of employees were finalized (which occurred on a rolling basis in mid-November through mid-December). The options in this group grant had an in-the-money value of over C$4.1 million.

**The Defendants Backdated Option Grant Documents**

57. Kavelman, Loberto, Balsillie and Lazaridis backdated documents, which made it appear that options were priced at fair market value on the grant date and that options to new hires were granted on their acceptance or start dates. In reality, the purported "grant" date in the option agreement was chosen because of the low exercise price on that date. So-called "offer" and "acceptance" dates in offer letters were selected to correspond with the low exercise prices.

58. Kavelman and Loberto were primarily responsible for preparing these documents, but Balsillie and Lazaridis backdated offer letters for some new hires and they signed backdated option agreements for their own options.

59. In some instances, when employees accurately dated documents, the employees were asked to change the date or sign a replacement document with a different date to correspond to a past low exercise price. On at least one occasion, RIM changed the date on its copy of an employee's option agreement to match the exercise price without notifying the employee.

60. In January 2001, the Canadian tax authority, Canada Customs and Revenue Agency ("CCRA") concluded an audit of RIM's recordkeeping and reporting of options, which were a taxable benefit to employees under Canadian law (the "CCRA Audit"). As a result of the CCRA audit, RIM agreed to pay $14,500 and to prepare complete records of stock options granted, and Kavelman signed the settlement documents on behalf of RIM. Even after this agreement, however, Kavelman, Loberto and others at RIM failed to prepare and maintain complete and accurate records of the option grants.

61. Loberto initially used an electronic spreadsheet and in 2001 switched to an electronic database to keep track of options at RIM. The grant dates from offer letters and option agreements, including those that had been backdated, were entered into both systems. Even though the electronic database had protections against changing information or inputting grant dates that preceded RIM's filings, Loberto, with Kavelman's knowledge, approved overriding those protections so that RIM could reprice options and backdate options prior to its filings. Loberto used the electronic spreadsheet and later the electronic database to generate RIM's financial statements and other filings with the Commission and Canadian regulators. The false

grant date information in these records resulted in filings and financial statements that were false and misleading.

**Kavelman and Loberto Concealed the Backdating**
**From Regulators, Shareholders and RIM's Outside Lawyer**

62. Kavelman and Loberto took affirmative steps to hide the backdating from regulators. They usually picked low strike prices within reporting periods so regulators would not detect the backdating. For example, on May 12, 2003, before the compensation committee had approved grants to the chief executives, Loberto wrote to Kavelman, "Should I proceed with the Insider . . . Reports [to the OSC]. They are due today, assuming a grant date of May 2nd. The OSC now imposes penalties, $50/day late. The fee is irrelevant, but the late filing will be highlighted."

63. In another example, on July 30, 2001, Balsillie e-mailed Loberto (copying Kavelman), "Please process another 10,000 options for [a RIM vice president]. Pick a low point in the past 30-60 days." Loberto e-mailed an options administrator (copying Balsillie and Kavelman), "Please grant 10,000 options to [the vice president] with a grant date of July 26, 2001 @ $35.00. I have already submitted May's transactions to the TSE and the lowest price in June was $38.65."

64. Kavelman and Loberto also tried to conceal the backdating by avoiding the lowest price in some instances. For instance, on September 26, 2001, Kavelman directed Loberto, "Please do option grants for [the two chief operating officers] for 50K options over 5 years at a recent low price for [Balsillie] to sign up tomorrow." Loberto replied to Kavelman, "I need to pick a price in the last 10 days. As this is going to be disclosed in the Insider . . . Report [to the OSC], I don't want to pick the absolute low." Kavelman approved Loberto's price choice - the second lowest price in the preceding week.

65. In addition, during the CCRA's Audit of RIM's options, the CCRA questioned why a number of employees' grant dates were different from their start dates. When RIM responded to the CCRA, it failed to disclose that some of the problematic grants had been backdated. Loberto was the main person at RIM providing information to the CCRA.

66. Furthermore, Kavelman asked a manager not to document improper pricing in e-mails. On October 3, 2000, a manager recommended backdating options for four recent new hires to low exercise prices from mid-September, before the recruits' start dates. The manager stated, "RIM has fewer financial incentive parameters in recruiting relative to the high tech companies in Ottawa and elsewhere . . . [I]n order to stay competitive . . . we should and need to make stock price adjustments." Kavelman approved backdating the options for these four recruits, but on October 4, 2000, he wrote to the manager (copying Loberto), "FYI, it is a major breach of protocol to be discussing (and documenting via email) using option pricing other than that allowable by the Ontario Securities Commission and the SEC in the US. You should call [Loberto] to discuss." The manager replied, "I understand and have full intention to comply with the serious nature of your FYI, thanks. I will communicate henceforth by phone to [Loberto] et. al."

67. Loberto also hid the backdating from RIM's outside lawyer. In November 2001 and again in April 2002, Balsillie sent e-mail messages directing Kavelman and Loberto to grant options to RIM executives at low prices. When Loberto forwarded Balsillie's e-mail messages to the lawyer for preparation of insider reports for these grants, Loberto deleted the portion of Balsillie's directions related to pricing, thus concealing from the lawyer that RIM picked the exercise prices with hindsight.

**RIM's Materially False and Misleading Disclosures in Filings with the Commission**

**Materially False and Misleading Reports on Forms 40-F and 6-K**

68. In all of RIM's annual reports on Form 40-F for fiscal years 1999 through 2006 and in a number of its reports on Form 6-K containing quarterly financial information through the first quarter of fiscal year 2007, RIM falsely stated that it granted options at the fair market value of the stock at the grant date and accordingly, no compensation expense was recognized under APB 25. In reality, RIM routinely granted in-the-money options and repriced options, but failed to record any compensation expense.

69. By failing to record compensation expenses for backdated and repriced options, RIM's financial statements in annual reports on Form 40-F and certain reports on Form 6-K, and its earnings releases on Form 6-K, were inaccurate and were not prepared in accordance with, or properly reconciled to, U.S. GAAP. Consequently, RIM reported inflated earnings or understated losses in each of the periods. If RIM had accounted for options consistent with its disclosures in its filings, RIM annually overstated income or understated (loss) due to backdating by material amounts in most years. RIM's annual reports on Form 40-F also misrepresented that its systems of accounting and internal controls were sufficient to prepare accurate financial statements.

70. Balsillie and Lazaridis reviewed RIM's reports on Forms 40-F and 6-K ("Exchange Act Reports") which explained options accounting under APB 25, they signed and beginning in fiscal year 2003 certified RIM's annual reports on Form 40-F, and they signed certain reports on Form 6-K that included quarterly financial statements. As Balsillie and Lazaridis approved or recommended backdating grants, they knew or should have known that: (i) the disclosures about RIM's pricing of options in RIM's Exchange Act Reports were

materially false and misleading, and (ii) RIM's financial statements and results, and its representations about the sufficiency of its accounting systems and internal controls, were materially false and misleading.

71. Kavelman prepared, reviewed and signed RIM's annual reports on Form 40-F and certain reports on Form 6-K including quarterly financial statements and earnings releases. Kavelman also certified RIM's annual reports on Form 40-F beginning in fiscal year 2003. Loberto helped to prepare and reviewed RIM's annual reports on Form 40-F and certain reports on Form 6-K that included quarterly financial statements. Loberto also signed an annual report on Form 40-F for fiscal year 2004, and reports on Form 6-K containing financial information for the third quarter of fiscal year 2004 and the first quarter of fiscal year 2005. Kavelman was responsible for, and Loberto participated in preparing, RIM's financial statements in RIM's Exchange Act Reports. Kavelman signed a number of reports on Form 6-K that contained earnings releases and Loberto signed at least one report on Form 6-K that contained the earnings release for the second quarter of fiscal year 2004. Kavelman and Loberto were responsible for RIM's systems of accounting and internal controls relating to options.

72. Kavelman and Loberto routinely backdated and repriced options and received advice that the Company was required to record compensation expenses for in-the-money options and repriced options. Nevertheless, they recorded no compensation expense for the millions of backdated (and repriced) in-the-money options. In fact, they took affirmative steps to hide their conduct from regulators, shareholders and RIM's outside lawyer. Accordingly, Kavelman and Loberto knew, or were reckless in not knowing, that: (i) the disclosures about RIM's pricing of options in RIM's Exchange Act Reports were materially false and misleading,

and (ii) RIM's financial statements and results, and its representations about the sufficiency of its accounting systems and internal controls were materially false and misleading.

**Materially False and Misleading Management Information Circulars**

73. RIM's management information circulars furnished to the Commission on Form 6-K contain a number of materially false and misleading statements concerning RIM's stock option plan. The 2000, 2002, 2004, 2005 and 2006 circulars correctly noted that RIM's stock option plan provides for options to be granted at prices not less than the closing price on the trading day before the grant. However, the circulars failed to disclose that RIM routinely violated this pricing provision in making grants and engaged in both backdating and repricing. RIM's management information circulars for 1999 through 2006 materially understated the compensation of the Company's most highly paid officers, including Balsillie, Lazaridis and in some years Kavelman, because those filings omitted the compensation resulting from the in-the-money options that they received in the current or prior years. The management information circulars also referenced, and in some instances were furnished to the Commission in the same Form 6-K with, RIM's materially false and misleading annual reports and financial statements.

74. Balsillie and Lazaridis reviewed and approved RIM's stock option plans and management information circulars. Balsillie approved backdating options for himself, other executives and employees. Lazaridis requested that Balsillie or Kavelman backdate option grants for employees and Lazaridis personally received backdated options. Accordingly, Balsillie and Lazaridis knew or should have known that the statements in RIM's management information circulars were materially false and misleading.

75. Kavelman and Loberto were familiar with the provisions of RIM's stock option plans and reviewed management information circulars. Kavelman and Loberto backdated

options for executives and other employees and they personally received backdated options, despite receiving advice detailing how to price and account for options. Therefore, Kavelman and Loberto knew, or were reckless in not knowing, that the statements in RIM's management information circulars were materially false and misleading.

**Materially False and Misleading Registration Statements**

76. RIM filed a registration statement on Form 40-FR on September 11, 1998. RIM filed registration statements and amendments thereto on Form F-10 on September 23, 1999, October 13, 1999, October 20, 2000, October 26, 2000, January 7, 2004 and January 14, 2004. RIM also filed registration statements on Form S-8 on March 28, 2002 and October 21, 2002.

77. RIM's registration statements and amendments included or incorporated by reference Forms 40-F and 6-K, which included annual and quarterly financial statements that were materially inaccurate because RIM failed to record any compensation expenses for in-the-money (and repriced) option grants. The registration statements falsely stated, or incorporated Exchange Act Reports that falsely stated, that RIM grants options at the fair market value on the day before the grant date and, therefore, no compensation expense is recognized under APB 25. Some of the registration statements also incorporated RIM's false and misleading management information circulars.

78. Balsillie and Lazaridis reviewed and/or signed RIM's registration statements and approved or recommended backdating options. Accordingly, Balsillie and Lazaridis knew or should have known that the registration statements were materially false and misleading.

79. Kavelman was responsible for the preparation of RIM's financial statements, which were incorporated into the registration statements. Kavelman also signed the registration statement filed on September 11, 1998, and authorized Balsillie to sign the March 28, 2002 and

October 21, 2002 registration statements on his behalf. Loberto helped prepare RIM's financial statements and options disclosures, which were incorporated into the registration statements. Kavelman and Loberto backdated and repriced options without recording compensation expenses, despite receiving advice to record compensation expenses for such options. Therefore, Kavelman and Loberto knew, or were reckless in not knowing, that RIM's registration statements were materially false and misleading.

**Kavelman's and Loberto's Material Misrepresentations to RIM's Auditor**

80. From at least 1999 to 2006, Kavelman misrepresented in management representation letters to RIM's independent auditor that: (i) he had no knowledge of any fraud, suspected fraud or illegal acts; (ii) RIM's internal controls were adequate to permit the preparation of accurate financial statements; and (iii) the financial statements were fairly presented in conformity with U.S. GAAP.

81. In addition, Kavelman and Loberto were aware that inaccurate stock option grant dates from RIM's books and records, including backdated option agreements and information generated from the electronic database RIM used for tracking options, were provided to the auditor. Kavelman and Loberto understood that the auditor relied on those documents in conducting its audits and reviews. They also did not provide to the auditor e-mails revealing backdating.

**Kavelman's Materially False and Misleading Statements to Investors at RIM's July 18, 2006 Annual General Meeting**

82. On March 18, 2006, the Wall Street Journal published an article discussing the legal and accounting problems associated with backdating stock options. The article included charts showing that executives at six companies repeatedly received stock options with very low exercise prices that suggested backdating. Although RIM was not mentioned in the article, Kavelman obtained a copy of the Wall Street Journal article, as well as other articles about backdating problems at a number of companies. In addition, in May 2006, an institutional investor sent Kavelman its assessment of the risk that backdating had occurred at various companies in North America (although the assessment did not identify RIM). The assessment was based on option grant charts similar to those that appeared in the Wall Street Journal. By May 2006, Balsillie, Lazaridis and Loberto also were aware of backdating issues at other companies.

83. In May 2006, Kavelman attended an analyst meeting where analysts and investors asked questions about options backdating. Kavelman then directed RIM's Vice President of Tax ("VP Tax") to prepare a chart of options granted to Balsillie, Lazaridis and two RIM chief operating officers ("COOs"). The chart revealed that Balsillie, Lazaridis and both COOs received options with very low exercise prices. The VP Tax highlighted for Kavelman that the COOs' initial grants were well before their start dates. Kavelman told Balsillie, Loberto and others about this analysis.

84. On July 18, 2006, the four executives attended RIM's annual general meeting for shareholders, which was broadcast over the internet. At the meeting, an investor asked whether RIM engaged in options backdating. Kavelman responded, "That's been a major issue in the news and I'm sure some of you have read about it. We have very strict policies around how we

grant options. When employees start they get them on their start date. Any options that are granted to employees, during the course of the year to senior officers, are approved by the Board and certainly, no, there's no backdating."

85. At the time Kavelman made these statements, he knew RIM had engaged in backdating because he was directly involved in backdating options. He also knew that employees often received options that were dated before their start dates to give them lower exercise prices. In fact, as noted above, just two months before the annual general meeting, the VP Tax highlighted for Kavelman that the two COOs had received options with favorable prices based on purported grant dates that were well before their start dates. Kavelman made these false and misleading statements to investors when he knew that regulators, investors and the media were concerned about backdating.

86. On September 28, 2006, RIM announced that it was conducting an internal review of the Company's stock option granting practices. This review culminated in the Restatement of $248 million in additional expenses from 1999 through 2006. Kavelman and Loberto stepped down from their positions, and Balsillie stepped down as Chairman of the Board.

**FIRST CLAIM**
**Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5**

87. The Commission realleges and incorporates by reference Paragraphs 1 through 86 above.

88. Defendants RIM, Kavelman and Loberto, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of RIM securities, knowingly or recklessly: (i) employed devices, schemes or artifices to defraud; (ii) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of

the circumstances under which they were made, not misleading; and/or (iii) engaged in acts, transactions, practices or courses of business that operated or would operate as a fraud or deceit upon other persons.

89. By engaging in the conduct alleged above, defendants RIM, Kavelman and Loberto violated Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

**SECOND CLAIM**
**Violations of Securities Act Section 17(a)(1)**

90. The Commission realleges and incorporates by reference Paragraphs 1 through 89 above.

91. Defendants RIM, Kavelman and Loberto, directly or indirectly, knowingly or recklessly, in the offer or sale of RIM's securities, by use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails, employed devices, schemes or artifices to defraud.

92. By engaging in the conduct alleged above, defendants RIM, Kavelman and Loberto violated Securities Act Section 17(a)(1) [15 U.S.C. § 77q(a)(1)].

**THIRD CLAIM**
**Violations of Securities Act Sections 17(a)(2) and 17(a)(3)**

93. The Commission realleges and incorporates by reference Paragraphs 1 through 92 above.

94. Defendants RIM, Kavelman, Loberto, Balsillie and Lazaridis, directly or indirectly, knowingly, recklessly, or negligently, in the offer or sale of RIM securities, by use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails: (i) obtained money or property by means of untrue statements of material fact or

omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (ii) engaged in transactions, practices or courses of business that operated or would operate as a fraud or deceit upon purchasers of RIM securities.

95. By engaging in the conduct alleged above, defendants RIM, Kavelman, Loberto, Balsillie and Lazaridis violated Securities Act Sections 17(a)(2) and (3) [15 U.S.C. §§ 77q(a)(2) and (3)].

**FOURTH CLAIM**
**Violations of Exchange Act Rule 13a-14**

96. The Commission realleges and incorporates by reference Paragraphs 1 through 95 above.

97. Defendant Kavelman certified in RIM's annual reports on Form 40-F that, among other things, he reviewed each of the reports and, based on his knowledge, the reports: (i) did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading; and (ii) included financial statements and other financial information that fairly presented, in all material respects, RIM's financial condition, results of operations and cash flows.

98. By engaging in the conduct alleged above, defendant Kavelman violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**FIFTH CLAIM**
**Violations of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1**

99. The Commission realleges and incorporates by reference Paragraphs 1 through 98 above.

100. Defendants Kavelman, Loberto, Balsillie and Lazaridis knowingly circumvented or knowingly failed to implement a system of internal accounting controls or knowingly falsified books, records or accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

101. Defendants Kavelman, Loberto, Balsillie and Lazaridis directly or indirectly, falsified or caused to be falsified books, records or accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

102. By engaging in the conduct alleged above, defendants Kavelman, Loberto, Balsillie and Lazaridis violated Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

**SIXTH CLAIM**
**Violations of Exchange Act Rule 13b2-2**

103. The Commission realleges and incorporates by reference Paragraphs 1 through 102 above.

104. Defendants Kavelman and Loberto, directly or indirectly: (i) made, or caused to be made, materially false or misleading statements; or (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review, or examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

105. By engaging in the conduct alleged above, defendants Kavelman and Loberto violated Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

**SEVENTH CLAIM**
**Violations of Exchange Act Section 13(a) and Exchange Act Rules 12b-20, 13a-1 and 13a-16**

106. The Commission realleges and incorporates by reference Paragraphs 1 through 105 above.

107. Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-16 [17 C.F.R. §§ 240.13a-1 and 240.13a-16] require foreign private issuers of registered securities to file with the Commission factually accurate annual reports and furnish factually accurate documents it makes public or files with other regulators. Exchange Act Rule 12b-20 [17 C.F.R. § 240.12b-12] further provides that, in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they were made not misleading.

108. As alleged above, defendant RIM filed with, or furnished to, the Commission false and misleading annual reports on Form 40-F and reports on Form 6-K that contained quarterly financial statements, earnings releases and management information circulars. In so doing, RIM violated Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16].

109. By engaging in the conduct alleged above, defendants Kavelman, Loberto, Balsillie and Lazaridis knowingly or recklessly provided substantial assistance to RIM in its violations of Exchange Act Section 13(a) [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16].

110. By engaging in the conduct alleged above, defendants Kavelman, Loberto, Balsillie and Lazaridis aided and abetted RIM's violations of Exchange Act Section 13(a) [15

U.S.C. § 78m(a)] and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16].

**EIGHTH CLAIM**
**Violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B)**

111. The Commission realleges and incorporates by reference Paragraphs 1 through 110 above.

112. Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] requires issuers to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of its assets. Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

113. By engaging in the conduct alleged above, defendant RIM violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

114. By engaging in the conduct alleged above, defendants Kavelman, Loberto, Balsillie and Lazaridis knowingly or recklessly provided substantial assistance to RIM in its violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

115. By engaging in the conduct alleged above, defendants Kavelman, Loberto, Balsillie and Lazaridis aided and abetted RIM's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

## PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

(a) permanently enjoin defendant RIM from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Exchange Act Rules 10b-5, 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1 and 240.13a-16];

(b) permanently enjoin defendant Kavelman from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Exchange Act Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1 and 240.13b2-2], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16];

(c) permanently enjoin defendant Loberto from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Exchange Act Rules 10b-5, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16];

(d) permanently enjoin defendants Balsillie and Lazaridis from violating Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)], Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)], and Exchange Act Rules 12b-20, 13a-1 and 13a-16 [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-16];

(e) order defendants Kavelman, Loberto, Balsillie and Lazaridis to disgorge, with prejudgment interest, all ill-gotten gains by virtue of the conduct alleged herein, and deem their disgorgement and interest to be satisfied in full because these defendants have already paid these amounts to RIM;

(f) pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)], order defendants Kavelman, Loberto, Balsillie and Lazaridis to pay civil money penalties;

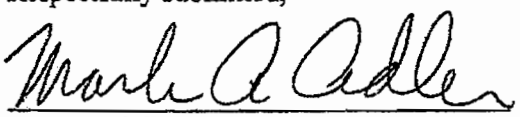
(g) pursuant to Securities Act Section 20(e) [15 U.S.C. § 77t(e)] and Exchange Act Section 21(d)(2) [15 U.S.C. § 78u(d)(2)], prohibit defendants Kavelman and Loberto from acting as officers or directors of any issuer that has a class of securities registered pursuant to Exchange Act Section 12 [15 U.S.C. § 78l] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)];

(h) grant any equitable relief that may be appropriate or necessary for the benefit of investors pursuant to Exchange Act Section 21(d)(5) [15 U.S.C. § 78u(d)(2)]; and

(i) grant such other relief as the Court may deem just and appropriate.

Dated: February 17, 2009
Washington, DC

Respectfully submitted,



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# Tab 28

thestar.com

# Balsillie comes out swinging

May 15, 2009

**KEVIN MCGRAN**
SPORTS REPORTER

When billionaire Jim Balsillie began his quest for an NHL team, it was all about having fun with a new toy.

But five years in and countless millions of dollars spent, it has become his personal mission to right a perceived wrong against Canada by putting a hockey team in Hamilton.

"I want another team in Ontario," Balsillie said. "I believe it's the right thing for the fans, I believe it's the right thing for the game. I believe it's the right thing for the league. And I believe it's the right thing for the Ontario economy. And it's what I want to do."

Speaking with a nationalist zeal, and sounding like a motivational speaker, Balsillie spent an hour in a *Star* boardroom in a session with writers and editors. He made no apologies for trying to bypass the usual route for buying an NHL club by pursuing the Phoenix Coyotes in a bankruptcy court auction.

"We're the source of the game, the players, the money, and I think we should have a seventh team," said Balsillie. "I spent five years looking for a front door. ... We couldn't find a front door. I found a side door."

He said his journey began when the NHL asked him to purchase the Pittsburgh Penguins at a time Mario Lemieux was ready to walk away because he couldn't reach a deal with the city to build a new arena.

"This started as fun and it evolved," said Balsillie. "This started as: `Wow, look at this up-and-coming team, it's for sale. I can afford it. Pittsburgh's a short flight away. Gosh, we need a new arena because this was designed when Eisenhower was the president.'"

But events changed. The team would have been his – he insists he'd have left it in Pittsburgh – but the NHL insisted he sign non-relocation clauses. Balsillie wouldn't do it because he wanted leverage to threaten to move the team – the same leverage Lemieux ultimately used – in order to get a new arena built. At the time, Kansas City was sniffing around for an NHL team.

Then problems in Nashville emerged. Balsillie said he was willing to buy the team and give Nashville a fair chance to keep the team.

"We were prepared to stay there with the proper accommodations," said Balsillie. "But we knew that all the structures were designed to move (the team) to K.C. if it didn't work out in Nashville."

Balsillie said he wanted Hamilton to be considered alongside Kansas City, but the league wouldn't bite. That's when he had his epiphany.

"It became clear that Hamilton was not in the equation," said Balsillie, adding the NHL would never consider moving a team to southern Ontario. "It didn't make sense."

When the league told Balsillie he couldn't do what he wanted, it made him want to do it more. It brought to mind the naysayers who said his company – Research In Motion – couldn't thrive in Canada. To him, it was about being the one-quarter native electrician's son from Peterborough who went on to co-found a company now worth over $47 billion.

"I take on entrenched interests. It's my character quirk. I don't quit and I don't get scared," said Balsillie. "I love the NHL, I love hockey and I believe this is part of our soul as Canadians and we don't feel we have enough stake in our own soul."

As idealistic as he sounds, he remains also a pragmatic businessman. When the topic switched to paying for upgrades to Copps Coliseum, he turned the tables. He argued he'd only be a tenant, and it was up to the owner to find financing for renovations. But he went further, suggesting he doesn't have to bring the team to Hamilton.

"We don't have to be in Hamilton," said Balsillie. "Hamilton's an option. It's always been my first option. ... If you don't want the team there, say no thanks."

The league disagrees with Balsillie's charge the NHL ignores the Canadian market.

``This has nothing to do with the suitability of southern Ontario to support another NHL franchise or whether there might be occasion to locate another NHL franchise in Canada at some point," deputy commissioner Bill Daly said in an email. ``This has everything to do with respect for the league's rules and processes.

"It has everything to do with respect for contracts and upholding the public trust. Balsillie cares nothing about any of that as he has demonstrated over and over and over again."

# Tab 29

# Balsillie not easily dissuaded

- Article
- Comments (34)

DAVID SHOALTS
FROM TUESDAY'S GLOBE AND MAIL
MAY 18, 2009 AT 9:16 PM EDT

PHOENIX — If Jim Balsillie's Coyote hunt comes to a quick end Tuesday afternoon at the hands of U.S. bankruptcy court judge Redfield T. Baum, it does not mean he will give up trying to put a second NHL team in Southern Ontario.

All it means is that the man who fuels the nightmares of NHL commissioner Gary Bettman will sit down with the architect of his pursuit, Toronto lawyer Richard Rodier, and pick another target. Then, when Balsillie and Rodier think the time is right, the roller-coaster ride will start all over again.

According to those familiar with their plans, there will not be an appeal if the judge rules against them on the key question of who controls the club, Phoenix Coyotes owner Jerry Moyes or the NHL.

If the judge rules that Moyes still owns the club and has the right to put it into bankruptcy and sell it to Balsillie, then the next step is the bankruptcy trial.

But if the judge sides with the NHL, which claims Moyes signed away control of the club last November when he stopped covering its enormous losses, then this particular fight is over for Balsillie before it even starts.

The judge could rule Tuesday or perhaps some time later after digesting the 100 or so documents filed by both sides.

Balsillie and Rodier believe their legal strategy can work.

The strategy is to buy an NHL team out of bankruptcy and then move it over the league's objections, by winning an antitrust lawsuit if necessary. Losing the control ruling just means the Coyotes are no longer bankrupt, so they will not get a chance to try their strategy in court.

But the duo quite rightly believes there is a long list of likely candidates in a league that was already dealing with financially shaky teams in non-traditional markets and elsewhere even before the recession came along. Some of those owners are watching this ugly row closely because, if Balsillie prevails, there could be a run on the bankruptcy courts. In a few years, Canada may have more than enough NHL teams for everyone.

Thanks to the number of candidate teams for this, it is hard to say where Balsillie will cast his eye next if the judge sends him back to the starting line. The list of candidates, going in rough order from most to least likely, includes the Atlanta Thrashers, Nashville Predators, Florida Panthers, Tampa Bay Lightning, New York Islanders, New Jersey Devils, Dallas Stars and St. Louis Blues.

The Thrashers are in the middle of their own bitter court battle. Minority owner Steve Belkin is fighting with the rest of the club's ownership group over the value of his 31-per-cent stake in the company that owns the Thrashers, the NBA's Atlanta Hawks and Philips Arena. Since the Thrashers were not tied to the arena by the bond issue the city made to finance it, they could be easier to move than the other teams.

But first the courts have to settle the fight over how much Belkin's share is worth before the other owners can buy him out. Only then can the Thrashers be sold. And this fight is so nasty there will not be any settlements on the steps of the courthouse.

The Predators bragged this season that they will turn a small profit. But that's only because they squeezed their payroll, bought their own tickets and raked in more than $20-million (all currency U.S.) from their NHL partners in revenue-sharing and escrow payments from the players, in addition to the regular shared NHL revenues like broadcasting.

There is also a bankruptcy court involved with this team. At stake is the share of the team owned by William (Boots) Del Biaggio before he flamed out into bankruptcy and pleaded guilty to one count of fraud. It is the biggest single slice of the team and would put its winner at the top of the group of owners.

Before Moyes came calling last month, the Del Biaggio shares were Balsillie's preferred target, according to those who know him. They could be again.

- Article
- Comments (34)

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# Tab 30

17 of 18 DOCUMENTS


Hamilton Spectator (Ontario, Canada)

April 30, 2004 Friday Final Edition

**SECTION:** LOCAL; Pg. A01

**LENGTH:** 731 words

**HEADLINE:** City's NHL mystery man unveiled?; EXCLUSIVE

**SOURCE:** The Hamilton Spectator

**BYLINE:** Andrew Dreschel

**BODY:**

A hole has finally appeared in the veil of secrecy surrounding the bid to bring an NHL team to Hamilton.

The Spectator has learned that the mystery man behind the move is linked to Research in Motion (RIM), the wildly successful Waterloo-based company that makes BlackBerry, the internationally hot hand-held communications device.

Sources say the mystery man himself is Jim Balsillie, RIM's millionaire chairman and co-chief executive officer.

Balsillie flatly denies any involvement in the proposed agreement.

"You're kidding, man. I'm a Leaf fan. I'm a Leaf fan all the way," laughed Balsillie when contacted yesterday.

"I know absolutely nothing."

But until now, the only hard piece of information that has come to light about the money man behind the talks is that his wife is from Hamilton.

And guess what?

Balsillie's wife, Heidi, originally hails from Steeltown, though most of her family now lives in the Kitchener-Waterloo area.

Despite Balsillie's denials, the fact that the secretive backer has personal connections to RIM's worldwide success goes a long way in explaining why city council is willing to pursue what many feel is a forlorn hope.

The BlackBerry, a pocket-size device combining e-mail, phone and Internet services, has not only revolutionized mobile communications, it has made the company's key partners fabulously wealthy, answering the basic need for owning a professional sports team -- deep pockets.

In late December, The Record, our sister paper in Waterloo region, reported that Balsillie's personal stake in the company was around $574 million based on slightly more than 6.2-million RIM shares.

Balsillie himself suggested the mystery man might be someone else connected to RIM.

"It could be investors. We had all kinds of people who made a lot of money."

Mike Lazaridis, president and co-CEO of RIM, could not be reached for comment. Nor could Michael Barnstijn, a well-known Kitchener area philanthropist and former RIM partner.

Names aside, new life was breathed into the doubtful dream of an National Hockey League franchise Wednesday when Hamilton council gave approval in principle to entering into an agreement with HHC Acquisition Corp.

Basically, in exchange for bringing a National Hockey League team to the city and $2 million in annual rent, council is prepared to give the company exclusive rights to manage and operate Copps Coliseum.

Lawyer Richard Rodier, who is representing HHC, has refused to reveal the identity of his client throughout the negotiations, as has Councillor Terry Whitehead, who has spearheaded the talks.

But after council's approval, Whitehead and Rodier hinted at the new angle of attack the proponent plans to take to bag a team.

Previous bids have stumbled over a combination of snubs from the NHL board of governors and the prospect of paying out millions of dollars in compensation to Toronto and Buffalo owners for invading their territorial rights.

This time out, the tactic is to take advantage of the looming labour battle between the NHL and the NHL Players' Association. The speculation is talks will fail, a strike or lockout will prevail, the loss of revenue will drive some shaky American franchises into bankruptcy, and Rodier's client will swoop in with an offer to pay off the creditors and purchase the team.

Whitehead says in a bankruptcy situation, the courts will decide on a purchase offer, not the NHL. He said that means normal NHL licensing and territorial rules would not apply.

Be that as it may, it's still a long shot full of potential obstacles. Rodier's client may balk at the city's terms and conditions.

The city needs to get provincial tax and bonusing exemptions for the agreement to work.

And let's not forget that Hamilton businessman David Braley is already talking to the council about taking over the operation of Copps Coliseum, as well as Hamilton Place and the Convention Centre.

Or that the Hamilton Bulldogs have a contract with the city giving them exclusive hockey rights to the arena, as the fledgling World Hockey Association just found out.

Still, there's no denying it: the fantasy of an NHL team is one castle in the air we just never quite grow tired of reaching for or talking about.

Andrew Dreschel's commentary appears Monday, Wednesday and Friday. adreschel@thespec.com or 905-526-3495.

**LOAD-DATE:** April 30, 2004

# Tab 31

LexisNexis

FOCUS - 19 of 235 DOCUMENTS


The Globe and Mail (Canada)

May 22, 2009 Friday

SECTION: SPORTS COLUMN; THE USUAL SUSPECTS / SPORTS MEDIA; Pg. S3

LENGTH: 804 words

HEADLINE: Balsillie directs the troops in new media crusade

BYLINE: BRUCE DOWBIGGIN

BODY:

dowbboy@shaw.ca

Has Jim Balsillie lifted something from Barack Obama's successful run for the White House last year?

Obama famously engaged every level of the new media to gather support, donations and momentum against the forces of conventional media on his way to becoming the first black man to win the U.S. presidency.

In his quest to purchase the Phoenix Coyotes and move them to Hamilton, Research In Motion co-founder Balsillie is also making full use of new media to rally Canadians to his cause of a seventh NHL franchise in this country.

Speaking Wednesday on *Prime Time Sports* with host Bob McCown, Balsillie was almost euphoric over the multimedia revolution he's unleashing on the stolid NHL culture.

"Canada hockey nation has spoken," Balsillie proclaimed. "It's an important force, and it's going to called into action real soon. We're 125,000 and counting ... let's make it a quarter-million ... If we all stick together, it's inevitable."

At the heart of Balsillie's army is unconventional tools. "We did use digital media," **Balsillie told** McCown.

Balsillie's makeitseven.ca website is just the beginning of an all-out attack on the NHL's definition of procedures and processes. The strategies involving Facebook, Twitter and texting techniques that made Obama independent of public funding for his historic campaign have all been employed in the effort to repatriate the former Winnipeg Jets to Canada.

"I'm just so, so proud of the groundswell of support," **Balsillie said.** "That's an important part to show the viability [of Southern Ontario as an NHL market]."

Which makes the perpetually optimistic business tycoon downright giddy about the likelihood of his full-frontal gambit winning the day.

"[Tuesday] was a very good day because the courts say that's where it will be settled," **Balsillie said.** "For me, this is not about personality at all ... I can assure you it's not one synapse of what's going on here. ... It's fun to make it about personalities [in the media], but personality has nothing to do with this whatsoever."

For now, Balsillie hasn't used his groundswell of support to solicit money - as Obama's campaign did in 2008. But if he's right about the inevitability of his movement in an Arizona bankruptcy court against the suits of the NHL, he might soon be sending out request forms for season tickets to those who've signed up via his new media crusade.

Rocky assessment

"Quite frankly, I don't believe people know what Versus is, and I still don't know what they do," Chicago Blackhawks chairman Rocky Wirtz told Time.com.

Well, Usual Suspects finally has something in common with a billionaire.

Wirtz was uncharacteristically frank for an NHL owner, given that commissioner Gary Bettman views free speech among owners as akin to a communicable disease.

But with the NHL's signature playoff series featuring Alex Ovechkin versus Sidney Crosby (oops, the Washington Capitals versus **Pittsburgh** Penguins) largely offloaded to U.S. cable channel Versus and local TV, Wirtz was stating the obvious for many in the United States: While NBC's numbers are showing an up-tick, the Crosby-Ovechkin spectacle on Versus drew fewer viewers than a *Batman* episode on the Cartoon Network (1.5 million viewers), and a *Reba* rerun on Lifetime (930,000).

It also splits the market in the cities where the series is being played. While the NBC Chicago affiliate scored big numbers in the City of the Big Shoulders with Game 1 of the Detroit Red Wings-Blackhawks series, the second-game market was lower on a combination of Versus and local TV.

Time.com points out a few reasons why our national sport can't catch a break down south: Versus is Channel 603 on the satellite DirecTV; on Time Warner Cable's Los Angeles system, it's Channel 267; in New York, Cablevision puts Versus on 146; and in Dallas, Versus gets prime position on 254.

Forty million of the 115 million television households in the United States do not even get Versus. But it's guaranteed money through 2011 for the league, which was willing to gamble on a no-rights deal with NBC but not with ESPN.

Sources tell Usual Suspects that Wirtz's crankiness about Versus could quickly be added to the list of Bettman's sins should his Phoenix strategy fall apart.

It could be worse.

The Orlando Magic, playing in the NBA Eastern Conference final, were outdrawn in their home market by the *American Idol* finale. And while Adam Lambert got waxed in the finale, the Magic beat the heavily favoured Cleveland Cavaliers.

Channel Hopping

Just wondering, but isn't it time PETA looked into Marv Albert's hairpiece? The legendary bingo caller for TNT and other networks seems to have trapped something against its will on his forehead. ... And separated at birth: TSN anchor James Duthie and *Saturday Night Live*'s Seth Myers.

**LOAD-DATE:** May 22, 2009

TSN



# MAKE IT SEVEN? MAKE IT STOP!

**TJ Madigan**
5/25/2009 4:15:31 PM

Look, there are thousands of articles out there, speculating about the future of the Phoenix Coyotes. I'm not going to add another voice to that wailing chorus.

Since it's all just educated guessing at this point, let's do a reality check on some of the 'what if?' scenarios bouncing around the media. Here are three things that are realistically NOT going to happen in the case of Jim Balsillie vs. the NHL.

First off, the Coyotes are not moving to Southern Ontario anytime soon. Even if the bankruptcy judge rules completely against the NHL -- which I doubt will happen -- this saga will be dragged out for years with appeals and lawsuits in so many different jurisdictions, it'll make your head spin.

Plus, every whisper we're hearing from the Maple Leafs camp says they're not giving up their territorial rights. So that's a big fat veto from the T-Dot.

Secondly, Jim Balsillie is not going away. Ever. Each attempt Balsillie makes to get his finger in the NHL pie is more aggressive than the last. The bankruptcy route was an absolute blindside attack, which almost got him through the back door before Gary Bettman even knew it was happening.

Plus, the 'Make It Seven' campaign has clearly painted NHL bosses as anti-Canadian corporate bullies up here in the True North strong and free. Expect Mr. Bettman to be heavily booed the next time he shows up on the JumboTron at a Canadian rink.

So, if the coup fails and the NHL wins this round? The League should be very, very afraid of what Balsillie will bring to the battleground next time.

And finally, one more not-gonna-happen to throw out there: The NHL is not coming back to Winnipeg.

I know the press is gushing over some affidavit in which a lawyer claims Bettman hinted that, if there's going to be another Canadian team, the 'Peg would be next in line for a franchise.

But the caveat at the start renders the rest of the comment meaningless. If there's not going to be another Canadian team, does it really matter which city would hypothetically be first in line?

So, yes, I'm sure Bettman may have uttered something like: "There'll be a team in Winnipeg before we move a team to Southern Ontario."

But what he meant to say (and was secretly thinking) was something more along the lines of: "There'll be Winnipeg weather in Hell before we move a team to Southern Ontario. Sucka!"

Then he rushed back to his office and made some calls to Kansas City.

Yup, that's a dealbreaker, ladies.

# Tab 32

July 2, 2009

Susan M. Freeman, Esq.
Lewis & Roca LLP
Two Renaissance Square
40 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

RE: NHL Transfer Application of PSE Sports & Entertainment LP

Dear Ms. Freeman:

I write in connection with the NHL Transfer Application of PSE Sports & Entertainment LP submitted by James Balsillie (through PSE) on May 22, 2009 and supplemented thereafter. This letter requests further information that the League deems pertinent to its review of Mr. Balsillie's application. The term "document," as used herein, includes but is not limited to letters, correspondence, faxes, communications, reports, records, memoranda, minutes, notes, drafts, analyses, email, and electronic or computerized data.

1. Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any person, attorney, corporation, partnership, trust or other person or entity associated or affiliated with him or acting for or on his behalf (collectively, a "Balsillie Representative") has had with any public official, governmental authority, including, without limitation, the Canadian Bureau of Competition ("CBC"), or anyone acting for or on behalf of any governmental authority concerning: (1) the NHL's rules, procedures, policies or practices concerning franchise ownership transfer and/or relocation; and (2) the potential relocation of an existing NHL franchise, including, without limitation, the Pittsburgh Penguins, Nashville Predators or Phoenix Coyotes. Please provide any and all documents and/or exhibits that Mr. Balsillie or any Balsillie Representative has submitted to any governmental authority or anyone acting for or on behalf of any governmental authority in connection with these contacts, discussions or communications. Such materials should include, without limitation, correspondence and responses to information requests, as well as documents provided or written answers to, questions or transcripts of interviews with, or questions posed by the CBC or other public officials. Please also provide all hearing transcripts and/or meeting notes of any discussions or communications with the CBC or any other public authority.

2. Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with any public official, governmental authority, including, without limitation, the Ontario Securities Commission ("OSC") and the Securities and Exchange Commission ("SEC"), or anyone acting for or on behalf of any governmental authority concerning: (1) any litigation to which Mr. Balsillie has been a party; and (2) any proceeding by any private, governmental, or quasi-governmental association or agency to which Mr. Balsillie has been a party, including, without limitation, charges of options backdating that Mr. Balsillie (in his individual capacity) settled with both the OSC and SEC in February 2009. (See NHL Background Information – Application for Membership, Individual at § 4.) Please provide any and all documents and/or exhibits, including, without limitation, any Wells notice or any Wells or similar submissions, correspondence and responses to information requests, that Mr. Balsillie or any Balsillie Representative has submitted to any governmental authority or anyone acting for or on behalf of any governmental authority in connection with these discussions and/or settlement negotiations, as well as any hearing transcripts and/or meeting notes.

3. Please describe, including the dates, participants and substance of, any contacts, discussions, communications and/or negotiations between Mr. Balsillie or any Balsillie Representative and any current or past owner of an NHL franchise concerning: (1) the NHL's rules, procedures, policies or practices concerning franchise ownership transfer and/or relocation; and (2) the potential purchase and/or relocation of an existing NHL franchise, including, without limitation, the Pittsburgh Penguins, Nashville Predators or Phoenix Coyotes. Please provide any and all documents concerning these contacts, discussions, communications and/or negotiations.

4. Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with anyone concerning the sale of season tickets in Hamilton, Ontario in or about June 2007 (referenced in Paragraph 11 of the Rodier Declaration, filed on May 15, 2009, and Paragraph 21 of the Balsillie Declaration, filed on June 6, 2009) in connection with the potential relocation of the Nashville Predators to Hamilton, including, but not limited to, the effect such sale would have on the Predators in Nashville. Please provide any and all documents concerning these contacts, discussions, communications, decisions or actions.

5. Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with anyone concerning the Consent Agreement proposed by the NHL in connection with Mr. Balsillie's potential purchase of the Pittsburgh Penguins, including his decision to sign or not sign the Consent Agreement. Please provide any and all documents concerning these contacts, discussions, communications or decisions.

6. Please provide any and all documents concerning Mr. Balsillie's meeting with the NHL Executive Committee in December 2006 concerning his potential purchase of the Pittsburgh Penguins.

7. Please provide any and all documents concerning communications between Mr. Balsillie or any Balsillie Representative and Commissioner Bettman, Deputy Commissioner Daly, David Zimmerman or any other representatives of the NHL concerning the purchase of any NHL team.

8. Other than the briefs, submissions or other statements made by PSE's counsel in the ongoing bankruptcy proceeding (No. 2:09-bk-09488-RTBP), please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with any third party concerning the matters covered by Articles 3 and 4 of the NHL Constitution, as well as NHL By-Laws 35 and 36, or the application by the NHL of these provisions. Please provide any and all documents concerning these contacts, discussions or communications.

9. Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with anyone concerning the Nashville Predators then-owner's notice of termination of the arena lease in Nashville referenced in Paragraph 9 of the Rodier Declaration, filed on May 15, 2009, and Paragraph 21 of the Balsillie Declaration, filed on June 6, 2009. Please provide any and all documents concerning these contacts, discussions or communications.

Please provide the above-referenced information and materials to me as soon as possible so the League may continue its investigation of Mr. Balsillie's application. Please provide the information and materials on a rolling basis as they are available. In addition to the above, the League may have additional information requests and/or questions as the process continues. In requesting the information and materials referenced herein, the League does not waive any of its rights under the NHL Constitution, By-Laws, Resolutions, rules and procedures, and reserves any and all of its rights and claims in the pending United States Bankruptcy Court Case No. 2:09-bk-09488-RTBP and in the pending Adversary Proceeding No. 2:09-ap-494-RTBP.

Please contact me (212-789-2118) if you have any questions.

Sincerely,

David Zimmerman
Executive Vice President and
General Counsel

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July 24, 2009

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Re: **Response to July 2, 2009 NHL Request for Supplemental Information on Transfer Application of PSE Sports & Entertainment LP**

Dear Tony and David:

We are writing in response to your letter of July 2, 2009, requesting further information in connection with the NHL Transfer Application of PSE Sports & Entertainment LP. This letter is written on behalf of Jim Balsillie, owner of PSE, along with PSE's officers and agents, which we will refer to collectively as "PSE."

We preface the responses to the questions in your July 2 letter by reiterating that PSE (and particularly Mr. Balsillie) wants very much to be the owner of an NHL hockey team. PSE believes NHL hockey is the greatest professional sport in the world and that is why Mr. Balsillie and others on behalf of PSE have been working for so long, and so hard, to acquire a team. PSE also believes that Hamilton, Ontario and the surrounding community would be an ideal market to host the NHL team they have been trying for so long to obtain. We understand that Copps Coliseum was built in the hope of attracting an NHL team. The activities of PSE that you have questioned have been directed toward the goal of acquiring a team that, if unsuccessful in its current market, could be relocated to Hamilton.

While the NHL Commissioner may not agree with PSE's methods, PSE and its owners and agents believe that their activities have always been legal and in accordance with their understanding of NHL rules. PSE realizes that it has caused some disruption to the Commissioner's Office in these efforts, which it regrets, as PSE does not intend to harm or disrespect the NHL as an institution. To the contrary, PSE has always respected the authority of the Commissioner's Office and has submitted to the transfer and relocation approval process where applicable. PSE has never attempted to acquire a team and then move it in the middle of

the night, as other owners have done in other leagues. PSE wants to play by the rules, fairly applied. PSE has honored, and will continue to honor, the commitments it makes to the League.

In responding to the questions below, we have tried to answer your questions as best we can. The scope of the questions is extremely broad and it is difficult to interpret them with precision. In addition, as PSE has not succeeded in acquiring an NHL team to date, it does not have the formal and customary business processes of established businesses. Accordingly, PSE does not have record keeping processes or procedures. PSE has had no reason to store records beyond those needed for retention of legal status and tax returns. We understand that it has no files of meeting notes or the like, and no simple methods or personnel to retrieve any records. We also understand that Mr. Balsillie and Mr. Rodier do not retain files where the types of documents you have requested are maintained. While PSE's counsel has maintained client files, the materials in those files are almost entirely protected by the lawyer-client privilege or other legal privileges. Electronic communications falling within the requested categories would be difficult and expensive to retrieve and, in the case of Mr. Balsillie, hosted on email systems belonging to his employer, Research In Motion Limited ("RIM"), that Mr. Balsillie would not be permitted to access for the purposes requested without permission from RIM.

We are concerned that the NHL is holding Mr. Balsillie to a higher standard than it has previous owners. We understand that the NHL may be troubled by the number of NHL owners who have had legal issues. We do ask that the NHL apply a standard to Mr. Balsillie that is reasonable and consistent with the League's past practices with other transfer applications and as necessary to protect the NHL's legitimate interests.

We are also of the view that the only question below that is in keeping with the bylaw requirement of ascertaining the "good character and integrity" of Mr. Balsillie is question #2 regarding RIM's historical stock options dating practices. Nevertheless, we have attempted to answer all questions in good faith, addressing the points we believe the NHL is raising, so that this process can move forward.

1. *Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any person, attorney, corporation, partnership, trust or other person or entity associated or affiliated with him or acting for or on his behalf (collectively, a "Balsillie Representative") has had with any public official, governmental authority, including, without limitation, the Canadian Bureau of Competition ("CBC"), or anyone acting for or on behalf of any governmental authority concerning: (1) the NHL's rules, procedures, policies or practices concerning franchise ownership transfer and/or relocation; and (2) the potential relocation of an existing NHL franchise, including, without limitation, the Pittsburgh Penguins, Nashville Predators or Phoenix Coyotes. Please provide any and all documents and/or exhibits that Mr. Balsillie or any Balsillie Representative has submitted to any governmental authority or anyone acting for or on behalf of any governmental authority in connection with these contacts, discussions or communications. Such materials should include,*

*without limitation, correspondence and responses to information requests, as well as documents provided or written answers to, questions or transcripts of interviews with, or questions posed by the CBC or other public officials. Please also provide all hearing transcripts and/or meeting notes of any discussions or communications with the CBC or any other public authority.*

This question is extremely broad. In the course of his duties as co-CEO of RIM, Mr. Balsillie has, over the years, routinely had conversations with government officials from all over the world. This would include multiple conversations with Canadian government officials at the municipal, provincial and federal level, including those who have a deep concern about Hamilton and attempts to locate an NHL team in Hamilton. It would appear from the question that you are primarily concerned with the inquiry undertaken by the CBC concerning the NHL's franchise relocation procedures in connection with the Nashville Predators sale.

In our view, any documents provided to the CBC Commissioner were provided in the context of an inquiry commenced under section 10 of the *Competition Act*. Pursuant to section 10(3) of the *Competition Act*, that inquiry was to be conducted in private. Any documents provided to the Commissioner in that inquiry would be protected both by public interest immunity and other applicable privileges, which privileges and immunities belong equally to the Commissioner and to us as to documents PSE provided. As such, PSE is not in a position to provide the requested material.

Furthermore, as the CBC's investigation was directed at the conduct of the NHL, it is inappropriate for the NHL to be requesting material obtained by the CBC in connection with that investigation, when we understand that the NHL is not entitled to obtain that information from the CBC itself.

2. *Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with any public official, governmental authority, including, without limitation, the Ontario Securities Commission ("OSC") and the Securities and Exchange Commission ("SEC"), or anyone acting for or on behalf of any governmental authority concerning: (1) any litigation to which Mr. Balsillie has been a party; and (2) any proceeding by any private, governmental, or quasi-governmental association or agency to which Mr. Balsillie has been a party, including, without limitation, charges of options backdating that Mr. Balsillie (in his individual capacity) settled with both the OSC and SEC in February 2009. (See NHL Background Information - Application for Membership, Individual at § 4.) Please provide any and all documents and/or exhibits, including, without limitation, any Wells notice or any Wells or similar submissions, correspondence and responses to information requests, that Mr. Balsillie or any Balsillie Representative has submitted to any governmental authority or anyone acting for or on behalf of any governmental authority in connection with these discussions and/or settlement negotiations, as well as any hearing transcripts and/or meeting notes.*

Once again, this question is broad in scope. We have assumed that the term "party" means "plaintiff," "defendant," "applicant," "respondent" or a similar role for Mr. Balsillie personally in connection with a judicial or administrative proceeding. We have assumed that the matters with which the NHL is concerned are matters of a material nature that could impugn the "good character and integrity" of Mr. Balsillie (as opposed to a parking ticket or similar minor matters). Based on those assumptions, Mr. Balsillie is not aware of any litigation or other proceeding to which he has been a party except for the stock options dating matter to which the NHL has referred.

In respect of the stock options dating matter, we have enclosed the following additional documents, all of which are public:

1. RIM Press Release Issued March 5, 2007;
2. SEC Complaint;
3. SEC Final Judgment;
4. SEC Consent to Judgment of James Balsillie;
5. SEC Press Release;
6. OSC Statement of Allegations;
7. OSC Settlement Agreement;
8. OSC Reasons Approving the Settlement; and
9. Ontario Superior Court of Justice Reasons Approving the Settlement of the Application Commenced by the Ironworkers Pension Fund.

The settlement with the SEC was reached on a pre-Wells basis. Similarly, the settlement with the OSC was reached on a pre-Enforcement Notice basis.

RIM, Mr. Balsillie and the other directors of RIM as of September 2006 were respondents in a civil proceeding commenced in the Ontario Superior Court of Justice by the Ironworkers Pension Fund. I understand that the Ironworkers civil proceeding was based on publicly available information, including press releases issued by RIM. The proceeding was settled in the fall of 2007, and the reasons of the court approving the settlement are described in the enclosed ruling. The order approving the settlement bars all litigation claims arising from RIM's options dating issues and purports to have worldwide effect. As RIM's stock price rose steadily in the period after RIM announced its option dating issues in September 2006, through the period the company took steps to remedy those issues, no further civil proceedings, even if not otherwise barred by court order, are anticipated.

To Mr. Balsillie's knowledge, no other civil, administrative or criminal proceedings are pending or anticipated in connection with RIM's option dating practices. Based on terms and

outcome of the SEC investigation, Mr. Balsillie believes that he will not be the subject of criminal proceedings in connection with RIM's option dating practices.

For the reasons described below, Mr. Balsillie is otherwise limited in the documents and information he is able to disclose. In connection with the options dating matter, the vast majority of communications and negotiations, oral and in writing, between RIM interests and applicable government authorities were undertaken by counsel acting for the Special Committee of the Board of Directors of RIM, and not by counsel for Mr. Balsillie personally. Under applicable Ontario law, Section 16 of the *Securities Act* prohibits Mr. Balsillie from disclosing information falling within the scope of the prohibitions on disclosure in that section. Finally, settlement privilege serves to protect negotiations giving rise to the settlements with the SEC and OSC. In any event, PSE believes the materials provided with this letter, including RIM's March 5, 2007 press release, provide sufficient information to the NHL regarding the scope of the allegations against Mr. Balsillie and the terms of the settlements.

3. *Please describe, including the dates, participants and substance of, any contacts, discussions, communications and/or negotiations between Mr. Balsillie or any Balsillie Representative and any current or past owner of an NHL franchise concerning: (1) the NHL's rules, procedures, policies or practices concerning franchise ownership transfer and/or relocation; and (2) the potential purchase and/or relocation of an existing NHL franchise, including, without limitation, the Pittsburgh Penguins, Nashville Predators or Phoenix Coyotes. Please provide any and all documents concerning these contacts, discussions, communications and/or negotiations.*

Once again, this is a very broad question. PSE has been seeking to acquire an NHL team since 2005. In that time, Mr. Balsillie and the Balsillie Representatives have had numerous conversations with current and past owners of NHL franchises. In fact, during the course of these proceedings, PSE has received inquiries from owners of financially challenged NHL teams concerning PSE's interest in purchasing those teams.

As noted above, Mr. Balsillie and Mr. Rodier do not retain files where the types of documents you have requested are maintained. While PSE's counsel has maintained client files, the materials in those files are almost entirely protected by the lawyer-client privilege or other legal privileges. Electronic communications falling within the requested categories would be difficult and expensive to retrieve and, in the case of Mr. Balsillie, hosted on email systems belonging to his employer, Research In Motion Limited ("RIM"), that Mr. Balsillie would not be permitted to access for the purposes requested without permission from RIM. It is therefore not possible to disclose all of those communications, including the substantial number of communications involved in negotiations for the potential purchase of the Penguins, Predators and Coyotes. PSE did not acquire the Penguins or the Predators, and its efforts to acquire the Coyotes are taking place under the scrutiny of the Bankruptcy Court with the active participation of the NHL.

4. *Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with anyone concerning the sale of season tickets in Hamilton, Ontario in or about June 2007 (referenced in Paragraph 11 of the Rodier Declaration, filed on May 15, 2009, and Paragraph 21 of the Balsillie Declaration, filed on June 6, 2009) in connection with the potential relocation of the Nashville Predators to Hamilton, including, but not limited to, the effect such sale would have on the Predators in Nashville. Please provide any and all documents concerning these contacts, discussions, communications, decisions or actions.*

This is again an extremely broad question. It would appear that the NHL has a particular conversation or conversations in mind. If so, it would be helpful to identify such a conversation more specifically so that we could attempt to respond directly to the NHL's concern.

We understand that Mr. Rodier discussed with Ticketmaster the possibility of making arrangements to take deposits for tickets in the event the Predators were relocated to Hamilton. His recollection is that he likely informed the City of Hamilton of the plan to take deposits for tickets, but he is uncertain in this recollection. He also spoke with Mr. Balsillie. Mr. Rodier does not believe he spoke with anyone else on this subject. PSE's position, which I understand Mr. Rodier stated publicly on numerous occasions, was that the team would not be moved to Hamilton unless two conditions were met, namely that the Nashville arena lease was terminated and the NHL consented to the relocation. PSE has stated repeatedly that the reason for taking deposits for tickets was to attempt to satisfy PSE's understanding of one of the NHL's relocation requirements for "conditional consent to relocation", namely that a certain number of season tickets had to be sold to demonstrate support for the franchise in the new location.

5. *Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with anyone concerning the Consent Agreement proposed by the NHL in connection with Mr. Balsillie's potential purchase of the Pittsburgh Penguins, including his decision to sign or not sign the Consent Agreement. Please provide any and all documents concerning these contacts, discussions, communications or decisions.*

Once again, this is an extremely broad question. I understand that there were many discussions with both the sellers of the Penguins and the NHL concerning the scope of the Consent Agreement that Mr. Balsillie was prepared to accept. As a precondition to engaging in negotiations for the definitive Asset Purchase Agreement with the sellers, we are advised that Mr. Balsillie met with the Commissioner and the sellers in the NHL's New York City offices in August 2006 to discuss the terms of the Consent Agreement. We further understand that Mr. Balsillie had previously informed the sellers that he was not prepared to commence negotiating an Asset Purchase Agreement if the NHL was going to impose a seven year non-relocation covenant.

The arena in which the Pittsburgh team played was very old and PSE believed that a new arena was required to make the team viable. PSE also believed it needed the flexibility to move the team if PSE was unable to convince local government officials to build a new arena and to lease the building to PSE on satisfactory terms. If Mr. Balsillie was going to be forced by the NHL to sign a Consent Agreement containing a seven year non-relocation requirement, PSE would have no negotiating leverage whatsoever with the government officials, and it was not interested in purchasing the team under those conditions. We are advised that Mr. Balsillie is confident that he never indicated to the NHL that he would never attempt to relocate the Penguins.

At the August 2006 meeting, Mr. Balsillie has advised that he recalls again saying that he was not prepared to commence negotiations to acquire the Pittsburgh team if the NHL was going to impose a seven year non-relocation covenant as part of the Consent Agreement he would be asked to sign. Mr. Balsillie recalls that the Commissioner assured him that there would be "no special terms" in the Consent Agreement. Mr. Balsillie took that to mean that there would be no seven year non-relocation covenant.

As a result of his understanding of the Commissioner's representation, Mr. Balsillie proceeded to negotiate an Asset Purchase Agreement to acquire the Penguins. The agreement contained specific provisions relating to the terms of the Consent Agreement that Mr. Balsillie would be prepared to accept from the NHL. We understand that those specific provisions were negotiated extensively and were included in detail in the Asset Purchase Agreement, a signed copy of which was provided to, and approved by, the NHL. We assume that this copy has been maintained in the NHL's files.

Once the Asset Purchase Agreement had been signed, we understand that Mr. Balsillie had a number of discussions with the NHL regarding the Consent Agreement. When the Consent Agreement was finally delivered by the NHL after much delay, just prior to closing, it contained the seven year non-relocation provision that Mr. Balsillie had indicated he would not accept. We are advised that the NHL then attempted, on the eve of closing, to encourage Mr. Balsillie to sign another document that had never before been discussed or presented to Mr. Balsillie or PSE, and that contained terms PSE considered even more prejudicial than the seven year non-relocation covenant. Again, we assume that the NHL has maintained a copy of that document. Mr. Balsillie declined to sign it.

As a result of being unable to reach terms for the Consent Agreement with the NHL that were in accordance with the Consent Agreement provisions of the Asset Purchase Agreement, PSE terminated the Asset Purchase Agreement in accordance with its terms. PSE's deposit, plus interest, was returned by the sellers (net of $1 million which the sellers were entitled to retain no matter what the outcome of the negotiations with the NHL).

6. *Please provide any and all documents concerning Mr. Balsillie's meeting with the NHL Executive Committee in December 2006 concerning his potential purchase of the Pittsburgh Penguins.*

We do not believe PSE created nor has any such documents. To the extent you may be referring to emailed communications within PSE or between PSE and its counsel before or after the meeting, such communications are burdensome and expensive to retrieve and are protected by lawyer-client privilege or other legal privileges.

7. *Please provide any and all documents concerning communications between Mr. Balsillie or any Balsillie Representative and Commissioner Bettman, Deputy Commissioner Daly, David Zimmerman or any other representatives of the NHL concerning the purchase of any NHL team.*

Once again this seems to us to be a broad and unclear question. We assume "representative of the NHL" means someone in the League office who officially represents the NHL. We do not understand why the NHL is asking PSE for its recollection of communications with the NHL's representatives. We would assume the NHL is fully aware of all those communications. If there is a particular communication that the NHL has in mind, please identify it more specifically, and we will attempt to describe PSE's recollection of the communication.

8. *Other than the briefs, submissions or other statements made by PSE's counsel in the ongoing bankruptcy proceeding (No. 2:09-bk-09488-RTBP), please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with any third party concerning the matters covered by Articles 3 and 4 of the NHL Constitution, as well as NHL By-Laws 35 and 36, or the application by the NHL of these provisions. Please provide any and all documents concerning these contacts, discussions or communications.*

PSE has had occasion to discuss these matters on almost a daily basis with almost everyone they meet, because these matters have been regularly reported in the media and are of interest to many Canadians. If there is a particular conversation of concern to the NHL, we would appreciate the NHL providing a summary to us and we would be prepared, subject to confidentiality and privilege issues, to report the recollection of the parties to such conversation and whether the conversation is accurately summarized by the NHL.

9. *Please describe, including the dates, participants and substance of, any contacts, discussions or communications Mr. Balsillie or any Balsillie Representative has had with anyone concerning the Nashville Predators then-owner's notice of termination of the arena lease in Nashville referenced in Paragraph 9 of the Rodier Declaration, filed on May 15, 2009, and Paragraph 21 of the Balsillie Declaration, filed on June 6, 2009. Please provide any and all documents concerning these contacts, discussions or communications.*

We assume the NHL is asking whether PSE told Mr. Leipold to give the termination notice for the Predators' arena lease. It did not. As Mr. Leipold is now an owner of another NHL team, we assume the NHL can speak with him to obtain his version of what transpired. PSE understands that Mr. Leipold had been marketing the team to persons who would relocate it and he had been speaking to potential buyers in a number of cities, including, with the full knowledge and consent of the Commissioner, to Mr. Del Biaggio.

If your inquiry is not directed at this issue, please advise.

We trust that this letter is a sufficient response to Mr. Zimmerman's July 2, 2009 letter. Like the NHL, PSE fully reserves and does not waive any of its rights and claims, including in connection with the pending bankruptcy case of Coyotes Hockey, LLC and the adversary proceedings related to that bankruptcy case.

Yours very truly,

Susan M. Freeman