ALBERTA SECURITIES COMMISSION

DECISION

Citation: Planned Legacies Inc., Re, 2011 ABASC 278 **Date: 20110511**

Planned Legacies Inc., Paul Charles Whitelaw, David Edward Harris, RightHedge Chrono-Logic Fund, Limited Partnership, RightHedge Investments, Inc., RightHedge Investments, LLC, Francois Michaud, doing business as Righthedge Investments, and Francois Michaud

Panel:	Glenda A. Campbell, QC Neil W. Murphy Kenneth B. Potter, QC
Representation:	Tom McCartney for Commission Staff Paul Charles Whitelaw for himself and Planned Legacies Inc. David Edward Harris for himself
Submissions Completed:	26 April 2011
Date of Decision:	11 May 2011

I. INTRODUCTION

[1] In a 9 February 2011 decision (the "Merits Decision", cited as *Re Planned Legacies Inc.*, 2011 ABASC 76), this Alberta Securities Commission (the "Commission") panel found that eight respondents (the "Respondents") – Planned Legacies Inc. ("PLI"), Paul Charles Whitelaw ("Whitelaw"), David Edward Harris ("Harris"), RightHedge Chrono-Logic Fund, Limited Partnership (the "Righthedge Fund"), RightHedge Investments, Inc. ("Righthedge Vanuatu"), RightHedge Investments, LLC ("Righthedge Nevada"), Francois Michaud, doing business as Righthedge Investments, and Francois Michaud (we will use "Michaud" to refer to both Francois Michaud, doing business as Righthedge Investments, and Francois Michaud, unless otherwise indicated) – had contravened Alberta securities laws and acted contrary to the public interest by trading in and distributing securities without registration and a prospectus and, in the case of PLI and Whitelaw, by making misleading or untrue statements to investors.

[2] The Merits Decision concluded the first phase of a hearing under sections 198 and 199 of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") (the "Merits Hearing") – the hearing into the merits of allegations made by Commission staff ("Staff") set out in an amended amended notice of hearing dated 11 August 2010 (the "Notice of Hearing").

[3] In the second phase of this hearing, we consider what, if any, orders under sections 198, 199 and 202 of the Act ought to be made against each of the Respondents. We received written and oral submissions from Staff as well as an affidavit of a Staff investigator sworn 7 March 2011 (the "Staff Affidavit"). Whitelaw and Harris made oral submissions and provided supplementary written materials. Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada provided no submissions.

[4] These are our reasons and decision as to the appropriate sanctions and costs to order against the Respondents. This decision should be read together with the Merits Decision (and the latter defines certain terms also used in this decision).

[5] For the reasons set out below, we conclude that it is in the public interest to make orders sanctioning all of the Respondents, and it is appropriate to make costs orders against certain of them, summarized as follows:

- PLI:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws, and all trading in or purchasing of PLI securities must cease until such time, if ever, as PLI files and receives a receipt for a prospectus in respect of securities of PLI from the Commission's Executive Director (the "Executive Director");

- Whitelaw:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws, from acting as a director or officer of any issuer, registrant or investment fund manager, from acting as a registrant, investment fund manager or promoter, or from acting in a

management or consultative capacity in connection with securities market activities (with limited exceptions), until (and including) 11 May 2031;
- shall pay an administrative penalty of $50 000; and
- shall pay $16 000 towards the costs of the investigation and hearing;

- Harris:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws (with limited exceptions), from acting as a registrant, investment fund manager or promoter, or from acting in a management or consultative capacity in connection with securities market activities, until (and including) 11 May 2021;
  - shall pay an administrative penalty of $20 000; and
  - shall pay $6500 towards the costs of the investigation and hearing;

- Michaud:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws, from acting as a director or officer of any issuer, registrant or investment fund manager, from acting as a registrant, investment fund manager or promoter, or from acting in a management or consultative capacity in connection with securities market activities, permanently;
  - shall, jointly and severally with the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, disgorge to the Commission $3 547 796;
  - shall, jointly and severally with the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, pay an administrative penalty of $1 000 000; and
  - shall, jointly and severally with the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, pay $26 000 towards the costs of the investigation and hearing; and

- The Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada:
  - are each barred from trading in or purchasing securities, from using exemptions under Alberta securities laws, from acting as a registrant, investment fund manager or promoter and from acting in a management or consultative capacity in connection with securities market activities, and all trading in or purchasing of securities of the Righthedge Fund must cease, permanently;
  - shall, jointly and severally with each other and Michaud, disgorge to the Commission $3 547 796;
  - shall, jointly and severally with each other and Michaud, pay an administrative penalty of $1 000 000; and
  - shall, jointly and severally with each other and Michaud, pay $26 000 towards the costs of the investigation and hearing.

II. BACKGROUND

A. Summary

[6] We provide, for context, the following summary of the factual background and the Respondents' capital market misconduct, discussed more fully in the Merits Decision.

[7] Whitelaw was PLI's sole director, majority shareholder and guiding mind. PLI and Whitelaw, with the assistance of Harris and others, encouraged investors to loan PLI money. PLI then invested the loaned money in the Righthedge Fund, supposedly engaged in a foreign currency trading program that was to generate the interest – typically 3% per month for a 12-month term – which PLI was promising to pay its investors. PLI and Whitelaw also told some investors that there was a protection mechanism in place that could be invoked to return investor money in the event Righthedge Nevada defaulted in its payments to PLI. Whitelaw apparently had a relationship with Michaud, and it was primarily because of that relationship that Whitelaw decided PLI would invest in the Righthedge Fund.

[8] From about April 2007 until about November 2008, PLI raised over $7 million from trading in and distributing its securities to more than 30 investors, with the majority of this money coming from at least 27 Alberta investors or groups of investors.

[9] Michaud was the directing mind of the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, which he often, and to a great extent, used interchangeably in conducting transactions. The Righthedge Fund was a Nevada limited partnership that was selling limited partnership interests in itself. The Righthedge Fund's investment objective as described in its Private Placement Memorandum dated January 2007 (the "Fund Private Placement Memorandum") was "to produce above[-]average capital appreciation by actively investing in a concentrated portfolio of cash foreign exchange a.k.a. Forex a.k.a. FX" and by "allocating funds to different FX traders, managers wether[sic] in-house or out-sourced". The Fund Private Placement Memorandum variously identified Righthedge Vanuatu, Righthedge Nevada and apparently Francois Michaud, doing business as Righthedge Investments, as the Righthedge Fund's general partner and identified Francois Michaud as the individual with "primary responsibility in managing the portfolio of" the Righthedge Fund.

[10] Between June 2007 and July 2008, PLI paid a total of $7 million to several different Righthedge Fund offshore bank accounts to purchase Righthedge Fund limited partnership units. PLI received payments, presumably from the Righthedge Fund, until June 2009 when all payments ceased. No financial statements, quarterly summaries or other reports were ever provided to PLI, and there was no evidence that any foreign currency trading had been carried out by Michaud, the Righthedge Fund, Righthedge Vanuatu or Righthedge Nevada. There was also no evidence as to the purpose for which Michaud, the Righthedge Fund, Righthedge Vanuatu or Righthedge Nevada used the money the Righthedge Fund received from PLI or whether there were any investors other than PLI.

[11] Most of the PLI investors never received the returns promised and there is apparently no realistic hope of recovering any of the money they invested. The location of Francois Michaud and the investors' money is currently unknown.

B. Findings

[12] We found that:

- the Respondents traded in securities in Alberta without being registered to do so, in contravention of the registration requirement in section 75(1)(a) of the Act, and distributed those securities without filing a prospectus, in contravention of the prospectus requirement in section 110 of the Act;

- PLI and Whitelaw made statements about the existence of a protection mechanism to some PLI investors, contrary to section 92(4.1) of the Act, that PLI and Whitelaw knew or reasonably ought to have known were untrue; and

- in so doing, the Respondents acted contrary to the public interest.

III. ANALYSIS

A. Parties' Positions

1. Staff

[13] Staff submitted that the public interest would be served by:

- prohibiting, for a period of 20 to 25 years: the trading in or purchasing of PLI securities; PLI from trading in or purchasing securities; PLI from using exemptions under Alberta securities laws; PLI from becoming or acting as a registrant, investment fund manager or promoter; and PLI from acting in a management or consultative capacity in connection with securities market activities;

- prohibiting Whitelaw, for a period of 20 to 25 years, from: trading in or purchasing securities; using exemptions under Alberta securities laws; acting as a director or officer of any issuer, registrant or investment fund manager; becoming or acting as a registrant, investment fund manager or promoter; and acting in a management or consultative capacity in connection with securities market activities; and by ordering that Whitelaw pay an administrative penalty of $250 000 to $300 000;

- prohibiting Harris, for a period of 5 to 7 years, from: trading in or purchasing securities; using exemptions under Alberta securities laws; acting as a director or officer of any issuer, registrant or investment fund manager; becoming or acting as a registrant, investment fund manager or promoter; and acting in a management or consultative capacity in connection with securities market activities; and by ordering that Harris pay an administrative penalty of $30 000 to $40 000;

- permanently prohibiting Francois Michaud from: trading in or purchasing securities; using exemptions under Alberta securities laws; acting as a director or officer of any issuer, registrant or investment fund manager; becoming or acting as a registrant, investment fund manager or promoter; and acting in a management or consultative capacity in connection with securities market activities; and by

ordering that Francois Michaud pay an administrative penalty of $750 000 to $1 000 000 and disgorge, jointly and severally with the Righthedge Fund, Righthedge Vanuatu, Righthedge Nevada and Francois Michaud, doing business as Righthedge Investments, to the Commission the sum of either $3 550 000 or $3 880 000; and

- permanently prohibiting the trading in or purchasing of the Righthedge Fund; permanently prohibiting the Righthedge Fund, Righthedge Vanuatu, Righthedge Nevada and Francois Michaud, doing business as Righthedge Investments, from: trading in or purchasing securities; using exemptions under Alberta securities laws; becoming or acting as a registrant, investment fund manager or promoter; and acting in a management or consultative capacity in connection with securities market activities; and by ordering that the Righthedge Fund, Righthedge Vanuatu, Righthedge Nevada and Francois Michaud, doing business as Righthedge Investments, pay, jointly and severally with each other, an administrative penalty of $750 000 to $1 000 000 and disgorge, jointly and severally with each other and Francois Michaud, to the Commission the sum of either $3 550 000 or $3 880 000.

[14] Staff referred us to factors relevant to sanction discussed by the Commission in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253), as refined in para. 43 of *Re Workum and Hennig*, 2008 ABASC 719 (affirmed 2010 ABCA 405). In applying those factors, Staff argued that these sanctions are warranted because the Respondents pose a risk to the Alberta capital market due to, among other things, the seriousness of the Respondents' contraventions, their failure to recognize the seriousness of their misconduct, the harm they caused to Alberta investors and the benefits they received. Staff contended that the requested orders are necessary to protect investors and the Alberta capital market by preventing likely future harm which could be caused not only by these Respondents but also by others tempted to engage in similar misconduct.

[15] Staff also sought an order for costs of the investigation and hearing, quantified at $68 640.88. Staff noted that this figure represents only a portion of the total costs related to the investigation and hearing of this case. Staff submitted that the Respondents should be ordered to pay as follows:

- PLI to pay $6865 or 10%;
- Whitelaw to pay $34 320 or 50%;
- Harris to pay $6865 or 10%; and
- Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada to pay, jointly and severally, $20 590 or 30%.

2. PLI and Whitelaw

[16] Whitelaw's submissions focused on cooperation with Staff over several years, the characters of both Whitelaw and Harris, and the compassion which both feel for the investors. Whitelaw stated in his submissions (although we had no evidence before us on these points) that he and Harris thought they had sufficiently checked out Michaud and his experience, and they

thought they were using proper paperwork for the PLI investments. Whitelaw also stated that he and Harris stopped their operations when told their activities might be contrary to securities laws, then tried to settle the allegations but were unable to reach an agreement with Staff. Whitelaw stated that he has been involved in charity and volunteer work and "didn't step out here to bilk people out of some money".

[17] Although he did not discuss at any length his view of appropriate sanctions, Whitelaw did express his wish to continue to be involved with a company he began over 30 years ago (Paul C. Whitelaw & Associates Ltd.), "to be able to make a living inside the financial world somehow" and to "stay in the exempt market somehow". Whitelaw said that company collects compensation from insurance renewal policies. He also stated that if the sanctions against him were 20 years, then "so be it", but requested leniency on the financial amount based on good intentions and the desire to repay investors – he suggested "almost negligible" fines. He requested that he be able to run a self-directed registered retirement savings plan, rather than having to go through an adviser.

[18] Whitelaw made no submissions specifically on costs, apart from his comments regarding cooperation and settlement.

3. Harris

[19] Harris emphasized the importance to him of trust and character, including that he is not the type of person that would try to do the wrong thing – "I thought it was fine. I don't do things that aren't fine. That's not who I am." Harris noted that, given his skills as a mentor and coach, had he been a fraudster, he would have convinced many more people to invest in PLI through him than the very few who did. Harris stated, although it is not in evidence, that the paperwork they used for the PLI investments "was already in the marketplace", implying that they could not, therefore, have realized it would be contrary to securities laws to use such paperwork. Harris also suggested that changes or ambiguity surrounding the laws applicable to the exempt market made it difficult for him, as someone not familiar with those laws, to comply with them. Harris stated that, in his view, the Commission was more interested in shutting down the investments and investigating what happened than in helping Harris and Whitelaw fix the problems.

[20] Harris acknowledged that investors have still not received their money after several years, but stated that he still wants to try to help them recover their money. He remains hopeful that, after all these years, some recovery of investors' money might occur.

[21] Harris disagreed with Staff on the applicability of the different factors to his circumstances. Overall, Harris proposed "cancelling any and all sanctions", seemingly because: he did not intend to contravene securities laws; he saw ambiguity surrounding the law applicable to accredited investors, making compliance difficult; he has learned his lesson; and he was not treated by the Commission with the level of respect and trust he desired.

[22] Harris accepted that it might be appropriate for him to pay a portion of the costs claimed by Staff, but emphasized again that he wanted to resolve the situation, not have it continue for three years and end up in an enforcement hearing.

4. Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada

[23] Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada did not appear or participate in the Merits Hearing or in this hearing on sanction and costs.

B. Sanctions

1. Principles and Factors

[24] We must decide whether the public interest requires the imposition of any sanction orders under sections 198 and 199 of the Act and, if so, what orders.

[25] Section 198 of the Act empowers a panel to order, in the public interest, one or more of several sanctions. These include prohibitions on a respondent from engaging in various forms of capital market participation and a requirement to pay to the Commission any amounts obtained or losses avoided as a result of non-compliance with Alberta securities laws. Section 199 empowers a panel to order, in the public interest, an administrative penalty against a respondent of not more than $1 million per contravention, when that respondent has been found to have contravened Alberta securities laws.

[26] In ordering sanctions, the Commission is neither punishing a respondent for past capital market misconduct nor remedying harm. Rather, the Commission addresses potential future harm by acting in a protective and preventative manner towards Alberta investors and the integrity of the Alberta capital market (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). In doing so, the Commission also considers the need to provide deterrence – both specific (deterring a particular respondent from engaging in future misconduct) and general (deterring like-minded persons from engaging in future similar misconduct). This need for deterrence was confirmed as an appropriate sanctioning consideration in *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62. As noted by Staff, other relevant considerations in ordering sanctions are the factors that this Commission set out in para. 43 of *Workum and Hennig* (a restatement of the factors set out in *Lamoureux)*:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

[27] These principles and factors assist the Commission in imposing sanctions that are appropriate in light of the specific circumstances of a respondent. This furthers the Commission's overall public interest objective to protect investors and the Alberta capital market from future similar capital market misconduct.

2. Principles and Factors Applied

[28] In addition to the particular circumstances of the Respondents and the objectives to be achieved, we also consider the anticipated overall effect of a particular sanction order or combination of sanction orders (including type and duration or quantum).

(a) Specific and General Deterrence

[29] We found serious capital market misconduct by each of the Respondents. All of these Respondents displayed disregard for the most basic tenets – the registration and prospectus requirements – of Alberta securities laws. Two Respondents also made untrue statements to investors. We believe that, without significant protective and preventative action on our part, there is a real risk that each of the Respondents would be likely to engage in similar or other misconduct without regard for the requirements of Alberta securities laws, therefore presenting a serious risk to investors and the integrity of the Alberta capital market. Consequently, substantial specific deterrence is required to prevent each of the Respondents from engaging in future misconduct in the Alberta capital market.

[30] Sanction orders that provide for substantial general deterrence are also necessary in circumstances in which serious capital market abuses are found, as here. The orders we make must be severe enough to communicate to those who might be inclined to engage in similar misconduct that such misconduct by them will result in significant personal consequences.

[31] Although there is a clear need for substantial specific and general deterrence in this case, a consideration of the specific, relevant sanctioning factors is required to reach a final decision on sanction.

(b) Relevant Factors

(i) Seriousness of Misconduct and Recognition of Seriousness

Serious Misconduct

[32] As noted, each of the Respondents breached key provisions – the registration and prospectus requirements – of the Act, which provide fundamental protections to investors, thus assisting them in making informed investment decisions. PLI and Whitelaw also made untrue statements about the protection mechanism. Finally, all of the misconduct of all of the Respondents was contrary to the public interest.

[33] Trades and distributions of securities not made in compliance with the Act deprive investors of those fundamental protections, namely: advice of a registrant as to the suitability of the investment being offered given the investor's particular financial circumstances and objectives; and disclosure of the material facts about the issuer offering the securities. Had investors in PLI and the Righthedge Fund received the advice of a registrant and the disclosure mandated in a prospectus, they might not have purchased the respective securities and sustained the financial losses that have resulted.

[34] Making untrue statements to potential investors is also a serious concern. The assertions made here by PLI and Whitelaw were obviously intended to lead investors to believe that their investments in PLI were not at risk. Therefore, investors were making misinformed decisions about the level of risk that they were proposing to undertake. Untrue or misleading statements

made to investors place at risk not only those individual investors, but also their confidence – and that of others – in the Alberta capital market.

Misconduct of PLI, Whitelaw and Harris

[35] PLI and Whitelaw played the central roles in the illegal trades and distributions of the PLI securities. Whitelaw's role in and responsibility for this illegal activity were significant, certainly more so than Harris, whose role was restricted to acting as a salesperson soliciting prospective investors to loan money to PLI. Whitelaw was the creator of PLI (although PLI's incorporation pre-dated the contraventions found here) and was solely responsible for the decision to invest money PLI received from investors in the Righthedge Fund through Michaud, Righthedge Vanuatu and Righthedge Nevada.

[36] Although there are indications that Whitelaw and Harris believed the sales of PLI securities were being conducted properly, we were presented with no documentary evidence or testimony that either of them took any steps to affirm independently that their taking of money from the public was being conducted in accordance with all legal requirements, including Alberta securities laws. As PLI, Whitelaw and Harris were seeking to raise money from the public, they were required to ensure – through their own knowledge or professional advice – that all legal requirements, including Alberta securities laws, were strictly followed. However, they did not comply with Alberta securities laws, and investors were harmed. As this Commission has stated before, those who do not take measures to ensure compliance with Alberta securities laws pose a threat to investors and to the integrity of and confidence in the Alberta capital market.

[37] Whitelaw, and PLI under his direction, made representations to investors about a so-called protection mechanism against a default in payment by Righthedge Nevada. We found that Whitelaw and PLI knew or ought to have known that this assurance was false and could be expected to have a significant effect on the value of the PLI securities. Such behaviour clearly cannot not be tolerated from those who seek the privilege of raising money in the Alberta capital market.

[38] These illegal activities by PLI, Whitelaw and Harris constituted serious capital market misconduct and call for meaningful sanction against them – more so against the former two because of their greater role and their misleading statements.

Misconduct of Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada

[39] Most serious, however, was the capital market misconduct engaged in by Michaud and, under Michaud's control and direction, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada. We conclude that Michaud – acting for himself and through the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada – was responsible for concocting the Righthedge scheme. He took advantage of his relationship with Whitelaw in using Whitelaw to obtain investor money, resulting in significant financial benefit to Michaud. Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada also moved PLI's money offshore, apparently for a deceitful purpose. This capital market misconduct by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada is very serious securities regulatory misconduct. It has deprived Alberta investors of legally-mandated protections and

caused them financial harm. Moreover, such capital market misconduct threatens the integrity of, and jeopardizes investor confidence in, the Alberta capital market. Thus, the seriousness of the misconduct by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada calls for the imposition of very significant sanction against them.

Recognition of Seriousness

[40] Both Whitelaw (and, through him, PLI) and Harris seemingly intended to help, not defraud, the PLI investors, some of whom were friends and acquaintances. Both claimed not to have known that their solicitation of investors for the PLI investment was contrary to Alberta securities laws, although no evidence was given as to how each of them reached such a conclusion. In their unsworn submissions, they referred to using paperwork that was already in the marketplace and used by others or to non-detailed and non-proven discussions with some legal adviser. That is not evidence and is not helpful in our determinations here. Harris suggested that his non-compliance arose from confusion, resulting from constantly changing securities laws; however, the requirements he identified as in flux had not been amended or changed for quite some time. Both Whitelaw and Harris apparently ceased their solicitations of investors in PLI once they were advised by Staff that PLI's fund-raising activities might be contrary to Alberta securities laws.

[41] Given the evidence and submissions before us, we conclude that PLI, Whitelaw and Harris did not intend to harm investors and do accept and recognize that they contravened Alberta securities laws. We accept that they now appreciate, to a limited extent, the seriousness of their misconduct. However, those who ask people to invest money are engaging in a specialized commercial activity that is highly dependent on trust and, thus, highly regulated. Securities laws are designed specifically to protect investors from exactly the kind of abuse that occurred in this case. Strict compliance with securities regulatory requirements is prescribed for all. Good intentions and a lack of deceit are irrelevant to the need to follow securities laws (although improper intentions and the presence of deceit will naturally attract greater sanction as they indicate a greater need for specific and general deterrence against future misconduct). We are concerned that Harris, in particular, failed to acknowledge or recognize this important factor. For example, he submitted that because he had good intentions and because he values trust and personal responsibility, any sanctions against him should be minimized or negated. Even late in the proceeding he persisted in referring to the changing securities laws that have not in fact changed in that regard. Whitelaw took a slightly different approach, emphasizing his after-the-fact attempts at cooperation and his concern for the return of investors' funds. However, his submissions were characterized by a litany of explanations relating how the actions of others led to the problems here – with little acceptance of responsibility for his own actions. We conclude that Whitelaw and Harris exhibited, during the course of this proceeding, a lack of insight into their own actions and a continued lack of understanding about the complexity of, and need for, securities and other legal requirements. In our view, both men fail to appreciate the public interest objective for imposing sanctions under Alberta securities laws.

[42] As this Commission has noted in many other cases, participation in the Alberta capital market is a privilege not a right. Those who exercise the privilege of access to the Alberta capital market are to adhere scrupulously to all requirements of Alberta securities laws. Those who do not do so are subject to losing that privilege and facing other consequences. Considering

all the circumstances, we are of the view that Whitelaw and Harris accept some responsibility for their actions and have some appreciation of the seriousness of their contraventions of Alberta securities laws, which could warrant some moderation in sanction. However, we are concerned that they could again unwittingly reoffend, which solidifies the need for some measure of protective action.

[43] Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada appeared to hold these regulatory proceedings in disdain, as shown by their successful avoidance of participation in this proceeding. We conclude that they cannot be trusted to comply with Alberta securities laws or to act honestly and in good faith in future dealings in the Alberta capital market. These factors reinforce the need for very severe sanctions against them.

(ii) Capital Market Experience

[44] Whitelaw had extensive capital market experience and training in the financial, insurance and securities industries: he completed two years of an accounting major in the business administration program at SAIT, completed the Canadian Securities Course, was a life insurance underwriter and held an Elder Planning Council designation. He had been registered with the Commission with various mutual fund dealers and a restricted dealer for most of 14 years (1989 to 2003). Given his extensive experience in highly-regulated industries, Whitelaw knew or ought to have known that he was engaging in conduct in the Alberta capital market that was subject to strict regulation. We conclude that it is appropriate here to attribute Whitelaw's background and experience to PLI. Nevertheless, he, and through him PLI, acted without due regard for Alberta securities laws or for the investors harmed. Whitelaw and PLI have not been previously sanctioned by the Commission. In all the circumstances, however, we do not consider that this lack of sanctioning history diminishes the need for sanction against Whitelaw or PLI.

[45] Francois Michaud has seemingly spent his entire working life in the financial and securities industries, achieving some positions of prominence, including those of Chief Investment Strategist and Associate Advisor with two Canadian financial institutions. He also apparently obtained his chartered financial analyst designation in 1994. He has never been registered under the Act. It was the strength of his credentials that gave credibility and legitimacy to Francois Michaud's operations and undoubtedly furthered the ease with which $7 million was raised from investors. Francois Michaud, with his educational background and training, must have known that the activities here, including the use of investor funds, were illegal and deceitful and would have as a consequence the financial deprivation of those investors. His contraventions of Alberta securities laws were, therefore, clearly premeditated and calculated. In the circumstances, it is appropriate to attribute Michaud's background and experience to the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada. Although Michaud (and, we assume, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada) has not been previously sanctioned by the Commission, we are firmly of the view that the factors discussed here reinforce the need for very severe sanctions against them.

[46] Compared to Whitelaw and Francois Michaud, Harris has relatively little capital market experience. He has neither professional designations nor formal training in the securities industry. Harris's background includes acting as a salesperson, personal coach or mentor and

establishing radio stations. He apparently provided a level of financial advice to others through his Releasing Kings platform. Harris has not been previously sanctioned by the Commission. While Harris has little capital market education or training, he does have some experience in and knowledge of the financial services industry. That should have alerted him to the need to ensure strict compliance with all legal and regulatory requirements – or to the need to ask the right questions of the right people. His lack of diligence in this causes us concern about his fitness to engage in capital market activities in the future and calls for sanctions that will address this public interest concern.

(iii) Benefit Received and Harm to Investors and Capital Market

[47] All of the Respondents profited from their illegal trades and distributions of securities.

[48] PLI and Whitelaw raised over $7 million from investors, most of them Alberta residents. Some of these investors were swayed to invest in PLI by PLI's and Whitelaw's misrepresentations. That money was then invested in the Righthedge Fund through Michaud, Righthedge Vanuatu and Righthedge Nevada. Although the exact amount of money received by PLI and Whitelaw is unknown, they were to be compensated from funds paid to PLI on the Righthedge Fund investment – PLI and Whitelaw were to receive, as were the salespeople, the excess amount after PLI investors were paid their 3% per month.

[49] Harris profited from his business relationship with PLI. He was paid approximately $20 000 in commissions he received from recruiting seven investors that loaned money to PLI. Despite Staff's contention, any amounts Harris earned through his personal holding company, Redeeming Health Inc. ("RHI"), are not relevant here, as we found in the Merits Decision that RHI did not trade in PLI securities.

[50] The Staff Affidavit contains an accounting of monies received by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada from PLI and of investors' "returns" disbursed back to PLI. This was completed to determine the approximate amount of investor funds retained by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada. Because not all information was available, an accurate accounting was not possible, Staff completed their calculations using a number of assumptions, which were not challenged by the Respondents and seemed reasonable in the circumstances.

[51] The Staff Affidavit indicates that Staff selected two dates – 30 April 2009 or 30 June 2009 – as the dates when payments of returns to PLI investors terminated. The 30 April 2009 termination date was selected as the approximate date that regular payments to investors ceased; the 30 June 2009 termination date was selected as an alternative because it appears that sporadic payments were made to some PLI investors after the regular payments ceased in April 2009.

[52] The Staff Affidavit concludes that:

- Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada obtained the sum of $7.142 million from the sale of the Righthedge Fund limited partnership interests to PLI and its investors (this is consistent with our finding in the Merits Decision based on the evidence presented to that point);

- Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada paid PLI investors $3 261 781.31 up to 30 April 2009, leaving a balance of $3 880 322.69; and
- Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada paid PLI investors $3 594 307.55 up to 30 June 2009, leaving a balance of $3 547 796.45.

[53] Based on the Staff Affidavit, we find a conservative estimate of the money retained by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada that could be substantiated by the evidence is $3 547 796. This amount excludes the money repaid to PLI investors.

[54] There is no doubt that Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada intended, directly and indirectly, to be enriched from their foray into the Alberta capital market, and they were so enriched at the expense of PLI investors.

[55] The evidence is clear that identifiable investors resident in Alberta and elsewhere were financially harmed. As noted, while PLI investors received some payments, most of their investments have been lost. Further, those investors who took out loans to finance their investments in PLI have not only lost their investments but also remain exposed to further losses as they continue to service repayment of their loans.

[56] Investors understand that investing involves risks – some investments more than others. However, when money is not used for the purpose for which it was invested – and, even more disturbing, disappears – those deceived, and others who learn of their plight, lose confidence in the capital market. In particular, they lose confidence in the exempt market and pursue other options for investing their money.

[57] These considerations, too, call for some measure of sanction for PLI, Whitelaw and Harris and for very severe sanction for Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada.

(iv) Previous Decisions

[58] Staff referred us to a number of decisions of securities regulatory authorities that might be of assistance to us in determining what, if any, sanctions to order against the Respondents. While not determinative of the issue, we found some of the following decisions useful in assessing the type and extent of sanctions appropriate here: *Re Kustom Design Financial Services Inc.*, 2010 ABASC 415; *Re Smylski*, 2010 ABASC 449; *Re Sea Sun Capital Corporation*, 2009 ABASC 407; and *Re Maitland Capital Ltd.*, 2007 ABASC 818 (affirmed 2009 ABCA 186).

(v) Mitigating Factors

[59] PLI, Whitelaw and Harris argued that that they did not intend to contravene Alberta securities law or harm investors. Whitelaw noted that once he became aware that the loans to PLI may have been made in contravention of Alberta securities laws, he ceased PLI's operations and took no further loans from investors. Further, both Whitelaw and Harris appear regretful

about the resulting financial losses to PLI investors. Both remain hopeful that Francois Michaud will return money to PLI for the benefit of its investors. Harris also pointed out that both he and Whitelaw were wrongly vilified and their reputations tarnished in a recent press article which headlined "ASC finds pair guilty of investor fraud", although no finding of fraud had been made against them in the Merits Decision. They suggested that these factors mitigate their misconduct and form part of the basis for negating or minimizing any sanctions ordered against them.

[60] Some of these considerations, in our view, mitigate, to a degree, the severity of the sanction we might otherwise order. We also appreciate that the recent press article did wrongly portray Whitelaw and Harris as fraudsters, although the issuance and wording of that article were beyond the control of the Commission. While not a mitigating factor, we accept that Whitelaw and Harris have suffered embarrassment and reputational damage, providing some element of specific deterrence to future misconduct.

[61] It appears that some efforts may have been made to locate Francois Michaud and the missing money. However, we note that Whitelaw's failure to disclose to Staff Francois Michaud's whereabouts may well have reduced the likelihood of recovery of investor money through the government authorities. This is an aggravating factor.

[62] We discern no mitigating factors in the circumstances of Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada.

3. Conclusions on Sanctions

(a) Capital-Market Bans

[63] The Alberta capital market is strictly regulated under Alberta securities laws; no individual or company has the right to participate in the Alberta capital market. The privilege of participation in the Alberta capital market can be removed by the Commission if it determines that a respondent has not complied with Alberta securities laws or has acted in a manner contrary to the public interest. This power is designed to protect Alberta investors and the integrity of the Alberta capital market from future misconduct by the wrongdoer or others similarly inclined.

[64] We found that Whitelaw, using PLI as the vehicle, engaged in illegal trades and distributions of securities. He also misled some investors about the existence of a "protection mechanism", which presumably was to assure investors that an investment in PLI involved little risk. The provisions of the Act that Whitelaw and PLI breached are intended to protect investors from such misconduct. This is serious regulatory misconduct and caused harm to investors. Despite his being a businessman with considerable capital market experience, Whitelaw failed to conduct sufficient due diligence on Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, relying instead on the strength of his relationship with Francois Michaud. Whitelaw's conduct shows a failure to understand his responsibilities as a director and officer of an issuer raising money from the public in the exempt market. Although Whitelaw maintained that he always acted in the best interests of the PLI investors, he failed to protect PLI investors from harm at the same time that he was receiving financial benefits.

[65] Whitelaw has expressed remorse. He also emphasized that once he learned PLI's fund-raising may have been contrary to Alberta securities laws, he immediately ceased those

activities. While we accept Whitelaw's remorse and indications that he understands his conduct was wrong, we remain concerned about his and PLI's potential future activity in the capital market – in particular, their ability to comply with Alberta securities laws if engaging in any such activity. Although Whitelaw expressed interest in continuing his involvement in the "financial world", including the exempt market, the public interest requires us to make orders that will protect investors from Whitelaw and PLI engaging in similar capital market misconduct for some time. This requires Whitelaw's removal from contact with investors in both the exempt and public capital market for a lengthy time and, in the case of PLI, until such time as it has filed and received a receipt for a prospectus.

[66] For the foregoing reasons, we conclude that, for his capital market misconduct, Whitelaw must be banned for a significant time from: trading in or purchasing securities; using exemptions under Alberta securities laws; director or officer positions with any issuer (this includes any company, public or private), registrant or investment fund manager; acting as a registrant, investment fund manager or promoter; or acting in a management or consultative capacity in connection with securities market activities. We do not believe that certain exceptions to permit limited personal trading for his own benefit would be contrary to the public interest. Further, although Whitelaw will be precluded from acting as a director or officer of any issuer, we do not believe that allowing him to continue as a director and officer of Paul C. Whitelaw & Associates Ltd., provided all of its securities are owned by him or members of his immediate family, would be contrary to the public interest.

[67] We conclude that all trading in or purchasing of securities of PLI must cease and PLI must be banned from trading in or purchasing securities, or from using exemptions under Alberta securities laws until such time as it files and receives a receipt for a prospectus from the Executive Director. This will ensure that any prospective investors would receive disclosure of all material facts about PLI before being permitted to purchase its securities.

[68] We found that Harris too engaged in illegal trades and distributions of PLI securities, although he played a lesser role as a salesperson who was selling PLI securities for a commission. We found that Harris's role in trading and distributing PLI securities illegally was serious regulatory misconduct and caused harm to investors. Of further concern was that Harris's conduct showed a lack of understanding of the rules associated with private placements and a willingness to engage in such activities without a complete understanding of those rules. Harris did show remorse and stated that he would never again engage in similar misconduct. However, we discerned a continuing lack of understanding, which calls for a greater amount of specific deterrence to protect the Alberta capital market in the future. For the foregoing reasons, we conclude that, for his capital market misconduct, Harris must be banned for a time longer than that recommended by Staff from: trading in or purchasing securities, and using exemptions under Alberta securities laws (with certain exceptions to permit limited personal trading for his benefit, which we do not perceive to be contrary to the public interest); acting as a registrant, investment fund manager or promoter; or acting in a management or consultative capacity in connection with securities market activities. As there was no evidence that Harris participated in any business decisions regarding PLI or any of the Righthedge entities, nor acted as a director, officer or de facto director or officer in the misconduct he engaged in, we do not believe it necessary to impose a director and officer ban on him.

[69] Francois Michaud devised and led the Righthedge Fund scheme, then used or encouraged the use of the other Respondents to implement it. Francois Michaud was an experienced capital market participant who was or should have been well-versed in securities laws. He convinced investors that he directed a successful foreign currency trading operation. We have grave doubts about the legitimacy of the entire scheme and Francois Michaud's fundraising efforts underlying it. Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada have harmed Alberta investors, whose money has disappeared along with Francois Michaud. This was very egregious capital market misconduct. Alberta investors and the Alberta capital market must be protected from Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada. We do not believe that Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada could be trusted to comply with Alberta securities laws if they were to participate in the capital market in the future. We similarly do not believe Francois Michaud fit to hold director or officer positions with any issuer (this includes any company, public or private), registrant or investment fund manager; to act in any capacity of trust such as a registrant or investment fund manager; to act as a promoter for any issuer; or to act in a management or consultative capacity in connection with securities market activities. We are satisfied that any future participation by Michaud, the Righthedge Fund, Righthedge Vanuatu or Righthedge Nevada in our capital market would pose a very real and significant threat to Alberta investors and to the integrity of and confidence in that market.

[70] For the foregoing reasons, we conclude that, for his capital market misconduct, Michaud must be banned for the remainder of his life from: trading in or purchasing securities; using exemptions under Alberta securities laws; acting as a director or officer of any issuer (this includes any company, public or private), registrant or investment fund manager; acting as a registrant, investment fund manager or promoter; or acting in a management or consultative capacity in connection with securities market activities. For the same reasons, we conclude that all trading in securities of the Righthedge Fund must cease permanently, and the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada must be permanently banned from trading in or purchasing securities, using any of the exemptions under Alberta securities laws, becoming or acting as a registrant, investment fund manager or promoter, and acting in a management or consultative capacity in connection with securities markets activities.

(b) Disgorgement

[71] Section 198(1)(i) of the Act empowers a hearing panel to order a person or company to pay to the Commission "any amounts obtained or payments or losses avoided" as a result of non-compliance with Alberta securities laws. This is typically referred to as disgorgement, which orders the removal of unlawfully-obtained money from a wrongdoer. The rationale for ordering disgorgement in a securities commission proceeding reflects the equitable policy designed to remove all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Act. It is not a compensation mechanism for victims of the wrongdoing. A disgorgement order thus provides a further element of specific and general deterrence. As the British Columbia Securities Commission explained in *Re Manna Trading Corp. Ltd.*, 2009 BCSECCOM 595 at paras. 35-36:

> In *Strother v. 3464920 Canada Inc.*, 2007 SCC 24 [at paras. 75, 77] the Supreme Court of Canada held that disgorgement orders serve a prophylactic purpose, noting that "the objective is to preclude the fiduciary from being swayed by considerations of personal interest." The court goes on to say that such orders [sic] "teaches faithless fiduciaries that conflicts do not pay. The prophylactic purpose thereby advances the policy of equity . . . "
>
> Although *Strother* is about civil disgorgement orders against fiduciaries, the reasoning, in our opinion, applies equally well to administrative disgorgement orders under section 161(1)(g) [the comparable provision in the British Columbia *Securities Act* (the "BCSA")]. Those orders serve to deter persons from illegal activity by removing the incentive of profiting from illegal misconduct. Section 161(1)(g) [of the BCSA] does not have punishment as its objective. It removes from contravening parties money not rightfully theirs, thus advancing the policy of ensuring that those who contravene securities laws do not profit from their misconduct, and that money obtained by contravening the [BCSA] is returned.

[72] The Ontario Securities Commission (the "OSC") in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 at para. 53 stated that the burden is on Staff to prove, on a balance of probabilities, the disgorgement amount obtained by a respondent as a result of that respondent's non-compliance with the Act. Once Staff prove the amount, the burden then shifts to the respondent (whose non-compliance resulted in funds being wrongfully obtained) to disprove the reasonableness of the amount. The OSC commented on determining that amount as follows (at para. 49):

> . . . paragraph 10 of subsection 127(1) [the comparable provision in the Ontario *Securities Act* (the "OSA")] provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the [OSA]. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the [OSA] to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the [OSC] having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the [OSA].

[73] In this case, Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada obtained money from investors as a result of non-compliance with Alberta securities laws, namely the registration and prospectus requirements of the Act. The amount obtained here by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada can be reasonably approximated – the evidence established that at least $7.142 million was raised from the illegal trades and distributions of the Righthedge Fund limited partnership units to PLI.

[74] Staff are seeking an order that the net amount of the PLI money obtained by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada – either $3.88 million or $3.55 million – be disgorged by them on a joint and several basis. None of these amounts were contested by any of the Respondents.

[75] In our view, a disgorgement order of at least the amount retained by Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada after they had made some payments to PLI – $3 547 796 – is appropriate because they obtained this money as a direct

result of their non-compliance with the registration and prospectus requirements of the Act. The evidence suggests that the money was not used in the manner in which they told investors it would be used.

(c) Administrative Penalty

[76] The Commission will order an administrative penalty when it has found that a respondent has breached a provision of the Act and it is in the public interest to make such an order. The public interest rationale for ordering an administrative penalty is specific and general deterrence – in part by communicating that breaches of Alberta securities law will come at a direct financial cost.

[77] Here, we conclude that it is appropriate for most of the Respondents to pay an administrative penalty in conjunction with the mentioned market-access bans.

[78] It was unclear from Staff's submissions whether they were also asking for PLI to pay an administrative penalty. In its circumstances, we are of the view that the public interest does not require the imposition of an administrative penalty against PLI.

[79] In the case of Whitelaw and Harris we do not find it necessary to impose administrative penalties as large as those sought by Staff, in light of their respective roles in the illegal conduct involved here and the significant market-access bans that will also be imposed on them.

[80] However, it is appropriate to impose a substantial administrative penalty on Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada in addition to the disgorgement order, so that the totality of the financial sanctions imposed is appropriate in all the circumstances of their misconduct. Michaud's conduct and background warrant a very substantial administrative penalty. He exhibited disdain for these proceedings by his non-participation and for the investors whose money he obtained by avoiding accountability to them. Given their interconnectedness, Michaud and the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada will be ordered to pay a very significant administrative penalty on a joint and several basis.

4. Sanction Decision

[81] We are satisfied that the imposition of these sanctions will, in the public interest, provide the necessary level of protection through specific and general deterrence. These sanctions are intended to communicate to these Respondents and like-minded others the seriousness with which we treat such capital market misconduct – those who engage in such misconduct will be denied the privilege of access to the Alberta capital market, will not be allowed to profit from such misconduct and will find such misconduct comes at a direct and substantial financial cost to them.

[82] Accordingly, considering that it is in the public interest to do so, we order that:

PLI

- under sections 198(1)(a), (b) and (c) of the Act, all trading in or purchasing of securities of PLI cease, PLI cease trading in or purchasing securities, and all of

the exemptions contained in Alberta securities laws do not apply to PLI until such time, if ever, as the Executive Director issues a receipt for a prospectus in respect of securities of PLI;

Whitelaw

- under sections 198(1)(b) and (c) of the Act, Whitelaw cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 11 May 2031, except that this order does not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:

    - registered retirement savings plans ("RRSPs"), registered retirement income funds ("RRIFs") or tax-free savings accounts ("TFSAs") (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts ("LIRAs") for Whitelaw's benefit;

    - one other account for Whitelaw's benefit; or

    - both, provided that:

        - the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

        - Whitelaw does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

- under sections 198(1)(d) and (e), Whitelaw resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, until (and including) 11 May 2031, except that this order does not preclude him from continuing to act as a director and officer (or both) of Paul C. Whitelaw & Associates Ltd., provided that:

    - all the securities of Paul C. Whitelaw & Associates Ltd. are owned by Whitelaw or members of his immediate family; and

    - Paul C. Whitelaw & Associates Ltd. does not engage in any conduct, including advertisement, solicitation or negotiation, made directly or indirectly in furtherance of a sale or disposition of a security;

- under section 198(1)(e.2), Whitelaw is prohibited from becoming or acting as a registrant, investment fund manager or promoter, until (and including) 11 May 2031;

- under section 198(1)(e.3), Whitelaw is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, until (and including) 11 May 2031; and

- under section 199, Whitelaw pay an administrative penalty of $50 000;

Harris

- under sections 198(1)(b) and (c) of the Act, Harris cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 11 May 2021, except that this order does not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:

    - RRSPs, RRIFs, TFSAs or LIRAs for Harris's benefit;

    - one other account for Harris's benefit; or

    - both, provided that:

        - the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

        - Harris does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

- under section 198(1)(e.2), Harris is prohibited from becoming or acting as a registrant, investment fund manager or promoter, until (and including) 11 May 2021;

- under section 198(1)(e.3), Harris is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, until (and including) 11 May 2021; and

- under section 199, Harris pay an administrative penalty of $20 000;

Michaud

- under sections 198(1)(b) and (c) of the Act, Michaud cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently;

- under sections 198(1)(d) and (e), Michaud resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is

permanently prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager;

- under section 198(1)(e.2), Michaud is permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

- under section 198(1)(e.3), Michaud is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

- under section 198(1)(i), Michaud pay, jointly and severally with the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, to the Commission $3 547 796 of the amounts obtained as a result of their non-compliance with Alberta securities laws; and,

- under section 199, Michaud pay, jointly and severally with the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, an administrative penalty of $1 000 000; and

Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada

- under section 198(1)(a) of the Act, all trading in or purchasing of securities of the Righthedge Fund cease permanently;

- under sections 198(1)(b) and (c) of the Act, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to them, permanently;

- under section 198(1)(e.2), the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada are permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

- under section 198(1)(e.3), the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada are permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

- under section 198(1)(i) of the Act, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada pay, jointly and severally with Michaud, to the Commission $3 547 796 of the amounts obtained as a result of their non-compliance with Alberta securities laws; and

- under section 199, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada pay, jointly and severally with Michaud, an administrative penalty of $1 000 000.

C. Costs

[83] Staff also sought an order that each Respondent pay a portion of the claimed costs of the investigation and hearing – $68 640.88:

- $6865 (10%) from PLI;
- $34 320 (50%) from Whitelaw;
- $6865 (10%) from Harris; and
- $20 590 (30%) from Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada, on a joint and several basis.

[84] In oral submissions, Staff stated that they were seeking costs under the current version of section 202 of the Act. Staff included supporting documentation with their itemization of "Investigation & Hearing Costs". However, the current section 202 is associated with section 20 of the *Alberta Securities Commission Rules (General)* (the "Rules"), while Staff's itemization was prepared using sections 191.1 and 191.2 of the Rules – those provisions were in force throughout the period in which the Respondents' capital market misconduct occurred and when the original notice of hearing and amended notice of hearing were issued, but were repealed as of 31 July 2010. The 11 August 2010 Notice of Hearing still refers to sections 202(1) and 202(2) of the Act, although section 202(2) was also repealed as of 31 July 2010.

[85] As the Respondents received notice that Staff were seeking costs under the former Act provision and the costs itemization materials were prepared and presented under the former Rules provisions, we conclude that Staff misspoke during submissions as to their reliance on the current Act provision. However, there is no substantive difference in this case – having reviewed Staff's itemization and supporting documentation, we are satisfied that investigation and hearing costs totalling $65 000 are allowable costs under the former Act provisions as well as the current ones. This takes into account a deduction from Staff's claimed costs for some poorly explained charges, such as a claim on 20 August 2009 for 5 hours ($250), which seems excessive given the explanation that the time claimed was for the receipt in 2008 of an e-mail and materials.

[86] An order for costs permits the Commission to recover costs incurred by it in enforcing Alberta securities laws, which costs would otherwise be paid by law-abiding market participants whose fees fund the Commission's operations. Generally, therefore, it is considered appropriate for a respondent who has been found to have contravened Alberta securities laws or acted contrary to the public interest to pay some or all of the costs incurred in the investigation and hearing of such allegations. Costs orders also provide the Commission with an effective means to encourage procedural efficiency in enforcement proceedings. Thus, in determining the quantum of a costs order, we consider any efficiency brought to an enforcement proceeding by a respondent.

[87] There are indications that Whitelaw (and, through him, PLI) and Harris attempted to cooperate, to a degree, in resolving this matter and saving the costs and time associated with a hearing. However, their lack of participation in the Merits Hearing clearly did not contribute to the efficiency of resolving the allegations against them. Some credit – although not a substantial amount – is, therefore, appropriate towards the amount of costs that Whitelaw and Harris would

otherwise be required to pay. In the circumstances, we see no need to award costs against PLI, as it was merely the investment vehicle for investor funds and it was under the sole control and direction of Whitelaw, who will be ordered to pay the costs of the investigation and hearing attributable to his misconduct.

[88] Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada did not cooperate at any point during the investigation or hearing. They made no contribution to the efficiency of the process and, as noted, in fact showed disdain for the Commission and Alberta securities laws. They are not entitled to any amelioration of the amount of costs they are required to pay.

[89] The majority of the investigation and hearing time seemed to have been directed to the allegations against Whitelaw, PLI, Harris and RHI, rather than to the allegations against Michaud, the Righthedge Fund, Righthedge Vanuatu, Righthedge Nevada and RIGHTHEDGE INVESTMENTS, Inc., also known as Righthedge Investments Inc. ("Righthedge Alberta"). We made no findings against RHI and Righthedge Alberta, and we are declining to award costs against PLI. We conclude that a portion of the costs should be deducted to reflect those conclusions for each of those entities. As mentioned, we have determined that there should be a slight reduction in costs for the indications of cooperation by Whitelaw and Harris.

[90] In all the circumstances, we order, under section 202 of the Act, that:

- Whitelaw pay $16 000 towards the costs of the investigation and hearing;
- Harris pay $6500 towards the costs of the investigation and hearing; and
- Michaud, the Righthedge Fund, Righthedge Vanuatu and Righthedge Nevada pay, jointly and severally, $26 000 towards the costs of the investigation and hearing.

IV. PROCEEDING CONCLUDED

[91] This proceeding is concluded.

11 May 2011

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Neil W. Murphy

"original signed by"
Kenneth B. Potter, QC