ALBERTA SECURITIES COMMISSION

DECISION

Citation: Rogers, Re, 2013 ABASC 484 **Date: 20131030**

John Dale Rogers, Robert Harold Keenan and Charles (Chad) Mitchell

Panel:	Glenda A. Campbell, QC Ian D. Beddis A. Webster Macdonald, QC
Representation:	Andrew Wilson for Commission Staff Renee Reichelt for John Dale Rogers Robert Harold Keenan for himself Charles (Chad) Mitchell for himself
Date of Hearing:	10 October 2013
Date of Decision:	30 October 2013

I. INTRODUCTION

[1] This was a hearing before the Alberta Securities Commission (the **Commission**) regarding allegations made by staff (**Staff**) of the Commission against three individuals (the **Respondents**) – John Dale Rogers (**Rogers**), Robert Harold Keenan (**Keenan**) and Charles (Chad) Mitchell (**Mitchell**) – in connection with securities distributions by Rogers Oil & Gas Inc. (**ROGI**) and Rogers Gold Corp. (**Rogers Gold**). The proceedings against ROGI and Rogers Gold (together, the **Companies**) were adjourned sine die. Another individual, Brian R. Kirkham, settled with Staff before the start of the hearing and thus is no longer a respondent in this proceeding.

[2] In a 4 April 2012 notice of hearing (**NOH**), Staff alleged that the Respondents contravened section 110 of the *Securities Act* (Alberta) (the **Act**) by trading in securities of the Companies, where such trades were distributions, without having filed and received a receipt for a prospectus or preliminary prospectus from the Executive Director (the **Executive Director**) of the Commission and without an applicable exemption, or that the Respondents authorized, permitted or acquiesced in the contravention of section 110 by one or both of the Companies. Staff also alleged that Rogers and Keenan contravened section 92(4.1) by making statements that they knew or reasonably ought to have known were misleading or untrue, or failed to state information required to make them not misleading, and would reasonably be expected to have a significant effect on the market price or value of a security, or by authorizing, permitting or acquiescing in such conduct by one or both of the Companies. Finally, Staff alleged that the Respondents acted contrary to the public interest through their contraventions. Staff withdrew their allegations that Rogers, Keenan and Mitchell engaged in a course of conduct relating to securities that they knew or ought to have known perpetrated a fraud on investors, contrary to section 93(b).

[3] The hearing into the merits of Staff's allegations was held on 10 October 2013. Staff and Rogers, Keenan and Mitchell provided the panel with statements from each of Rogers, Keenan and Mitchell containing admissions of facts and of contraventions of the Act (the **Rogers Admissions**, the **Keenan Admissions** and the **Mitchell Admissions**, respectively), and a joint recommendation as to the appropriate sanction and costs for each of Rogers, Keenan and Mitchell (the **Joint Recommendation for Rogers**, the **Joint Recommendation for Keenan** and the **Joint Recommendation for Mitchell**, respectively). Each of the Rogers Admissions, the Keenan Admissions and the Mitchell Admissions provided the evidentiary basis for each of the Joint Recommendation for Rogers, the Joint Recommendation for Keenan and the Joint Recommendation for Mitchell, respectively. We also heard submissions from Staff, Rogers, Keenan and Mitchell.

[4] For the reasons discussed below, we accepted: the Rogers Admissions as the evidence with respect to the allegations against Rogers; the Keenan Admissions as the evidence with respect to the allegations against Keenan; and the Mitchell Admissions as the evidence with respect to the allegations against Mitchell. On that basis, we sustained Staff's allegations against Rogers, Keenan and Mitchell. We also accepted the Joint Recommendation for Rogers, the Joint Recommendation for Keenan and the Joint Recommendation for Mitchell generally as representing appropriate sanction and cost-recovery orders to make in the circumstances of Rogers, Keenan and Mitchell, respectively. Our conclusions and orders are set out below.

II. BACKGROUND

[5] In the Rogers Admissions, the Keenan Admissions and the Mitchell Admissions, each of Rogers, Keenan and Mitchell admitted to numerous facts, which Staff confirmed appeared consistent with the results of their investigation. We accepted these admissions as generally truthful and accurate.

[6] We next set out what we considered the salient facts, as derived from the Rogers Admissions, the Keenan Admissions and the Mitchell Admissions.

A. The Parties

[7] At all material times, ROGI was an Alberta company with a stated purpose of investing to acquire producing oil and gas assets and farm-in drilling prospects, on a non-operated basis, primarily in the Western Canadian Sedimentary Basin.

[8] At all material times, Rogers Gold was an Alberta company with a stated purpose of investing in gold exploration and development opportunities in British Columbia's Cariboo District.

[9] At all material times, Rogers was a director, Chief Executive Officer (**CEO**) or Chief Financial Officer (**CFO**), founder and promoter of ROGI, and a director and CFO of Rogers Gold.

[10] Keenan provided professional tax, accounting and various business advisory services on behalf of his professional services corporation. At all material times, Keenan was a promoter and founder of ROGI, and the promoter, founder and principal shareholder of Rogers Gold. Although never formally appointed, Keenan acted as both a director and an officer of both ROGI and Rogers Gold.

[11] In July 2006, Keenan was sanctioned by the Pennsylvania Securities Commission for breaches of US securities regulations. He had also been the President and CEO of an issuer that was cease traded by the British Columbia Securities Commission on 12 July 2007 (the **Keenan Sanction History**).

[12] Mitchell is a Calgary-based businessman and lawyer. Commencing September 2009, he was the CEO of ROGI, and commencing June 2009 he was appointed a director and CEO of Rogers Gold. He stated he was unaware of the Rogers Gold appointments until the spring of 2010. Mitchell resigned as a director and officer of both ROGI and Rogers Gold in the summer of 2011.

B. ROGI Distributions of Securities

[13] Rogers, Keenan and Mitchell admitted that between June 2008 and March 2011 (the **ROGI Relevant Period**), ROGI traded in Alberta its securities – shares and debentures – that had not been previously issued in Alberta. No prospectus or preliminary prospectus had been filed and no receipt issued by the Executive Director with respect to ROGI securities during the ROGI Relevant Period.

[14] ROGI's distributions of securities during the ROGI Relevant Period were made in purported reliance on the "offering memorandum" exemption (the **OM Exemption**) contained in National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) and effected through the use of offering memoranda (**OMs**).

[15] Rogers, Keenan and Mitchell each admitted that they authorized, permitted or acquiesced in ROGI issuing the following ROGI OMs (the **Impugned ROGI OMs**):

- ROGI OM dated 11 September 2009 (amended as at 19 October 2009), with respect to the issuance of Series 3 Participating Debentures of ROGI;
- ROGI OMs dated 11 September 2009 and 15 January 2010, with respect to the issuance of Voting Common Shares of ROGI on a flow-through basis at a price of $2.50 per share;
- ROGI OM dated 29 March 2010, with respect to the issuance of Series 4 Participating Debentures of ROGI;
- ROGI OM dated 24 November 2010, with respect to the issuance of Series 5: 15% Debentures of ROGI; and
- ROGI OM dated 6 January 2011, with respect to the issuance of Series 5: 15% Debentures of ROGI.

[16] Rogers, Keenan and Mitchell each admitted that each of the Impugned ROGI OMs contained numerous material defects and material omissions, including the following (collectively referred to as the **ROGI OM Deficiencies**):

- failing to disclose properly a detailed breakdown of how ROGI would use the net proceeds of the offerings;
- incorrectly stating that ROGI expected to apply approximately 80% of the gross proceeds raised to the "drilling and acquiring of oil and gas wells in Western Canada";
- failing to disclose properly monthly fees, management fees, fees and bonuses payable to related parties, and indirect compensation payable to management through related or other entities;
- failing to disclose properly details of material agreements with related parties;
- failing to disclose Keenan as a promoter, or as a director and executive officer of ROGI, even though he had acted in the capacity of a director and executive officer of ROGI;

- failing to disclose properly in certain of the Impugned ROGI OMs the Keenan Sanction History;

- failing to describe or update properly ROGI's use of available funds, business and its development, and short and long term objectives;

- failing to disclose properly previously-issued debentures as prior sales;

- failing to disclose properly ROGI's current and anticipated interest payment obligations for the debentures and the anticipated source of funds that would be used to meet those interest obligations; and

- failing to include required financial statements in certain of the Impugned ROGI OMs.

[17] Though the precise wording of the Rogers Admissions, Keenan Admissions and Mitchell Admissions varied on this point, each Respondent admitted that he knew or ought reasonably to have known that the ROGI OM Deficiencies constituted omissions that, in a material respect and at the time and in light of the circumstances, failed to state facts required to be stated to make the Impugned ROGI OMs not misleading. In the result, Rogers and Mitchell admitted that they each signed OM certificates inaccurately declaring that the Impugned ROGI OMs did not contain any misrepresentations.

[18] Rogers, Keenan and Mitchell admitted that they knew, or in the circumstances ought to have known, that the Impugned ROGI OMs would be relied upon by investors and that the disclosure contained within the Impugned ROGI OMs was insufficient to enable a prospective investor to make an informed investment decision.

C. Rogers Gold's Distributions of Securities

[19] Rogers, Keenan and Mitchell admitted that between December 2010 and July 2011 (the **RG Relevant Period**), Rogers Gold traded in Alberta its securities – shares and debentures – that had not been previously issued. No prospectus or preliminary prospectus had been filed and no receipt issued by the Executive Director with respect to Rogers Gold securities during the RG Relevant Period.

[20] Rogers Gold's distributions of securities during the RG Relevant Period were made in purported reliance on the OM Exemption.

[21] Rogers, Keenan and Mitchell variously admitted that they either approved, authorized, permitted or acquiesced in Rogers Gold issuing certain Rogers Gold OMs (the **Impugned RG OMs**) that contained numerous material defects and material omissions, including the following (collectively referred to as the **RG OM Deficiencies**):

- failing to disclose properly the key terms of agreements with related parties;

- failing to disclose that Keenan was a director and executive officer of Rogers Gold even though he acted in the capacity of director and executive officer of Rogers Gold;

- failing to disclose properly the Keenan Sanction History;

- including a technical report dated 1 May 2011 that failed to comply with the requirements of National Instrument 43-101 *Standard of Disclosure for Mineral Projects*;

- using a deficient certificate of qualified person; and

- omitting to include the required consent of the qualified person.

[22] Though the precise wording of the Rogers Admissions, Keenan Admissions and Mitchell Admissions varied on this point, each Respondent admitted that he knew or ought reasonably to have known that the RG OM Deficiencies constituted omissions that, in a material respect and at the time and in light of the circumstances, failed to state facts required to be stated to make the Impugned RG OMs not misleading. In the result, Rogers and Mitchell admitted that they each signed OM certificates inaccurately declaring that the Impugned RG OMs did not contain any misrepresentations.

[23] Rogers, Keenan and Mitchell admitted that they knew or, in the circumstances ought to have known, that the Impugned RG OMs would be relied upon by investors and that the disclosure contained within the Impugned RG OMs was insufficient to enable a prospective investor to make an informed investment decision.

[24] Keenan admitted that he was primarily responsible for the preparation of the Impugned RG OMs, a fact that was consistent with the Rogers Admissions and the Mitchell Admissions.

D. ROGI Brochure

[25] Rogers and Keenan admitted that in soliciting investments in ROGI, its management and board of directors authorized, permitted or acquiesced in the creation of a brochure to be provided to investors (the **Brochure**). Both were part of ROGI's management and board of directors during the ROGI Relevant Period – Rogers was an officer and a director, and Keenan acted in those roles.

[26] The Brochure included (the **Brochure Representations**):

- the statement "Investors secured by company assets", when none of the securities issued by ROGI were so secured; and

- a table setting out estimated Oil & Gas Revenue, Rates of Returns on Participating Debentures and Net Asset Value per Share for ROGI, without any,

or any reasonable, basis for the estimates, and without properly advising investors as to the various risk factors inherent in the estimates.

[27] Rogers and Keenan admitted that, with hindsight, they each knew or ought reasonably to have known that the Brochure Representations were statements that were, in a material respect and at the time and in the light of the circumstances in which they were made, misleading or untrue, or failed to state a fact required to be stated or necessary to make the statement not misleading, and would reasonably be expected to have a significant effect on the market price or value of the ROGI securities.

E. Specific Admissions

[28] Rogers, Keenan and Mitchell specifically admitted to contravening Alberta securities laws during the material times in the following ways:

- Rogers and Keenan contravened section 110 of the Act by distributing securities of the Companies without having filed a prospectus or having received a prospectus receipt, and without an applicable prospectus exemption, and this conduct was also contrary to the public interest;

- Mitchell permitted or acquiesced in the Companies' contraventions of section 110 by trading in securities where such trades were distributions and without having filed a prospectus or preliminary prospectus or having received a prospectus receipt; and

- Rogers and Keenan contravened section 92(4.1) when they made statements known to be materially misleading and that would reasonably be expected to have a significant effect on the market price or value of the Companies' securities, and that this conduct was also contrary to the public interest.

F. Status of the Companies

[29] On 17 August 2011, ROGI sought and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (the **CCAA**). As a result, the current status of investors' investments in ROGI is uncertain. Rogers has remained involved by working with ROGI and its professional advisors through the CCAA process.

[30] Rogers Gold is currently seeking to sell its assets but the current status of investors' investments in Rogers Gold is uncertain.

III. ANALYSIS

A. Illegal Distributions

1. The Law

[31] The prospectus requirement found in section 110(1) of the Act prohibits a person or company from distributing a security in the absence of a filed and receipted prospectus – unless an exemption is available.

[32] The broadly-defined term "security" includes "any bond, debenture, note or other evidence of indebtedness, share, stock, . . ." (section 1(ggg)(v) of the Act).

[33] A "trade" is broadly defined in section 1(jjj) of the Act to include a "sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation made directly or indirectly in furtherance" of a trade.

[34] A "distribution" is defined in section 1(p) of the Act as including "a trade in securities of an issuer that have not been previously issued". These are securities issued directly from the issuer's treasury to the purchaser, as was the case here.

[35] Exemptions from the prospectus requirement are provided under NI 45-106, and include, as noted above, the OM Exemption. A person or company making a trade or distribution in reliance on an exemption "must have made a reasonable, serious effort, or taken whatever steps were reasonably necessary, to ensure that the exemption was available to make the trade or distribution at the time of the trade or distribution" (*Re Bartel*, 2008 ABASC 141 at para. 115). Further, it is essential that all requirements of the OM Exemption are complied with strictly, including a properly-signed certificate stating "*This offering memorandum does not contain a misrepresentation*".

2. Distributions of Securities

[36] As acknowledged by the Respondents, the Companies sold their shares and debentures to investors in Alberta. The ROGI and Rogers Gold shares and debentures were securities under the Act (securities as defined in section 1(ggg)(v)). The ROGI and Rogers Gold securities were sold to Alberta investors in exchange for money – valuable consideration – and thus were "trades" of securities under the Act (section 1(jjj)). These securities had not been previously issued by the Companies and, as admitted, they constituted distributions of securities. The Companies were therefore required by section 110(1) to file and receive a receipt for a prospectus from the Executive Director for the distribution, or, alternatively, to ensure that they met the requirements of an applicable exemption from the prospectus requirement, as set out in NI 45-106.

[37] The evidence is clear that no prospectus or preliminary prospectus was filed – and no receipts were issued by the Executive Director – for any of the securities distributed by the Companies. Instead, ROGI and Rogers Gold purported to rely on the OM Exemption to distribute their securities. However, as admitted by Rogers, Keenan and Mitchell, the Impugned ROGI OMs and the Impugned RG OMs contained numerous material defects and omissions, including inaccurate certificates. Distributions made using those documents thus failed to comply strictly with the requirements of the OM Exemption; investors were not in a position to make informed investment decisions.

[38] We therefore find that ROGI and Rogers Gold failed to comply with the requirements of the OM Exemption. In the result, the impugned distributions of ROGI securities during the ROGI Relevant Period and of Rogers Gold securities during the RG Relevant Period were made without an applicable exemption from the prospectus requirement.

[39] For these reasons, we find that ROGI and Rogers Gold each contravened section 110(1) of the Act.

[40] We also find that Rogers and Keenan each breached section 110(1) of the Act by distributing ROGI securities during the ROGI Relevant Period and Rogers Gold securities during the RG Relevant Period, without there having been filed prospectuses or preliminary prospectuses and receipts issued therefor, and without strictly meeting the requirements of an applicable prospectus exemption.

[41] We further find that Mitchell – an officer of ROGI and a director and officer of Rogers Gold – authorized, permitted or acquiesced in the Companies' contraventions of section 110(1) of the Act.

B. Misleading or Untrue Statements

1. The Law

[42] Section 92(4.1) of the Act states:

> No person or company shall make a statement that the person or company knows or reasonably ought to know
>
> (a) in any material respect and at the time and in the light of the circumstances in which it is made,
>
> (i) is misleading or untrue, or
>
> (ii) does not state a fact that is required to be stated or that is necessary to make the statement not misleading,
>
> and
>
> (b) would reasonably be expected to have a significant effect on the market price or value of a security . . . .

2. Misleading or Untrue Statements

[43] The NOH did not allege that Mitchell had contravened section 92(4.1) of the Act and therefore we make no finding on that matter.

[44] We find, consistent with the Rogers Admissions and the Keenan Admissions, that at least some of the ROGI OM Deficiencies, the RG OM Deficiencies and the Brochure Representations were misleading or untrue (or both) or failed to state a fact required or necessary to be stated to make the statements not misleading. We also find, as admitted, that Rogers and Keenan knew or reasonably ought to have known that the ROGI OM Deficiencies, the RG OM Deficiencies and the Brochure Representations were misleading or untrue (or both) or failed to state a fact required or necessary to be stated to make the statements not misleading.

[45] Rogers – a director and officer of both ROGI and Rogers Gold and a founder and promoter of ROGI – admitted that he ought reasonably to have known of the misrepresentations in the Impugned ROGI OMs and the Impugned RG OMs. Rogers signed admittedly inaccurate ROGI OM and Rogers Gold OM certificates declaring that those documents contained no misrepresentations. We find, consistent with the Rogers Admissions, that the certificates for the Impugned ROGI OMs and Impugned RG OMs were untrue in a material respect. Keenan – a promoter and founder of ROGI and Rogers Gold – admitted preparing drafts of the Impugned

ROGI OMs and being primarily responsible for preparing the Impugned RG OMs. As such, he also bore responsibility for the misrepresentations in those documents.

[46] We find, as admitted, that certain of the ROGI OM Deficiencies, the RG OM Deficiencies and the Brochure Representations would reasonably be expected to have a significant effect on the market price or value of the ROGI and Rogers Gold securities during the ROGI Relevant Period and RG Relevant Period, as applicable, and that Rogers and Keenan knew or reasonably ought to have known this.

[47] Accordingly, in all the circumstances, we find that Rogers and Keenan contravened section 92(4.1) of the Act.

C. Conduct Contrary to the Public Interest

[48] The prospectus requirement is a key investor protection mechanism for the investing public because it ensures that an investor contemplating a purchase of securities has full, true and plain disclosure of the information required to assess properly the investment and its risks – ultimately leading to the ability to make an informed investment decision.

[49] The OM Exemption provides an exception from the basic requirements for distributions of securities under Alberta securities laws. The OM Exemption eliminates the requirement for a reviewed prospectus but provides investors with an alternative basis – the offering memorandum – on which to make reasonably informed investment decisions.

[50] When used properly, the OM Exemption can facilitate capital-raising activities. However, when used improperly, as here, identifiable investors are directly harmed or placed at risk, as the means to make an investment decision on reasonably accurate, reliable disclosure are absent. There can also be broader repercussions. Abuse or misuse of an exemption can threaten the willingness of directly-affected investors to take part in other prospectus-exempt offerings (or, perhaps in any offering). That trepidation can extend to other potential investors who learn of the negative experience. Damaged investor confidence – in prospectus-exempt offerings, or in the capital market more generally – can, in turn, impair the ability of other market participants who seek to raise investment capital legally.

[51] The Respondents' failures, in their capacities as (or acting as) the Companies' directors and officers, to distribute properly the ROGI securities and the Rogers Gold securities – by complying with either the prospectus requirement or the OM Exemption – showed a general disregard for fundamental protective elements of Alberta securities laws. In the result, ROGI and Rogers Gold investors were denied the benefits of fundamental protections to which they were entitled under Alberta securities laws.

[52] In short, the deficiencies and misrepresentations in the Impugned ROGI OMs and the Impugned RG OMs, for which Rogers, Keenan and Mitchell were variously responsible, were contrary to the spirit and intent of the OM Exemption. The various conduct of Rogers, Keenan and Mitchell with respect to the misrepresentations and deficiencies found in the Impugned ROGI OMs, the Impugned RG OMs and the Brochure was clearly contrary to the public interest, and we so find.

[53] For these reasons, we conclude that Rogers, Keenan and Mitchell – through their contraventions of the Act – engaged in conduct contrary to the public interest.

IV. FINDINGS

[54] We find that Rogers and Keenan contravened sections 110(1) and 92(4.1) of the Act and that Mitchell authorized, permitted or acquiesced in ROGI's and Rogers Gold's contraventions of section 110(1). That conduct was contrary to the public interest.

V. SANCTION AND COSTS

A. General Sanctioning Principles

[55] The Commission is responsible for the administration of Alberta securities laws. The focus of the Commission's public interest mandate is to protect both Alberta investors and the Alberta capital market from capital-market misconduct. In considering sanctions in the public interest under sections 198 and 199 of the Act, our objective is not to punish or remedy capital-market misconduct but to act prospectively to protect from future harm Alberta investors and the efficiency and integrity of our capital market (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). Specific and general deterrence are important considerations when determining what, if any, protective and preventative orders to make (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62).

[56] We also take into account relevant factors such as those set out at para. 11 of *Re Lamoureux*, [2002] A.S.C.D. No. 125 (affirmed on other grounds 2002 ABCA 253), as restated at para. 43 of *Re Workum and Hennig*, 2008 ABASC 719 (affirmed 2010 ABCA 405):

- 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.

B. General Cost-recovery Principles

[57] Ordering a respondent to pay "costs" is not a sanction, but a way of recovering costs incurred during the course of Commission enforcement proceedings. A respondent who has contravened Alberta securities laws or acted contrary to the public interest is generally ordered to pay at least a portion of the investigation and hearing costs so they are not borne by law-abiding capital-market participants. A respondent's contribution to the efficiency of the Commission's adjudicative processes is a relevant factor in determining an appropriate cost-recovery order.

C. Joint Recommendation of the Parties

[58] The Joint Recommendation for Rogers is the imposition of the following sanction and cost-recovery orders:

- Rogers cease trading in or purchasing securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, for 12 years, with the exception of trades made by Rogers in a registered retirement savings account (**RRSP**), tax-free savings account (**TFSA**) or registered education savings plan (**RESP**) (each as defined in the *Income Tax Act* (Canada)), or a personal brokerage account, for the benefit of one or more of himself, his spouse or children, provided such trades are made through a registrant;

- Rogers immediately resign all positions he holds as a director or officer of any reporting issuer, and he be prohibited from becoming or acting as a director or officer (or both) of any reporting issuer, for 12 years;

- Rogers immediately resign all positions he holds as a registrant or investment fund manager, and he be prohibited from acting as a registrant or investment fund manager, for 12 years;

- Rogers be permanently prohibited from acting in a management or consultative capacity in connection with capital-raising activities in the securities market;

- Rogers pay an administrative penalty of $200 000; and

- Rogers pay $10 000 towards the costs of the investigation.

[59] The Joint Recommendation for Keenan is the imposition of the following sanction and cost-recovery orders:

- Keenan cease trading in or purchasing securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, for 12 years, with the exception of trades made by Keenan in an RRSP, TFSA, RESP or personal brokerage account, for the benefit of one or more of himself, his spouse or children, provided such trades are made through a registrant;

- Keenan immediately resign all positions he holds as a director or officer of any issuer, and he be prohibited from becoming or acting as a director or officer (or both) of any issuer, for 12 years, with the exception of any private issuer whose securities are all held by Keenan or members of his immediate family;

- Keenan immediately resign all positions he holds as a registrant or investment fund manager, and he be prohibited from acting as a registrant or investment fund manager, for 12 years;

- Keenan be prohibited from acting in a management or consultative capacity in connection with capital-raising activities in the securities market, for 12 years;

- Keenan pay an administrative penalty of $200 000; and

- Keenan pay $10 000 towards the costs of the investigation.

[60] The Joint Recommendation for Mitchell is the imposition of the following sanction and cost-recovery orders:

- Mitchell cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, for 10 years, with the exception of trades made by Mitchell in an RRSP or TFSA for the benefit of one or more of himself or his spouse, provided such trades are made through a registrant;

- Mitchell resign all positions he holds as a director or officer of any issuer and he be prohibited from becoming or acting as a director or officer (or both) of any issuer, for 10 years, with the exception of any private issuer whose securities are all held by Mitchell or members of his immediate family;

- Mitchell pay an administrative penalty of $45 000; and

- Mitchell pay $5000 towards the costs of the investigation.

D. Appropriate Sanction and Cost-recovery Orders

[61] We now consider the sanctioning principles and factors and the cost-recovery principles applicable to the facts here, including the Joint Recommendations for Rogers, Keenan and Mitchell.

[62] We assess the proposed sanctions in the Joint Recommendation for Rogers, the Joint Recommendation for Keenan and the Joint Recommendation for Mitchell based on whether they fall within acceptable parameters, and meet the Commission's public interest objective of protection through deterrence. We do not consider the sanction orders we might otherwise have made after hearing all the evidence and making findings on that evidence.

[63] While the appropriate public interest sanctions to order for the particular facts and circumstances here is ultimately a matter for our judgment, we gave substantial weight to the Joint Recommendation for Rogers, the Joint Recommendation for Keenan and the Joint Recommendation for Mitchell.

[64] The following facts and circumstances were relevant in assessing the sanctions appropriate in the cases of Rogers, Keenan and Mitchell:

- Rogers, Keenan and Mitchell (although to a much lesser extent) played pivotal roles in the illegal distributions of ROGI and Rogers Gold securities;

- the contraventions of the Act and conduct contrary to the public interest engaged in by Rogers, Keenan and Mitchell (again, to a much lesser extent) are serious matters;

- their misconduct caused harm to identifiable investors and to the reputation and integrity of the Alberta capital market;

- all believed that the Impugned ROGI OMs and the Impugned RG OMs complied with Alberta securities laws, but now, with the benefit of hindsight, understand that such was not the case;

- Keenan prepared drafts of the ROGI OMs and was primarily responsible for preparing the Rogers Gold OMs;

- Rogers and Keenan were involved in the drafting of the Brochure;

- Mitchell was a director or officer of ROGI for part of the ROGI Relevant Period;

- neither Rogers nor Mitchell has any history of capital-market misconduct;

- Keenan has a history of capital-market misconduct;

- Rogers continued to work with ROGI and Rogers Gold in an attempt to realize some return of money to investors; and

- in these circumstances, the sanctions imposed on the Respondents must be significant enough to deter them and others from engaging in similar misconduct in the future.

[65] We also took into account that Rogers, Keenan and Mitchell – by agreeing to the Rogers Admissions, the Keenan Admissions and the Mitchell Admissions and to the Joint Recommendation for Rogers, the Joint Recommendation for Keenan and the Joint Recommendation for Mitchell – demonstrated recognition of their misconduct, are remorseful for the losses occasioned to ROGI and Rogers Gold investors, cooperated with Staff, and saved the time and expense associated with a contested enforcement hearing.

[66] Had a full hearing been conducted, this panel may well have reached a different conclusion as to the appropriate sanctions and costs in all the circumstances. However, we are satisfied that, overall, the sanctions and costs proposed in the Joint Recommendation for Rogers, Joint Recommendation for Keenan and Joint Recommendation for Mitchell are within an acceptable range of appropriateness in all the circumstances for Rogers, Keenan and Mitchell, respectively, and will provide the protection and deterrence required in the public interest.

VI. ORDERS

[67] For the reasons given, we make the following orders.

Rogers

[68] Concerning Rogers:

- under sections 198(1)(b) and (c) of the Act, Rogers cease trading in or purchasing securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, for 12 years to and including 30 October 2025, except that this order does not preclude him from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of this decision) in an RRSP, RESP, TFSA or personal brokerage account for the benefit of one or more of Rogers, his spouse, and his children, if any;

- under sections 198(1)(d) and (e), Rogers resign from all positions he holds as a director or officer of any reporting issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any reporting issuer, for 12 years to and including 30 October 2025;

- under section 198(1)(e.2), Rogers is prohibited from becoming or acting as a registrant or investment fund manager, for 12 years to and including 30 October 2025;

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

- under section 199, Rogers pay an administrative penalty of $200 000; and

- under section 202, Rogers pay $10 000 of the costs of the investigation.

Keenan

[69] Concerning Keenan:

- under sections 198(1)(b) and (c) of the Act, Keenan cease trading in or purchasing securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, for 12 years to and including 30 October 2025, except that this order does not preclude him from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of this decision) in an RRSP, RESP, TFSA or personal brokerage account for the benefit of one or more of Keenan, his spouse, and his children, if any;

- under sections 198(1)(d) and (e), Keenan resign from all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a

director or officer (or both) of any issuer, for 12 years to and including 30 October 2025, except that this order does not preclude him from acting as a director or officer (or both) of any issuer that is wholly owned by one or more of his immediate family members and does not issue or propose to issue securities to the public;

- under section 198(1)(e.2), Keenan is prohibited from becoming or acting as a registrant or investment fund manager, for 12 years to and including 30 October 2025;

- under section 198(1)(e.3), Keenan is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, for 12 years to and including 30 October 2025;

- under section 199, Keenan pay an administrative penalty of $200 000; and

- under section 202, Keenan pay $10 000 of the costs of the investigation.

Mitchell

[70] Regarding Mitchell:

- under section 198(1)(b) and (c) of the Act, Mitchell cease trading in or purchasing securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, for 10 years to and including 30 October 2023, except that this order does not preclude him from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of this decision) in an RRSP or TFSA for the benefit of one or more of Mitchell and his spouse;

- under sections 198(1)(d) and (e), Mitchell resign from all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, for 10 years to and including 30 October 2023, except that this order does not preclude him from acting as a director or officer (or both) of any issuer that is wholly owned by one or more of his immediate family members and does not issue or propose to issue securities to the public;

- under section 199, Mitchell pay an administrative penalty of $45 000; and

- under section 202, Mitchell pay $5000 of the costs of the investigation.

[71] This proceeding is concluded.

30 October 2013

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Ian D. Beddis

"original signed by"
A. Webster Macdonald, QC