ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Cerato, 2022 ABASC 121 **Date: 20220919**

Jan Gregory Cerato (a.k.a. Jan Strzepka)

Panel:	Kari Horn Tom Cotter Karen Kim
Representation:	Amelia Martin Adam Karbani for Commission Staff Jan Cerato for himself
Submissions Completed:	June 23, 2022
Decision:	September 19, 2022

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I. INTRODUCTION

[1] Following a ten-day hearing into the merits of the allegations made by staff (**Staff**) of the Alberta Securities Commission (the **ASC**) (the **Merits Hearing**), this panel found that the respondent, Jan Gregory Cerato (a.k.a. Jan Strzepka) (**Cerato**) breached s. 110 of the *Securities Act* (Alberta) (the **Act**) by illegally distributing securities.

[2] Upon the issuance of our decision (the **Merits Decision**, cited as *Re Cerato*, 2022 ABASC 31), this proceeding moved into the second phase to determine what (if any) sanction or cost-recovery orders should be made against Cerato pursuant to ss. 198, 199 and 202 of the Act.

[3] For the following reasons, we order that Cerato pay an administrative penalty of $40,000, that he be subject to certain market-access bans for at least eight years contingent on his payment of the administrative penalty, and that he pay costs of $125,000.

II. BACKGROUND

[4] Staff and Cerato were provided an opportunity to present additional evidence relevant to the issue of appropriate orders but both parties declined. Thereafter, we received written submissions from Staff, along with a summary of Staff's investigation and enforcement costs and supporting documentation (the **Bill of Costs**). Cerato did not provide written submissions. As neither party requested an oral hearing for argument on sanction and costs, and the panel did not require such a hearing, our decision on sanction and cost-recovery is based on the record of the Merits Hearing, our findings in the Merits Decision, Staff's written submissions, and the Bill of Costs.

A. Summary of Facts and Findings from the Merits Decision

[5] These reasons should be read in conjunction with the Merits Decision, which sets out the facts, law and analysis that led to our decision that Cerato contravened s. 110 of the Act. The following synopsis outlines the more significant aspects of the Merits Decision relevant to the analysis of appropriate sanction and cost-recovery orders.

[6] Starting in December 2017, Cerato solicited members of the public to invest in the WhaleClub (the **WhaleClub**), which he promoted primarily through online forums and in-person workshops as an investment suitable for individuals who were inexperienced with cryptocurrency trading. The only requirement was for investors to contribute a minimum of $10,000 in fiat currency or the equivalent in Bitcoin, which was pooled with capital invested by others and used by Cerato's team to trade cryptocurrencies. Investors generally understood that their principal investment would be used for 90 days, at which point they would be repaid their principal along with 75% of any profit, and the trading team would retain 25% of any profit.

[7] Cerato did not file a prospectus for the WhaleClub investment and he did not explain to investors the risks associated with the WhaleClub. Instead, he marketed the WhaleClub by focusing on the returns for investors, telling them that the minimum goal was to double the investment with the potential to "double the funds a number of times together" in the initial 90 days. One WhaleClub promotion suggested that an investment could double every few weeks, and Cerato told an investor that his capital would multiply tenfold in a short period of time.

[8] Investors were not asked to complete any documents (such as a subscription agreement) either before or at the time they invested, and Cerato did not inquire about the financial circumstances of investors, most of whom were previously unknown to him. After he received their investment funds, Cerato provided most of the investor witnesses with a spreadsheet (the **WhaleClub Agreement**) outlining certain terms of the WhaleClub investment.

[9] Cerato raised at least $200,000 for the WhaleClub from at least 16 investors. The WhaleClub failed, and Cerato's trading team did not generate a return for investors. Instead, investors lost thousands of dollars and received only a small portion of their principal in return, ranging from approximately 10% to 40% of their capital.

[10] In the Merits Decision, we found that Cerato contravened s. 110 of the Act by engaging in a distribution of securities without a prospectus. In making this finding, we concluded that Cerato traded investment contracts that were securities within the meaning of the Act, that they had not been previously issued, and that there were no applicable exemptions from the prospectus requirement. Despite Cerato's contention that the private investment club exemption was available, we found it was inapplicable here because the investment contracts were distributed "to the public".

[11] Cerato also asserted as part of his defence that his freedom of expression had been infringed and that this warranted a stay of proceedings. We found that he had not established a violation of his constitutional rights.

B. Subsequent Developments

[12] While the Merits Decision was under reserve, Cerato applied for a stay of proceedings based on an alleged administrative delay (the **Stay Application**). The Stay Application – heard by a different panel at Cerato's request – was dismissed (*Re Cerato*, 2022 ABASC 56).

[13] Following that determination, Cerato's counsel sought and was granted leave to withdraw.

III. ORDERS SOUGHT BY STAFF

[14] Staff submitted that the public interest warrants orders requiring Cerato to pay an administrative penalty of $40,000 and imposing certain market-access restrictions against him for eight years, contingent on payment of the administrative penalty. Staff also sought a cost-recovery order of $125,000.

[15] As mentioned, Cerato did not provide written or oral submissions.

IV. SANCTION

A. General Sanctioning Principles

[16] Sections 198 and 199 of the Act authorize an ASC panel to make certain orders when it is in the public interest. In this context, the public interest is measured by the ASC's mandate to protect investors and to maintain and foster a fair and efficient capital market (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). Thus, sanction orders are not meant to punish a respondent or remediate past misconduct but are preventive in nature and prospective in orientation, with the

objective of preventing future misconduct (see *Re Homerun International Inc.*, 2016 ABASC 95 at para. 12).

[17] Both specific deterrence (deterring future misconduct by a particular respondent) and general deterrence (deterring future misconduct by others) are legitimate sanctioning considerations (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; *Homerun* at para. 13). Nevertheless, sanction orders must also be proportionate and reasonable, taking into account the particular circumstances of the misconduct and the respondent (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 154; *Homerun* at paras. 13-15). Appropriate consideration of previous decisions and settlement outcomes can assist in this analysis (*Homerun* at para. 16).

[18] Certain sanctioning factors have been identified and refined in previous ASC decisions to help focus the analysis (*Homerun* at paras. 20-22). These factors include:

- the seriousness of the respondent's misconduct;
- the respondent's characteristics and history;
- any benefit sought or obtained by the respondent; and
- any mitigating or aggravating considerations.

[19] We adopt the discussion of these factors in *Homerun* (at paras. 20-46), although we do not repeat it here other than to highlight some of the more pertinent aspects in our analysis.

B. Analysis

1. Seriousness of the Misconduct

[20] Serious misconduct generally indicates a greater need for deterrence, as it reflects a heightened risk of future harm (*Homerun* at para. 26). In this context, seriousness is measured by considering various interrelated elements of the misconduct, such as its underlying nature, the respondent's intent (i.e., whether the misconduct was deliberate, reckless, or inadvertent), and the extent to which it exposed identifiable investors or the capital market to harm – both financial harm and any corresponding loss of confidence in our capital market related to the misconduct (*Homerun* at para. 22; *Re Aitkens*, 2019 ABASC 151 at para. 21).

[21] Cerato's central role in the WhaleClub caused investors to invest large sums without the benefit of a prospectus. The prospectus requirement – a fundamental protection for investors and the integrity of the capital market – allows investors to make informed investment decisions by providing them with full, true and plain disclosure of material information to assess the risks of an investment (*Limelight Entertainment Inc.*, 2008 ONSEC 4 at para. 139; see also *Re Mek Global Limited*, 2022 ONCMT 15 at para. 103). Cerato's misconduct deprived investors of this critical safeguard and was a serious contravention of Alberta securities laws.

[22] We observed in the Merits Decision (at para. 287) that the WhaleClub investors were precisely the type of individuals who need the protection of prospectus-like disclosure. Cerato promoted the WhaleClub as an investment opportunity well-suited for novice investors seeking to

access cryptocurrency markets – widely regarded as complex, speculative and volatile. Although he suggested in his investigative interview that the WhaleClub was "an experiment with cryptocurrency" and a "casual situation", this is not what he told WhaleClub investors and instead made "extravagant promises of spectacular returns". WhaleClub members were exposed to significant financial risks that they did not fully appreciate when they invested. One investor witness said that he invested because it "all sounded too good not to", whereas another was persuaded by Cerato's assurance that he could profit whether Bitcoin was going up or down.

[23] Despite receiving limited repayments of their capital, the harm experienced by individual WhaleClub investors was more than the financial loss. One WhaleClub investor described the terrible impact he experienced, citing financial hardship and that "it's been a huge embarrassment in my life in front of my friends and family". Another said that he trusted Cerato and felt cheated. An unfortunate but recurring aspect of capital market misconduct is the effect it has on investors who often report similar feelings of guilt, embarrassment and a loss of trust in others.

[24] In these circumstances, the seriousness of Cerato's misconduct and the harm experienced by WhaleClub investors require both specific and general deterrence.

2. Cerato's Characteristics and History

[25] A respondent's characteristics and history (such as their level of education and work experience, background in the capital market, and any relevant disciplinary history) can inform the deterrence required by providing insight into the future risk posed to investors and the capital market, and can also inform proportionality considerations (*Homerun* at para. 27).

[26] Cerato was not registered with the ASC, nor had he been sanctioned for any capital-market misconduct in the past. Staff submitted that the absence of a disciplinary record does not necessarily lessen the need for significant sanction, and the fact that Cerato represented himself as a cryptocurrency-trading expert when soliciting WhaleClub investors suggests a continuing risk to Alberta investors and the integrity of the capital market.

[27] We agree that Cerato's lack of a disciplinary record does not reduce the need for deterrence here, particularly where there is no indication that he learned from his misconduct or expressed any regret or responsibility for the harm he caused. Instead, he blamed others and aggressively intimidated investors with threats of physical harm and civil litigation. In these circumstances, we discerned an ongoing risk should Cerato be permitted to continue participating in the capital market.

3. Benefits Sought or Obtained by Cerato

[28] The extent to which a respondent benefited from the misconduct, or whether the misconduct was undertaken in hopes of obtaining a benefit, may reflect a greater risk of future harm and thus a heightened need for deterrence (*Homerun* at para. 35). Financial gain is often the most obvious benefit, but less tangible benefits (such as an enhanced reputation) may engage similar concerns about a respondent's risk of future misconduct (*Homerun* at para. 36).

[29] Staff submitted that Cerato sought to profit from his misconduct based on the profit-sharing term in the WhaleClub Agreements that entitled the trading team to a 25% share of any profits.

Because Cerato was not a part of the trading team, we do not find that he sought a direct financial benefit from his misconduct.

[30] Cerato's motivation may have been to indirectly benefit from the WhaleClub, given that he took advantage of his access to WhaleClub members to promote and market other business opportunities. As Staff did not argue this point, we make no finding in this regard.

[31] In the circumstances, we consider this factor to be neutral.

4. Mitigating and Aggravating Considerations

[32] A comprehensive sanctioning analysis should consider any other relevant circumstances, both mitigating and aggravating, that do not fall within the previously mentioned factors (*Homerun* at para. 39). Mitigating considerations may include "a genuine acceptance of responsibility" or other "[p]ersuasive indications that a respondent appreciates the wrong done, and its seriousness", whereas a "belligerent contempt for either the victims of the misconduct or the law" may be considered aggravating as an indicator of the risk of future misconduct (*Homerun* at paras. 40-46).

[33] Staff contended that the return of some funds to investors was not mitigating because only a small portion of their capital was repaid and investors ultimately lost thousands of dollars from Cerato's misconduct.

[34] Staff submitted that Cerato's "belligerent contempt" towards his victims demonstrated a heightened need for specific and general deterrence and was therefore an aggravating factor. Staff pointed to the threats made by Cerato to at least three different investor witnesses before the hearing. Cerato sent one a text message saying "I know you're a rat and so do a lot of very dangerous people; enjoy." Shortly before the Merits Hearing began, Cerato sent a text message to an investor witness in which he threatened to sue if the investor acted as a witness for the ASC:

> Our legal team is currently in the process of suing Scott Fleurie & Alex Jackson and anyone else that defamed Jan, exposed the club, discredited Jan, supplied false documents & witness to the securities commission about Jan, whaleclub [sic] etc. Legal is suing all these people for $500k each.
>
> If you want to help out because you were in the whaleclub [sic] Reach out and let Jan know your [sic] willing to support, all the legal costs will be covered for you no worries.

[35] Cerato sent a similar message to another investor shortly before the Merits Hearing.

[36] We considered these communications to be an obvious intimidation tactic on Cerato's part "by threatening litigation and in one case by making a veiled threat of physical harm" (Merits Decision at para. 108). The messages threatening civil lawsuits were serious enough to warrant a prehearing direction prohibiting Cerato from any further contact with hearing witnesses other than through his legal counsel (Merits Decision at para. 157).

[37] Cerato's threatening communications are a significant aggravating factor. In context, these communications reflected a contemptuous disregard for investors harmed by his misconduct, and a lack of accountability and acceptance of any responsibility for his actions. Accordingly, Cerato's actions towards investors demonstrated a significant risk of future misconduct and thus an increased need for deterrence, predominantly specific deterrence.

5. Conclusion on Sanctioning Factors

[38] We conclude from a consideration of the pertinent sanctioning factors that Cerato engaged in serious capital market misconduct for which he accepted little or no responsibility or regret and instead blamed others and exhibited contempt towards those who were harmed by his actions. Accordingly, we believe Cerato poses a significant risk to investors and the capital market, and that any sanction order must sufficiently deter him from engaging in similar misconduct. General deterrence is also important in this case, and the sanctions we impose should deter other like-minded individuals from engaging in similar misconduct, particularly in respect of cryptocurrency markets. As noted in *Re Coinsquare Ltd.*, 2020 ONSEC 19 (at para. 4):

> It must be clear to all who participate in the crypto asset industry that, where Ontario securities law applies to their activities, they are expected to meet the same high standards of honesty and responsible conduct that apply in the more traditional capital markets.

[39] While a sanction order must also be proportionate and reasonable, we have little evidence about Cerato's current circumstances that might assist in this regard. There was no suggestion that he is destitute or having financial difficulties, and his educational and business background seemed more focused on marketing and web development, whereas he characterized his cryptocurrency seminars as a donation of his time to the community. That suggested to us that the sanction orders proposed by Staff, particularly the market-access bans, would not be disproportionately onerous.

6. Outcomes in Other Proceedings

[40] Staff cited five prior ASC decisions to assist in our sanctioning analysis. Previous decisions and settlement outcomes involving the same or similar misconduct may help in formulating a package of sanctions that is proportionate to the respondent's misconduct and personal circumstances (*Re Holtby*, 2015 ABASC 891 at para. 54, *Homerun* at para. 16).

[41] These five decisions involved sanctions for multiple infractions – including illegal trades and distributions of securities – some of which also involved mitigating considerations that factored into the sanction orders. Staff acknowledged that these prior decisions may be of limited assistance given that they are relatively dated and do not involve witness intimidation as an aggravating factor. They are summarized here:

- *Re Bartel*, 2008 ABASC 398 – an ASC panel ordered seven-year market bans and a $40,000 administrative penalty for illegal trading and distributing of securities involving four different issuers over a period of more than two years, in which more than $800,000 was raised from approximately 70 investors (over half were Alberta investors);

- *Re Broers*, 2009 ABASC 25 – an ASC panel imposed 10-year market bans and a $40,000 administrative penalty against a licensed mortgage broker who admitted to participating in illegal trading and distribution of securities (more than $700,000 from approximately 50 Alberta investors), and filing false reports of exempt distribution;

- *Re Innovative Energy Solutions Inc.*, 2008 ABASC 136 – the individual respondent, after admitting that the company he controlled illegally raised approximately US$1.1 million from 89 Alberta residents and having been found by an ASC panel to have acted contrary to the public interest, received 10-year market bans and a $60,000 administrative penalty;

- *Re Lavallee*, 2008 ABASC 78 (merits decision affirmed *sub nom. Alberta (Securities Commission) v. Lavallee*, 2009 ABCA 52) – Lavallee engaged in illegal trading and distribution of securities with several other individuals, together raising $1.5 million in investment funds from more than 100 Alberta investors, though Lavallee was linked to only a limited number of prospective investors (not all of whom invested). The ASC panel imposed five-year market bans and a $20,000 administrative penalty against Lavallee; and

- *Re Wheatfield Inc.*, 2009 ABASC 619 – the individual respondent received an administrative penalty of $75,000 and five-year market bans after he admitted to illegal trading and distribution of securities, raising about US$1.1 million from approximately 35 investors (at least 10 were Alberta investors) over a period of nearly 3.5 years.

[42] The circumstances surrounding Cerato's misconduct differed somewhat from these cases, as he contravened one provision of the Act and he raised less capital. However, here there was aggravating behaviour, whereas some of the comparable cases had mitigating circumstances and some involved admissions of misconduct by the respondents. Recognizing these differences, we accept that the cases cited by Staff indicate a benchmark of the nature and extent of sanctions typically ordered for the illegal distribution of securities, namely a combination of market-access bans ranging from five to ten years and administrative penalties ranging from $20,000 to $75,000. We found these cases helpful in our assessment of the reasonableness and proportionality of Staff's proposed sanction orders.

C. Types of Sanctions

1. Market-Access Bans

[43] Section 198(1) of the Act permits an ASC panel to impose various restrictions on a respondent's ability to participate in the Alberta capital market if it is in the public interest. An order made under s. 198(1) may be subject to any terms and conditions that the ASC may impose (s. 198(2)).

[44] The ASC's authority relative to market restrictions under s. 198(1) was described in *Re Fauth*, 2019 ABASC 102 (at para. 68):

> Different bans addressing different types of activity in the Alberta capital market are available under s. 198(1). They may be temporary or permanent, and subject to exceptions (the aforementioned "carve-outs") or not. Such orders prohibit those who contravene Alberta securities laws from future participation in the market, and make it apparent to others that they risk losing the privilege of participation if they undertake similar misconduct (see *Planned Legacies* at para. 63 and *Mandyland* at para. 51).

[45] Staff sought eight-year market-access prohibitions to restrict Cerato from trading in or purchasing any security or derivative (s.198(1)(b)), using any and all of the exemptions contained in Alberta securities laws (s.198(1)(c)), engaging in investor relations activities (s. 198(1)(c.1)), advising in securities or derivatives (s. 198(1)(e.1)), and acting in a management or consultative capacity in the securities market (s. 198(1)(e.3)). Staff contended that the nature of these bans are responsive to Cerato's misconduct, in which he held himself out as an expert cryptocurrency trader and solicited investors through online forums.

[46] Staff submitted that the length of any bans must take into account both specific and general deterrence, and that bans at the lower end of the range would not achieve that objective in light of Cerato's involvement in the cryptocurrency community and his threatening and intimidating behaviour.

[47] Staff also requested that the expiration of any market-access bans be contingent on the payment in full of any administrative penalty ordered. As determined in *Re Felgate*, 2021 ABASC 68 (at para. 71), the authority to impose conditions on a sanction order permits an ASC panel to link the expiry of market-access bans to the payment of an administrative penalty.

2. Administrative Penalty

[48] In addition to any other sanction that may be imposed, an ASC panel may order payment of an administrative penalty of not more than $1 million for each contravention or failure to comply with Alberta securities laws (s. 199(1) of the Act). An administrative penalty is an important sanctioning measure to address both specific and general deterrence (*Re Workum and Hennig*, 2008 ABASC 719 at para. 135, affirmed on other grounds *sub nom. Alberta (Securities Commission) v. Workum*, 2010 ABCA 405). As observed by the Alberta Court of Appeal, an administrative penalty should not be so low as to be viewed as merely another cost of doing business (*Alberta Securities Commission v. Brost*, 2008 ABCA 326 at para. 54), or otherwise ". . . communicate too mild a rebuke to the misconduct, or perhaps a licensing fee for its occurrence", lest "the opposite to deterrence may result" (*Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 at para. 21). We remain mindful that the amount of an administrative penalty must be "proportionate to the offence, and fit and proper for the individual offender" (*Walton* at para. 156).

[49] Staff submitted that while the proposed administrative penalty of $40,000 falls in the mid to upper end of the range in the cases cited for comparison, the amount is appropriate in the circumstances given the exceptional aggravating factor of Cerato's threatening conduct.

D. Conclusion on Sanction Orders

[50] In our view, the public interest necessitates a sanction order that includes both market-access bans and an administrative penalty.

[51] Market-access bans are necessary for Cerato's misconduct, which was carried out with reckless or careless disregard for Alberta securities laws. We also consider the nature of the proposed market-access bans to be appropriate given the context of Cerato's contraventions, which involved the distribution of securities without an applicable exemption and marketed to prospective WhaleClub investors without having any information about their personal circumstances. In our view, market-access bans of at least eight years will provide the requisite

level of protection and deterrence (both specific and general), are commensurate with sanctions ordered against others in relatively similar cases, and are proportionate and reasonable to what we know of Cerato's personal circumstances.

[52] We conclude that the public interest warrants an administrative penalty of $40,000. We also find it appropriate to link the expiry of the market-access bans to Cerato's payment of the administrative penalty, as that condition will reinforce the important deterrent effect of the administrative penalty and maintain the integrity of the capital market by precluding his future participation pending full compliance with our sanctions order.

V. COSTS

[53] Staff also requested an order under s. 202(1) of the Act, which provides that a person who has contravened Alberta securities laws or acted contrary to the public interest may be ordered to pay costs of or related to the hearing or the investigation that led to the hearing (or both).

[54] A cost-recovery order is distinct from a sanction order, as it is a means of recovering from a respondent certain investigation and hearing costs "that would otherwise be borne indirectly by law-abiding market participants whose fees fund the [ASC's] operations" (*Homerun* at para. 48). It is generally considered appropriate for a respondent to bear at least some portion of the relevant costs, with the precise amount determined by an assessment of the parties' relative contributions to the efficient conduct and resolution of the proceeding. For that reason, a cost-recovery order provides "an effective means of promoting procedural efficiency in the conduct of enforcement proceedings" (*Bartel* at para. 50).

[55] Section 20 of the *Alberta Securities Commission Rules (General)* provides that a cost-recovery order under s. 202(1) of the Act may include reasonable costs of Staff involved in the investigation or hearing (or both), based on the time expended and the applicable hourly rates, as well as amounts paid to witnesses or to any person or company engaged by Staff, so long as those amounts relate to the investigation or hearing and are reasonable in all the circumstances. Determining the reasonableness of such costs may involve some consideration of the time spent by Staff on a matter, while taking into account potential duplication of efforts and the nature and scale of claimed disbursements (*Homerun* at para. 50).

A. Staff's Position on Cost-Recovery Orders

[56] Staff's position was that a cost-recovery order was appropriate on a principled basis, and submitted that Cerato should be ordered to pay $125,000 of the hearing and investigation costs.

[57] According to the Bill of Costs, the investigation and hearing costs up to and including the time of oral submissions in the Merits Hearing came to approximately $147,000. Staff's costs to respond to Cerato's unsuccessful Stay Application were an additional $15,480. Staff asserted that litigation costs were reasonable in the circumstances, in part because junior litigation counsel assumed responsibility for significant aspects of the file. Even so, Staff acknowledged that the overall amounts were more than usual and pointed to several reasons for the increased costs:

- Cerato raised a novel issue relating to the private investment club exemption, which required significant research;

- shortly before the hearing, Cerato submitted a notice of constitutional question and sought to adjourn the Merits Hearing pending a referral to the Court of Queen's Bench;
- midway through the Merits Hearing, Cerato raised the prospect of examining the Director of Enforcement to provide evidence relevant to Cerato's constitutional challenge;
- responding to Cerato's constitutional issues was somewhat challenging and required additional resources, in part because the constitutional notice and Cerato's written submissions were "convoluted and carelessly drafted" and required considerable time "parsing and untangling Cerato's arguments" (Merits Decision at para. 113); and
- Cerato pursued the unsuccessful Stay Application.

[58] Staff conceded that Cerato is fully entitled to defend himself against Staff's allegations, but argued that he is responsible for the cost consequences of his defence strategy. In particular, Staff pointed to Cerato's constitutional challenge, which was described in the Merits Decision as a disingenuous contrivance advanced for improper purposes (para. 112). Taking into account the exceptional circumstances here, Staff argued that it was reasonable to order payment of $125,000 in costs. This amount was derived after making reasonable deductions to the Bill of Costs, including deducting certain litigation costs that were unnecessary or potentially duplicative, costs related to research on the private investment club exemption, costs related to Cerato's unsuccessful Stay Application, and costs related to sanction and cost-recovery orders.

B. Analysis and Conclusions on Costs

[59] Having carefully considered Staff's Bill of Costs and the supporting information, particularly in light of Staff's reductions and the decision not to seek costs associated with the Stay Application or the sanction phase of this proceeding, we are satisfied that the claimed costs are both recoverable and reasonable. Accordingly, we accept that $125,000 is a fair assessment of the recoverable costs.

[60] Cerato did not contribute to an efficient resolution of Staff's allegations. Despite being represented by counsel during the investigation and the hearing, his defence strategy and tactics complicated and lengthened the Merits Hearing. He did not provide any prehearing disclosure nor did his constitutional notice outline the evidence he sought to rely on in support of his constitutional arguments (including the materials and documents he intended to rely on, or the identity of relevant witnesses and the substance of their proposed testimony). These omissions led to certain complications during the hearing, including the use of additional hearing time dedicated to resolving evidentiary issues and the recall of a Staff investigator witness. In the Merits Decision (at para. 112), we found a lack of *bona fides* in Cerato's constitutional challenge – his arguments (including the prehearing request for authorization under s. 45(b) of the Act) were "disingenuous contrivances advanced on the eve of the hearing for improper purposes".

[61] In these circumstances, we consider it reasonable that Cerato bear a significant proportion of the investigation and hearing costs. We agree that he was entitled to defend against Staff's allegations, but he must accept the costs consequences of employing a strategy that prolonged the determination of this proceeding and increased the hearing costs (*Re Kilimanjaro*, 2021 ABASC 131 at para. 84).

[62] Accordingly, we conclude that it is appropriate and reasonable to order Cerato to pay $125,000 of the investigation and hearing costs.

VI. CONCLUSION AND ORDERS

[63] For the reasons given, we make the following orders against Cerato:

- for a period of eight years from the date of this decision or until the administrative penalty set out below is paid in full to the ASC, whichever is later:
    - under ss. 198(1)(b) and (c), he must cease trading in or purchasing securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to him;
    - under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
    - under s. 198(1)(e.1), he is prohibited from advising in securities or derivatives;
    - under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- under s. 199, he must pay to the ASC an administrative penalty of $40,000; and
- under s. 202, he must pay to the ASC $125,000 of the costs of the investigation and hearing.

[64] This proceeding is now concluded.

September 19, 2022

For the Commission:

"original signed by"
Kari Horn

"original signed by"
Tom Cotter

"original signed by"
Karen Kim