ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Ward, 2023 ABASC 62 **Date: 20230508**

Shane Courtney Ward

Panel:	Kari Horn Karen Kim Maryse Saint-Laurent, KC
Representation:	Adam Karbani Amanda Goodwin for Commission Staff Robert Stack for Shane Courtney Ward
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I. INTRODUCTION

[1] On May 29, 2020, staff (**Staff**) of the Alberta Securities Commission (the **ASC**) issued a notice of hearing (the **NOH**) alleging that Shane Courtney Ward (**Ward**) contravened several sections of the *Securities Act* (Alberta) (the **Act**).

[2] The allegations proceeded to a 12-day hearing (the **Merits Hearing**), and in a decision dated October 19, 2022 (cited as *Re Ward*, 2022 ABASC 139) (the **Merits Decision**), we found that Ward breached:

- s. 92(4.1) of the Act by making statements to investors that Ward knew or reasonably ought to have known: (i) were, in a material respect, misleading or untrue or did not state facts that were required to be stated or were necessary to make the statements not misleading; and (ii) would reasonably be expected to have a significant effect on the market price or value of a security;

- s. 93(1)(b) of the Act by directly or indirectly engaging or participating in an act, practice, or course of conduct relating to securities that he knew or ought to have known would perpetrate a fraud on investors; and

- s. 110(1) of the Act by distributing securities: (i) without having filed and received a receipt for a preliminary prospectus or prospectus from the Executive Director of the ASC; and (ii) without an exemption from that requirement for some or all of the relevant distributions.

[3] The proceedings then moved into this, their second phase, to determine what orders (if any) ought to be made against Ward as a result of his misconduct. Both parties provided written submissions on sanction and costs, and we heard the parties' oral arguments on January 10, 2023 (the **Sanction Hearing**).

[4] Based on the record of the proceedings, our findings in the Merits Decision, the parties' arguments, and Staff's summary of their investigation and litigation costs (the **Bill of Costs**), we have concluded that it is in the public interest to order permanent market-access bans against Ward, and to order him to pay both disgorgement and an administrative penalty. In addition, we are ordering Ward to pay a portion of the costs incurred by Staff to investigate and prosecute the allegations in the NOH.

[5] Our reasons for this determination follow.

II. MERITS DECISION – SUMMARY OF FACTS AND FINDINGS

[6] As the facts, law, and our analysis of this matter are set out in detail in the Merits Decision, it should be read together with this decision. For ease of reference, however, we summarize the most significant points below.

[7] At the time relevant to the allegations, Ward was the founder, sole proprietor, sole employee, and guiding mind of an investment business he called by its registered trade name, Engineered Wealth or **E-Wealth**. In addition, the evidence included documents describing Ward

as E-Wealth's "Managing Director and Executive Strategist". Neither Ward nor E-Wealth was registered with the ASC in any capacity.

[8] According to Ward, he started the business because he had had some personal success investing through the online **Qtrade** platform, and other people that he knew asked if he could make investments on their behalf. After some initial success trading for others, he consulted a securities lawyer, **AC**, for advice on formalizing his business arrangements.

[9] Initially, he structured the business as an investment fund in which investor money was pooled and used to make trades through Qtrade and other platforms. Ward and his investors were to share the profits, as set out in subscription agreements he entered into with each investor. Ward said he understood from AC that he could operate a non-registered, non-reporting private investment fund and offer exempt securities to certain qualified investors without having to register under securities laws, as long as he kept the number of investors under 50.

[10] Through 2011 and 2012, Ward sold investors **Units** in E-Wealth for $5,000 each.

[11] Ward testified that some time in or around 2013, AC told him that changes had been made to the applicable securities rules and regulations, and that he could no longer operate an investment fund unless he became a registered fund manager or portfolio manager. As Ward wished to avoid those requirements, he changed his business from the fund structure to a promissory note structure. Under the new structure, the subscription agreements stated that each Unit purchased was comprised of a promissory note in the amount of $5,000, and would pay a flat rate of return. During this latter phase, Ward also entered into two investment loan agreements, a loan agreement, and an undocumented investment with three investors, each of which we found was also an E-Wealth security.

[12] Ward was unsuccessful in his investing activities. By late 2017, E-Wealth had failed, and virtually all of the investors lost their money.

[13] Concerning Staff's allegation that Ward breached s. 110(1) of the Act, we found that while Ward had purported to qualify E-Wealth investors for an exemption from the prospectus requirement, the vast majority did not qualify for the exemption claimed. Staff met their burden to show that Ward distributed E-Wealth securities without a prospectus, but Ward failed to meet his burden as the issuer to show that he took reasonable steps to establish that his investors met the criteria for an exemption to apply.

[14] Consequently, we found that during the **Relevant Period** (February 2011 through April 2018), Ward distributed E-Wealth securities for which no prospectuses were filed with the ASC or receipted by the Executive Director, and for which there was no evidence that exemptions from the requirement were available. We therefore concluded that he breached the Act as alleged in the NOH by raising at least $500,307.52 from the distribution of E-Wealth securities in contravention of s. 110(1).

[15] As mentioned, we further concluded that in soliciting investments in E-Wealth and communicating with investors and potential investors during the Relevant Period, Ward made a number of misrepresentations both verbally and in writing.

[16] First, Ward led investors to believe they were not at risk of losing the principal amount of their investments because the principal would be protected. He knew or reasonably ought to have known that his statements in this regard were untrue, or omitted the facts necessary to prevent the statements from being misleading: i.e., that there was nothing in place to secure the investments beyond his personal liability, and there was nothing stopping him from dissipating the limited personal assets that he claimed would back his promise. He did not explain to E-Wealth investors what he meant when he offered "principal protection", the realistic limits of that protection, and the risks that investors' principal would be lost.

[17] Second, Ward told E-Wealth investors that they would and did earn specific high rates of return. Though we did not find that E-Wealth in itself was a sham or was simply incapable of generating the returns advertised (and because some returns were paid at the rates indicated), we did find that Ward omitted facts required to be stated or necessary to keep his statements concerning the returns to be paid from being misleading, and that he knew or reasonably ought to have known that was the case. He failed to provide investors with clear disclosure about the risks that the returns would not be paid, and instead used language that affirmatively indicated that no matter how the markets were doing, he had a system that eliminated volatility. He therefore conveyed the impression that receipt of the returns indicated was certain and risk-free, depriving investors of information necessary to allow them to make fully-informed investment decisions.

[18] Third, Ward told E-Wealth investors that he would use their investment funds to make investments and trade securities using his proprietary trading strategy, and he knew or reasonably ought to have known that this was false or required further disclosure to make his statements not misleading. While the evidence indicated that he used some of the funds for investing, it also showed that he improperly diverted a significant portion – $106,610.22 – for his personal use and other purposes that were not authorized by or disclosed to the investors. He maintained at the Merits Hearing that at least under his promissory note structure, he was entitled to treat the funds as simple business loans and spend the money as he wished, but we found that the investors had no such understanding. Rather, they expected that through E-Wealth, Ward would make investments on their behalf to generate the returns promised – even if they did not know anything about his investment strategy or the specific investments he intended to make – and not that they were making unsecured loans that he could use at his discretion.

[19] We also found that with each category of misrepresentation, Ward knew or reasonably ought to have known that his statements would reasonably be expected to have a significant effect on the market price or value of E-Wealth's securities. It is self-evident that securities advertised as no-risk but with a promise of high reward would be valued more highly and seen as more desirable by investors, and we had no doubt that Ward knew that was the case. Indeed, we had no doubt that he made the statements for precisely that reason: people would be more likely to entrust him with their money and invest.

[20] Similarly, we had no doubt that E-Wealth investors would have been less willing to invest if they had been told that Ward intended to treat their funds as a personal or business loan that he was entitled to spend in whatever manner he wanted, rather than as investment funds he would invest on their behalf utilizing his touted skills. Given that a number of the investor witnesses did not even know Ward prior to making their investments, we considered it improbable that they would have given him unsecured loans with no qualifications on their use. As we stated in the Merits Decision, a prospective investor's assessment of the risk involved in the investment would

have been directly affected by this knowledge, and this would in turn have affected the decision whether to invest and if so, how much. In our view, this was the likely reason that Ward marketed E-Wealth as he did even after he implemented the promissory note structure.

[21] Finally, we concluded in the Merits Decision that Staff had established all of the necessary elements to prove that Ward perpetrated a fraud on E-Wealth investors. He engaged in prohibited acts of deceit and falsehood by making the misrepresentations described, and those acts resulted in financial deprivation: the loss of the majority of the funds invested. Because he was the sole individual responsible for raising investment funds, using the funds, and communicating with investors, he had subjective knowledge of his prohibited acts and the fact that they could result in deprivation. Again, as we stated in the Merits Decision, he could not have been unaware of the possibility that he would not succeed and that funds in amounts beyond his capacity for repayment would be lost, especially when he did not dedicate all of the funds raised to investing activities. He may not have intended that outcome, but the case law is clear that such an intention is not required to establish fraud in this context.

[22] At the Merits Hearing, Ward advanced two possible defences to Staff's allegations: limitations and reasonable reliance on the legal advice he received from his lawyer, AC.

[23] Concerning the first, we found that Ward's illegal distribution of E-Wealth securities contrary to s. 110(1) of the Act constituted a continuing course of conduct that extended from February 2011 through to the date of the last deposit of investment funds in early September 2017. Similarly, we found that Ward's misrepresentations and fraud constituted a continuing course of conduct that did not end until E-Wealth collapsed. As a result, his limitations defence failed.

[24] Concerning the second, we found that Ward did not meet the requirements to establish reasonable reliance on AC's legal advice because he did not prove that AC was aware of all of the pertinent facts or that the advice given was actually followed. For example, in several instances, the email evidence Ward tendered showed that he received specific advice – including advice to discontinue his E-Wealth business entirely because of the regulatory requirements and the possibility of regulatory scrutiny – but disregarded it.

III. SANCTIONS

A. Purpose and General Principles

[25] Sections 198 and 199 of the Act provide that an ASC panel may make certain orders against respondents found to have breached Alberta securities laws, as long as the panel considers the orders to be in the public interest.

[26] Sanction orders are intended to protect the public and prevent future misconduct, rather than to punish respondents or address the harm suffered by investors (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). This accords with the ASC's mandate to protect investors and foster a fair and efficient capital market in which the public can have confidence.

[27] To achieve these goals, both specific deterrence (deterring future misconduct by the respondent) and general deterrence (deterring future misconduct by others who might be tempted to act in a similar fashion) are legitimate considerations (see *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62). While taking specific and general deterrence into account, sanctions

must be both "proportionate and reasonable" for the individual respondent in light of all of the circumstances of the case, including the respondent's personal circumstances (see *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at paras. 154 and 156; leave denied [2014] S.C.C.A. No. 476).

[28] This concept was explained in *Re Homerun International Inc.*, 2016 ABASC 95 (at paras. 14-15):

> The determination in a particular case of whether deterrence is required and, if so, the type and extent of sanctions appropriate for that purpose, will turn on the circumstances of the misconduct and of the particular respondent, and on an assessment of the risk posed to investors and the capital market by a particular respondent or by others who might be minded to emulate the respondent's misconduct.
>
> Pertinent to assessing the proportionality and reasonableness of a contemplated sanction is the Alberta Court of Appeal statement in *Walton* (at para. 154) that "general deterrence does not warrant imposing a crushing or unfit sanction on" a respondent. Specifically in the context of an administrative [monetary] penalty, the Court of Appeal stated (at para. 156) that it must "be proportionate to the offence, and fit and proper for the individual offender".

[29] That said, the Alberta Court of Appeal (**ABCA**) has indicated that a monetary penalty should not be so low that it may be considered "nothing more than another cost of doing business" (*Alberta Securities Commission v. Brost*, 2008 ABCA 326 at para. 54). As stated in *Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 (at para. 21), "[i]f sanctions under [the Act] are so low as to communicate too mild a rebuke to the misconduct, or perhaps a licensing fee for its occurrence, the opposite to deterrence may result".

[30] To guide the analysis, ASC hearing panels typically consider specific sanctioning factors as well as the sanctions imposed in past decisions that involved similar circumstances and misconduct (*Homerun* at paras. 16, 20, and 22 *et seq.*; see also *Spaetgens v. Alberta (Securities Commission)*, 2018 ABCA 410 at para. 31). No past decision will have circumstances identical to those in the matter at issue, but their consideration is nonetheless useful to determining the package of sanctions that will be "proportionate to the offence, and fit and proper for the individual offender" (*Walton* at para. 156).

B. Types of Orders Available

1. Market-Access Bans

[31] Under s. 198, possible orders include those that would restrict in various respects a respondent's participation in and access to the capital market, either on a permanent basis or for a specified duration. In *Re Planned Legacies Inc.*, 2011 ABASC 278, a panel explained (at para. 42):

> . . . 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.

[32] The specific orders imposed typically address the capacities in which a respondent acted when perpetrating the misconduct at issue.

2. Disgorgement

[33] Section 198 also provides that we may order a respondent who has failed to comply with Alberta securities laws to pay – i.e., disgorge – to the ASC "any amounts obtained or payments or losses avoided as a result of the non-compliance" (see s. 198(1)(i)). These orders are meant to remove any financial benefit a respondent has received as a result of the misconduct under consideration, which is in turn meant to remove the incentive for such misconduct to be repeated by the respondent or by others.

[34] A useful summary of the law applicable to disgorgement orders was set out in *Re Fauth*, 2019 ABASC 102 (see paras. 76-87). We adopt that discussion here, including the following main principles:

- First, the panel must determine whether the respondent obtained a monetary amount as a result of the misconduct. Second, the panel must be satisfied that a disgorgement order is in the public interest.

- Staff bear the burden of proving the approximate amount obtained by the respondent on a balance of probabilities. The burden then shifts to the respondent to demonstrate that that amount is inaccurate or unreasonable. Uncertainty is resolved against the respondent because it is the respondent's failure to comply with the law that gave rise to the uncertainty; this approach also ensures that a disgorgement order is not frustrated by the complexity of the misconduct or the respondent's attempts to conceal it.

- Since s. 198(1)(i) refers to "any amounts obtained" (and not to amounts retained), disgorgement may be appropriate even if the respondent has spent or otherwise dissipated some or all of the funds in question. This is to avoid rewarding a wrongdoer for spending ill-gotten gains quickly enough to avoid being held liable for those funds later.

- For the same reason, a disgorgement order may be appropriate even if the respondent is impecunious. As the panel explained in *Re Magee*, 2015 ABASC 846 (at para. 191), "it would seem perverse that disgorgement could be ordered against a respondent who has retained amounts illegally obtained, but not against a respondent who has squandered such amounts".

3. Administrative Penalties

[35] Section 199 of the Act provides that notwithstanding the imposition of any other penalty or sanction – including disgorgement – hearing panels may order a respondent to pay an administrative penalty of up to $1 million per contravention of Alberta securities laws. While disgorgement addresses the specific monetary benefit a respondent may have obtained, an administrative penalty imposes a direct financial consequence for the misconduct (see *Re Currey*, 2018 ABASC 34 at para. 44; see also *Magee* at para. 194). In *Re Rustulka*, 2021 ABASC 15, an ASC panel explained (at para. 112):

> Without the addition of an administrative penalty, a respondent [subject to a disgorgement order who has been] found to have contravened Alberta securities laws would only face the prospect of having to repay the financial benefit obtained. This would have an insufficient deterrent effect in

> itself, as the respondent would at worst "break even" – that is, he or she would be no worse off financially than if he or she had not broken the law in the first place (see *Walton* at para. 156). An administrative penalty ensures that there is also a direct financial consequence to the offender, to send the message to both that offender and others that there is a serious risk in choosing not to comply with legislative and regulatory requirements.

[36] Thus, as pointed out in *Fauth*, both disgorgement and administrative penalties are monetary sanctions aimed at deterrence, but they serve different purposes (at para. 77; see also *Currey* at para. 44).

C. Sanctioning Factors and Application to this Case

[37] Above we alluded to a set of sanctioning factors that may be considered by a hearing panel to guide its determination of the sanction orders that are appropriate in a particular case. The most recent iteration of these factors was set out in *Homerun* (at para. 20):

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

[38] Application of these factors is intended to direct our focus to the circumstances of both the specific misconduct at issue and of the respondent, Ward, and to assist us in assessing the risk of future misconduct by him or by others. This in turn informs our conclusions as to the orders necessary to achieve deterrence and mitigate the risk.

1. Seriousness

[39] The first factor described in *Homerun* is the seriousness of the misconduct. This requires us to consider the nature of the misconduct, Ward's intentions (i.e., whether he acted deliberately, recklessly, or simply inadvertently), and the harm to which his actions exposed his investors or the capital market in general (see para. 22). In most cases, more serious misconduct implies a greater risk of future misconduct and a need for more significant deterrent measures (*ibid.* at para. 26).

[40] In argument, Staff pointed out that each of Ward's breaches of Alberta securities laws was serious, as he deliberately contravened key provisions aimed at protecting investors and fostering a fair and efficient capital market. They emphasized that he illegally distributed securities over an extended period of time, in each instance depriving E-Wealth investors of the important protection provided by prospectus disclosure. In addition, he made misrepresentations over an extended period of time that perpetrated a fraud – the most serious of securities law contraventions – and induced people to invest based on false or incomplete information, while he made unauthorized use of their investment funds.

[41] Staff further argued that Ward engaged in a pattern of deliberate misconduct, each part of which compounded the effect of the other parts. As most investors received no returns or repayment of their principal, he caused substantial harm. In Staff's submission, such misconduct warrants a significant package of sanctions.

[42] At the outset of his submissions concerning the seriousness of the misconduct found, Ward stated that he acknowledged that his misconduct was serious. He further acknowledged that the laws governing illegal distributions, misrepresentations, and fraud are intended to provide investors with important protections.

[43] Ward emphasized that in the Merits Decision, we did not find that E-Wealth was a sham or a fictional business, and that he used at least some of the funds raised for investment purposes. He described the case as one in which "an individual collecting funds for re-investment purposes paid some of them to himself without proper disclosure to (or consent from) investors and failed to qualify contractual promises with risk disclosure". He suggested that if his intention had simply been to strip investors of their money, he might have appropriated all of the funds instead of attempting to make investments. Similarly, if he had no regard for the law, he would not have sought the advice of a securities lawyer.

[44] Although it is true that we did not conclude that E-Wealth was a mere sham or a Ponzi scheme, such a finding is not a precondition to concluding that the misconduct at issue was egregious, because capital market participants are expected to conduct legitimate businesses. We did find that Ward's misconduct was very serious, especially because it included deliberate deceit: making misrepresentations to investors and perpetrating a fraud. It is frequently observed in ASC sanction decisions that fraud is "self-evidently serious" (*Homerun* at para. 23), and that it is among the most serious misconduct prohibited by the Act (*Magee* at para. 148). We consider deceit by misrepresentation similarly egregious. As noted by Staff, E-Wealth investors were induced to make their investments based on false or incomplete information – information that went to the heart of what they were seeking and thought they had found: a low-risk investment opportunity that paid a high return.

[45] That is not to minimize the significance of our finding that Ward also engaged in illegal distributions. While full prospectus disclosure is not necessary for all investors in all circumstances, the exemptions from that requirement have been carefully crafted to apply to situations where the characteristics of the investor or the relationship between the investor and the issuer are such that the protection offered by prospectus disclosure is not necessary. The vast majority of E-Wealth investors did not fit within those categories.

[46] Given that most E-Wealth investors – including JL's elderly parents – lost their principal and received no returns, it is obvious that significant harm resulted over the number of years that Ward operated. It is no doubt of little comfort to them that if Ward had wanted to, he could have misappropriated all of the funds he obtained from them. Cases like this also result in harm to the Alberta capital market more generally. Market participants who hear about frauds and failed investments that were not offered in compliance with Alberta securities laws may lose confidence in the fairness of our market and its integrity and become averse to investing and risking their capital – to the detriment of law-abiding issuers.

[47] We are not persuaded that Ward's pursuit of legal advice from AC attenuates the seriousness of Ward's misconduct in any way. As we found in the Merits Decision, the evidence did not prove that AC was given sufficient information to understand exactly what Ward was doing so that he had a proper foundation to give meaningful legal advice. Instead, if anything, the evidence suggested that Ward consulted AC primarily for assistance probing for loopholes in the

law that would allow him to conduct himself as he wished. Moreover, he often ignored AC's advice entirely – including advice to cease the E-Wealth venture.

[48] On the basis of these conclusions, we are of the view that the seriousness of the misconduct in this case calls for significant deterrent measures. In particular, Ward and any other capital market participants who may be tempted to act in a similar fashion "must appreciate that findings of fraud will attract the most severe sanctions" (*Re Reeves*, 2011 ABASC 107 at para. 20).

2. Characteristics and History

[49] Ward's personal characteristics and history in the capital market and other regulatory contexts are also pertinent to our assessment of the risk of future misconduct, the deterrent measures necessary, and the proportionality of the sanctions under consideration (*Homerun* at para. 27). Relevant characteristics may include educational background, work experience, any disciplinary history, and claimed impecuniosity (*ibid.* at para. 28).

[50] Staff observed that Ward is 45 years old, and as a professional engineer, he is a member of a regulated profession. Although he has no prior capital market sanctioning history, Staff's position was that in light of his serious misconduct, the absence of such a history does not reduce the need for deterrent measures.

[51] Ward emphasized his inexperience in the world of business, especially in securities. He acknowledged that his inexperience does not diminish the seriousness of his misconduct, but submitted that "it is relevant to his degree of culpability and how intentional his contraventions of Alberta securities laws were" – that is, he did not simply act despite having an awareness of the applicable law as might be the case if the wrongdoer were, for example, a registrant or experienced in raising capital in the exempt market. In his submission, his lack of a disciplinary history should be given significant weight.

[52] Whether or not Ward was experienced in the capital market, he is an educated and relatively sophisticated individual who, as Staff observed, is a member of a regulated profession. As demonstrated by the fact that he reached out to AC at all, he had an understanding that there was a framework of legislation, rules, and regulations governing the raising of funds from the public. Unfortunately, he chose to ignore much of the legal advice he received, and ended up in the exact situation AC cautioned him against – offside securities laws and under regulatory scrutiny. His willingness to disregard legal advice suggests a heightened need for deterrent measures.

[53] All market participants are expected to comply with the law. Accordingly, while past discipline may suggest an elevated risk of recurrence – and thus an elevated need for deterrent measures – the absence of a disciplinary history is not a mitigating factor (*Homerun* at para. 85). It is at best a neutral consideration, especially when the misconduct at issue involves deceit and fraud. As the panel stated in *Rustulka* (at para. 74), "one does not require training to know that misrepresenting the facts to one's clients is wrong in any profession or industry" (see also *Homerun* at paras. 31 and 83). The same is obviously true of converting investment funds to personal use without disclosing that intention to the investors.

[54] In *Currey*, it was observed that, "[r]educed financial circumstances may suggest that reduced financial penalties are appropriate in certain cases . . ." (at para. 64). Ward made some references to reduced financial capacity during his testimony at the Merits Hearing and in his

submissions on sanction. At the Merits Hearing in March 2021, for example, he complained of securing but then losing a series of engineering jobs in Vancouver, and stated that as a result of E-Wealth's failure, he ended up having to liquidate all of his assets. In his written submissions, he mentioned that he was "not in a position financially" to order the Merits Hearing transcripts or have extensive legal research conducted.

[55] However, Ward did not claim impecuniosity or provide any evidence of impecuniosity (other than, as noted, his limited testimony on the subject). He is a relatively young man with a degree and experience in engineering, a field that can be quite lucrative. Even if his current financial circumstances are constrained, those circumstances can change. At his age, he has the ability to earn an income and find the resources necessary to pay monetary orders. Therefore, in the absence of persuasive evidence to the contrary, we do not find that Ward is impecunious, which might have called for moderation in any monetary orders made against him.

[56] On balance, we find that Ward's inexperience in the securities market and the absence of any disciplinary history are only neutral factors in this case. They are countered by his clear awareness that securities is a regulated environment and his willingness to seek but disregard legal advice that might have helped him avoid the findings and consequences he is now facing.

[57] In the result, we find that Ward's personal characteristics suggest he poses a risk of future misconduct that must be addressed by protective and preventative measures. In addition, his characteristics do not alleviate the need to impose sanctions that will effect general deterrence and dissuade others from similarly fraudulent and deceptive behaviour.

3. Benefit Sought or Obtained

[58] Whether Ward sought or obtained a benefit for himself from his misconduct may be an indication that greater deterrent measures are necessary to remove the incentive for him or for others to undertake similar misconduct in the future (*Homerun* at paras. 35 and 37). Generally, the greater the benefit sought or obtained, the greater the risk of future misconduct and the need for deterrence (*ibid.* at para. 38).

[59] Staff emphasized that in the Merits Decision, we found that Ward had misappropriated at least $106,610.22 of the funds raised for E-Wealth, to the prejudice of E-Wealth investors. They argued that he therefore sought and obtained a personal benefit that harmed investors and the capital market, which is an aggravating factor that argues in favour of significant deterrent sanctions.

[60] Ward acknowledged that $106,610.22 is not a small sum, but pointed out that it was accrued over a number of years and that he did make efforts to invest some of the funds raised to earn returns for E-Wealth investors. He also pointed out that it is a lower sum than those at issue in the comparable decisions cited by both parties.

[61] We agree with both parties' submissions concerning the benefit sought and obtained by Ward through investments in E-Wealth. We found that he misappropriated a substantial sum of money – over 20 percent of the amount raised illegally – to the detriment of his investors. It is true that this occurred over several years and is a smaller amount than that seen in many other cases. Nonetheless, he must not be permitted to retain the benefit of his ill-gotten gains. This is an

important measure of deterrence and risk-reduction, so that Ward and others are not tempted to engage in similar misconduct with the hope of financial reward.

4. Other Mitigating or Aggravating Considerations

[62] As mentioned, in addition to the foregoing, the panel in *Homerun* indicated that a given case may involve other relevant mitigating or aggravating factors that might affect a panel's assessment of risk and the consequent need for deterrence (at para. 39).

[63] Additional mitigating factors may include (but are not limited to) whether a respondent "appreciates the wrong done, and its seriousness", accepts responsibility for what occurred, or expresses remorse – all of which may suggest a reduced risk of recurrence (*ibid.* at paras. 41-42). By contrast, additional aggravating factors may include (but are not limited to) displaying contempt for the victims of the misconduct or the law itself – which may suggest a higher risk of recurrence (*ibid.* at para. 46).

[64] However, it is not aggravating for respondents not to accept responsibility or express remorse; they are entitled to defend themselves and maintain their innocence (*Walton* at para. 155). In that case, it is merely a neutral consideration.

[65] In their submissions, Staff identified several factors they characterized as aggravating:

(i) Ward exploited two romantic relationships for his own financial gain, including by convincing JL's retired parents to invest using a $100,000 home equity line of credit, and misappropriating a portion of the funds invested;

(ii) Ward tried to dissuade investors from taking legal action against him when he notified them by email that E-Wealth had failed; and

(iii) Ward blatantly and recklessly ignored the legal advice he received from AC.

[66] Staff did not acknowledge any mitigating factors. They argued that instead of demonstrating remorse and accepting responsibility, Ward attempted to justify his misconduct at the Merits Hearing and blamed others for what happened, including his legal counsel, AC (now deceased), and the investors themselves.

[67] Ward indicated that he now realizes he is not qualified to work in the securities industry and does not intend to pursue a similar form of investment business ever again. He maintained that in his testimony at the Merits Hearing, he conveyed the fact that he had been "chastened by the whole experience", was not defiant, and did not scoff at the law. He also relied on the ABCA's observation in *Walton* that the "ordeal and expense" of a contested merits hearing is likely to have a deterrent effect in itself (*Walton* at para. 155).

[68] By way of specific mitigating factors, Ward argued that the fact that he sought legal advice is mitigating, as it shows that he had at least some desire to comply with securities laws. He also cited his willingness to participate in the proceedings and testify in order to give his version of events and express his regret and dismay that he could not repay his investors. In addition, Ward reiterated that he did not incorporate E-Wealth, and therefore left himself exposed to civil claims – even though he found himself unable to satisfy them.

[69] We are satisfied that despite mounting a defence to the allegations in the NOH (as was his right), Ward does appreciate, to at least some degree, the negative consequences suffered by his investors, and he regrets that he was unable to repay most E-Wealth investors or generate the lucrative returns he thought he could at the time. We also accept that the "ordeal and expense" of the Merits Hearing has some deterrent effect.

[70] These are considerations that suggest a slightly reduced risk of recurrence, which would militate in favour of somewhat less severe sanctions than might otherwise be appropriate.

[71] However, we do not consider the remorse Ward otherwise expressed to be mitigating, as it was overshadowed by the blame he continued to place on others.

[72] We agree that Ward's interactions with AC are more aggravating than mitigating. He knew enough to seek legal advice but not to heed it (instead, he probed for loopholes), and he attempted to blame AC for giving him inadequate advice when it was clear from his own evidence that that was not the case. There is likely some truth in Ward's position that he did not fully understand the realm within which he tried to operate, but that was largely due to his choice not to ensure that he was in full compliance with the law, despite having access to a securities lawyer.

[73] There is also truth in Staff's assertions that Ward gained from two prior romantic relationships and sent emails to investors that included content aimed at dissuading them from taking legal action. Even more egregious in our view is the fact that Ward's relationship with JL gave him access to her elderly, vulnerable parents' primary asset – their home – a loss from which they may never recover.

[74] Finally, while we take some comfort in Ward's current expressed intention never to operate another investment-based business, it is self-evident that intentions can change. His assurance alone is insufficient to protect investors and the capital market from future misconduct.

[75] Apart from the foregoing and the considerations already described in our discussion of the other *Homerun* factors, we do not perceive any other mitigating or aggravating considerations.

5. Outcomes in Other Proceedings

[76] Staff cited five past decisions that they submitted were illustrative of the sanctions imposed upon other respondents who engaged in misconduct comparable to Ward's:

- *Re Nyadongo*, 2022 ABASC 19. Pursuant to a Statement of Admissions, the individual respondent, Nyadongo, admitted to illegally distributing securities and fraud. He and his company raised at least $1.2 million and misrepresented how the funds would be used, misappropriating at least $234,000. He was impecunious at the time of sanctioning and did not have any prior disciplinary history. The panel accepted a joint submission on sanction from the parties. They imposed an administrative penalty of $150,000 and 20-year market-access bans against Nyadongo, and ordered him to disgorge $234,000. He was also ordered to pay $10,000 in costs.

- *Currey, supra*. Also pursuant to a Statement of Admissions, Currey admitted to illegal dealing, illegal advising, and fraud. He used two of the corporate respondents to raise $3.2 million from nine investors, approximately $400,000 of which he used personally. He was near to insolvency but consented to a $595,000 court judgment in favour of one investor. The panel accepted a joint submission on sanction from the parties and imposed a $200,000 administrative penalty, a disgorgement order of $120,200, and 20-year market-access bans. Currey was also ordered to pay $25,000 in costs.

- *Re Bradbury*, 2016 ABASC 272. Also pursuant to a Statement of Admissions, the respondent, Bradbury, admitted to illegal dealing, illegal distribution, making misrepresentations to Staff, and fraud. He raised over $1.5 million, in some instances promising returns of 19 to 21 percent. Some investors lost all of their funds, while Bradbury misappropriated to his own use approximately $370,000 of the funds raised. He claimed to be impecunious at the time of sanctioning. The panel accepted the parties' joint submission on sanction, and ordered Bradbury to pay an administrative penalty of $150,000 and disgorgement of $370,000. He was also made subject to an array of permanent market-access bans and ordered to pay costs of $13,000.

- *Re Narayan*, 2016 ABASC 228. Narayan admitted to perpetrating a fraud and to authorizing, permitting, or acquiescing in various misconduct by the corporate respondents: fraud, illegal dealing, illegal distributions, prohibited representations, misrepresentations, and failing to comply with an undertaking to the ASC. $5.8 million was raised, $4 million of which was lost. Narayan admitted to diverting at least $800,000 to his personal use, but the panel calculated the total as $880,951. He was ordered to pay an administrative penalty of $300,000, plus $880,951 in disgorgement. In addition, he was made subject to permanent market-access bans and ordered to pay $95,000 in costs.

- *Magee, supra*. The respondents admitted to illegally acting as dealers and illegally distributing securities, and the principal individual respondent admitted to making misleading statements and fraud. Over $2 million was raised for the ostensible purpose of day trading through a brokerage account. Most of the money was lost, and at least $893,837 was converted to the personal use of the respondents. Permanent market-access bans were imposed against the principal individual respondent, who was also ordered to pay a $200,000 administrative penalty. All three individual respondents were ordered to disgorge $893,837 and pay costs of $142,000, both on a joint and several basis.

[77] Ward cited a different set of decisions that he asserted were comparable. He contended that they include lighter sanctions for more serious misconduct than what Staff propose in this case, which he considers disproportionate in light of our findings in the Merits Decision, the applicable sanctioning factors and principles, and other ASC decisions. The cases he cited are: *Re Caspian Energy Inc.*, 2013 ABASC 367; *Re Bartel*, 2008 ABASC 398; *Re Broers*, 2009 ABASC 25; *Re Innovative Energy Solutions Inc.*, 2008 ABASC 136; *Re Lavallee*, 2008 ABASC 78; *Re Wheatfield Inc.*, 2009 ABASC 619; and *Re Jardine*, 2016 BCSECCOM 82.

[78] Although Ward argued that many of the cases he cited involved parties who engaged in "much more serious conduct" than he did, we reject that submission entirely. As noted by Staff, none of the cases he cited included findings of misrepresentation or fraud. Five of the seven (*Bartel*, *Broers*, *Innovative*, *Lavallee*, and *Wheatfield*) were confined to illegal trading and illegal distribution, one was a settlement involving an inadvertent breach of a cease trade order (*Caspian*), and the last (*Jardine*) involved breaching an order of the British Columbia Securities Commission prohibiting the respondent from acting as a director or officer of any issuer. *Caspian* and *Jardine* are completely irrelevant, given that there were no allegations or findings that Ward breached a previous order. It is true that more money was raised in the five illegal trading/illegal distribution decisions than Ward raised, but the fact that they do not include the more serious findings of misrepresentation and fraud renders them of little assistance here.

[79] The decisions cited by Staff must also be considered with some caution, as the misconduct was admitted in each case, and in three of the five, the parties made joint submissions as to sanction. In such cases, the sanctions are generally lighter due to the agreement of the parties than the sanctions imposed in matters such as this, where no admissions were made and Staff was required to prove the allegations in a fully contested hearing. In addition, *Currey*, *Bradbury*, and *Narayan* included additional misconduct such as illegal advising and prohibited representations.

[80] Nonetheless, while we are mindful of these important distinctions – as well as the larger amounts of money raised and misappropriated – we find that Staff's cases provide some guidance as to the types of orders typically made in these kinds of cases: administrative penalties ranging from $150,000 to $300,000 (even where the respondents claimed impecuniosity), disgorgement of the full amount found to have been misappropriated, and market-access bans ranging from 20 years in length to permanent. In other words, findings of deceit and misuse of investor funds are typically met with significant sanctions.

[81] This information assists us in assessing the proportionality of the sanctions under contemplation. *Bradbury* and *Magee* are particularly helpful, given that they both involved respondents who, like Ward, raised money for the purpose of trading in the securities market.

D. Conclusions on Appropriate Orders

1. Market-Access Bans

[82] In light of the seriousness of the breaches of securities laws in this case (including fraud), the number of investors involved, and the period of time over which the misconduct occurred, Staff argued that it would be in the public interest and achieve both specific and general deterrence for Ward to be barred from participation in the capital markets permanently. In their submission, Ward was deceitful and dishonest, and cannot be trusted to comply with Alberta securities laws in the future. Accordingly, he should not be permitted to raise money from the public ever again, or to act in certain capacities.

[83] Staff therefore seek orders barring Ward from: trading in or purchasing securities; relying on any exemptions contained in Alberta securities laws; engaging in investor relations activities; becoming or acting as a director or officer of certain types of entities; advising in securities; becoming or acting as a registrant, investment fund manager, or promoter; and acting in a management or consultative capacity in connection with activities in the securities market.

[84] Ward argued that Staff's requests for "sweeping, life-time bans are disproportionate (indeed unrelated) to the conduct in which Mr. Ward engaged". He acknowledged that the "illegal distribution, misrepresentation and fraud findings all related to raising funds from other people and how those funds were used", and therefore that permanent "[b]ans relating to such activities would be appropriate" – specifically, bans from acting as a registrant, engaging in investor relations activities, or trading in or purchasing securities. However, Ward argued that with respect to the latter, he should be granted a carve-out for trading in his own account with his own money so that he can save for retirement.

[85] Ward also submitted that since none of the allegations involved him acting as a director or officer, he should not be banned from those roles as long as they do not involve raising funds or trading in securities with funds from other individuals. He cited as an example that he should be permitted to take a role as a director or officer of a small engineering firm, should that opportunity arise.

[86] We have concluded that because of the seriousness of Ward's misconduct, the personal benefit he obtained, the harm he caused to specific investors and to the capital market in general, and his flagrant disregard of the legal advice he received cautioning him against his activities, Ward presents an ongoing risk and cannot be trusted to comply with Alberta securities laws in the future. At least in contested proceedings, findings of fraud typically warrant an array of permanent bans, and we are of the view that such bans are appropriate here, directed at all of the capacities in which Ward might have access to the investing public and their money. As mentioned, such access is a privilege and not a right, and it is in the public interest for us to make it clear to Ward and others that egregious misconduct in breach of the law will result in a permanent denial of that access.

[87] Accordingly, we are ordering that Ward is permanently banned from:

- trading in or purchasing securities;
- relying on any exemptions contained in Alberta securities laws;
- engaging in investor relations activities;
- advising in securities;
- becoming or acting as a registrant, investment fund manager, or promoter; and
- acting in a management or consultative capacity in connection with activities in the securities market.

[88] Although we note that trading in his own account with money that he treated as his own is how Ward breached the Act in the first place, Staff indicated that they did not object to a carve-out that would allow him to save for retirement as long as any trading is conducted through a registrant who has been given a copy of our order – similar to the order issued in *Nyadongo*. We are satisfied that such an order would still protect the public, as the involvement of a registrant will ensure that Ward is only trading on his own behalf, using his own money. However, we are adding the additional restriction that the trading occur in registered funds, which is appropriate in view of Ward's stated objective of saving for his eventual retirement.

[89] As for the director and officer ban sought by Staff, it is true that Ward did not act in those capacities because he did not incorporate E-Wealth. However, we agree with Staff that despite the

lack of formality, he was the sole individual responsible for E-Wealth and its activities, and his misconduct shows that he is not fit to serve in a fiduciary capacity, especially for any company that might be involved in issuing securities to the public. Contrary to Ward's submissions, we consider a director and officer ban directly connected to the role he played at E-Wealth, which was comparable to the role a director or officer of an incorporated entity would play.

[90] While Ward hypothesized about a situation in which he might have a director or officer position that does not involve activities in the securities market, we decline to consider hypotheticals. We find that the director and officer ban sought by Staff is in the public interest for the reasons cited by Staff. Should Ward find a specific suitable role in the future – such as, as he suggests, a role as a director or officer of a small engineering firm that does not issue securities to the public – he can apply for a variation order under s. 214 of the Act. With specific information about what is being sought, a panel will be able to take into account all of the relevant circumstances and determine whether a variation is appropriate.

2. Monetary Sanctions

[91] In light of the nature and seriousness of the misconduct in this case and the application of the other *Homerun* factors as discussed above, we are of the view that market-access bans alone will not mitigate the risk to the public interest. It is necessary to add significant monetary sanctions to achieve the necessary levels of specific and general deterrence so that Ward and others who might be tempted to act in a similar manner know that such misconduct will result in removal of the financial benefit obtained as well as a direct financial cost.

(a) Disgorgement

[92] Staff seek a disgorgement order against Ward in the amount of $106,610.22 – the amount we found that he had misappropriated from E-Wealth investment funds. Citing *Fauth* (at para. 77), Staff argued that this would not only remove the financial benefit he obtained, it would also serve to effect both specific and general deterrence by removing the incentive to profit from misconduct.

[93] Ward did not dispute the amount of the disgorgement order sought by Staff.

[94] Given our previous comments and findings, we are satisfied that it is in the public interest to make such an order in the amount stated: $106,610.22. Ward took that amount in breach of the Act, and removing that benefit is necessary for specific deterrence to eliminate any incentive he might have to repeat his misconduct. It is also necessary for general deterrence. It must be clear to other capital market participants that serious misconduct – especially fraud – will result in serious consequences. This order is also consistent with the types of orders made in the comparable decisions cited by Staff.

[95] Although it appears that Ward spent these funds some time ago, we have already set out the law explaining that that does not affect whether a disgorgement order is necessary or appropriate. If securities fraud is to be deterred effectively, those who engage in it must not be permitted to retain any benefit from it.

(b) Administrative Penalty

[96] In addition to disgorgement, Staff seek an order that Ward pay an administrative penalty of $100,000. They argued that the quantum of the order must be sufficient to protect the public and the capital market, and to act as a meaningful deterrent that is not simply a cost of doing

business. They emphasized the number, nature, and extent of Ward's breaches of securities laws, as well as the degree of planning and deliberation involved and the amount of money raised and misappropriated.

[97] In response, Ward suggested that given his current financial situation, "[a]n administrative penalty that may seem modest to a respondent with more resources will be deeply felt by this Respondent." Further, he argued that because the factual underpinning of the fraud and misrepresentation allegations against him overlapped, the administrative penalty for those findings should be assessed together, and an additional amount added for the illegal distribution allegations. He suggested $20,000 and $15,000 respectively, for a total administrative penalty of $35,000. In his submission, "[m]any of the cases provided by Staff involved respondents who engaged in misconduct that is egregiously more serious than the misconduct perpetrated by Mr. Ward, yet they received administrative penalties much more proportionate than . . . those sought by Staff in this case."

[98] Staff described Ward's proposed administrative penalty as "woefully inadequate" for addressing the misconduct at issue and achieving meaningful deterrence. They pointed out that there is no evidence before us of Ward's current financial situation. Even if there were evidence to support a claim of financial hardship, Staff relied on *Rustulka* (at para. 114) for the proposition that a respondent's impecuniosity does not justify a "nominal" administrative penalty.

[99] Generally, we agree with Staff's submissions. As mentioned, other than comments Ward made in his testimony at the Merits Hearing about his inability at the time to repay investors or find lasting employment, there is no persuasive evidence of his current finances. We also agree with the panel's observation in *Homerun* (at para. 18) that "a monetary sanction almost inevitably involves . . . a burden on a respondent. This does not in itself demonstrate disproportion or unreasonableness in the *Walton* sense; an order with no real effect on the recipient may be no sanction at all".

[100] We do not consider it appropriate to parse an administrative penalty and attempt to apportion it to individual aspects of the misconduct in the manner suggested by Ward. To borrow the terminology from *Walton*, we consider the circumstances of the "offence" and the "offender" globally, as a whole, to arrive at an overall view of what occurred and its context. We then use that assessment to inform our view of the appropriate sanction orders. In this case, the elements of Ward's misconduct were completely intertwined: he raised money illegally based on his misrepresentations, and then used a portion of that money for his own purposes without disclosure or authorization. The elements cannot be usefully untangled and ascribed a separate "value".

[101] We disagree that the misconduct in the comparable decisions cited by Staff is egregiously more serious than Ward's. As previously discussed, the misconduct in those decisions was similar to that in this case, involving illegal capital-raising, various types of deceit, and fraud. Although more money was raised illegally in those cases (ranging from $1.2 million to $5.8 million) and, in turn, the amounts misappropriated were higher (ranging from $234,000 to approximately $900,000), the administrative penalties imposed were also higher than that suggested by Staff here ($150,000 to $300,000, in comparison to the $100,000 Staff proposes for Ward). In addition, some of the respondents in those cases satisfied the panels that they were impecunious, all made admissions, and three of the five joined Staff in making a joint submission on sanction – factors

that are not present in this case, and which typically affect the size of the administrative penalties imposed.

[102] By contrast, the amount Ward proposed – $35,000 – is less than the amounts imposed in most of the cases he cited in his written submissions, none of which included findings of misrepresentation or fraud.

[103] While bordering on lenient, in light of the mitigating factors we described above, we are satisfied that an administrative penalty of $100,000 is proportionate to the circumstances of the misconduct and its perpetrator. Most importantly, we are satisfied that it is in the public interest because it will achieve the necessary specific and general deterrence. There must be a direct financial consequence in addition to the removal of the financial benefit Ward wrongfully obtained to reflect the seriousness with which misconduct of this nature – especially fraud – is viewed by the ASC, address the risk and protect against similar misconduct in the future, and preserve public confidence in our capital market.

IV. COSTS

A. The Law

[104] Section 202 of the Act empowers ASC hearing panels to exercise their discretion to order respondents to pay some or all of the costs incurred by Staff in investigating and prosecuting breaches of Alberta securities laws. The *Alberta Securities Commission Rules (General)* (the **Rules**) set out the categories of costs that may be claimed, such as the time spent by investigative Staff or litigation Staff and witness expenses (see s. 20).

[105] As is frequently observed in ASC sanction decisions, cost-recovery orders are not sanctions. They are not intended to have a preventive and protective effect, but are instead a means by which the ASC may recover costs from a respondent who is found to have engaged in capital market misconduct. If we did not do so, those costs would be borne indirectly by the other market participants that pay the fees funding the ASC's operations (*Narayan* at para. 82). In addition, the prospect of a costs order is intended to encourage procedural efficiencies in enforcement proceedings (*ibid.*).

[106] Several factors may be relevant to a panel's assessment of the appropriate quantum of costs that should be ordered against a respondent, including:

- the respondent's contributions, if any, toward resolving the proceedings efficiently, such as by making formal admissions or entering into a statement of agreed facts;
- whether all of Staff's allegations were proved;
- whether it appears that there was a duplication of efforts by Staff;
- the nature and amount of claimed disbursements; and
- whether a costs order would diminish wronged investors' prospects of recovering their investment funds (see *Homerun* at paras. 49-50 and 52-53).

[107] Any claimed impecuniosity by the respondent is not generally relevant to the assessment (*Fauth* at para. 117).

B. Positions of the Parties

[108] According to Staff's Bill of Costs, the investigation and litigation costs of this matter from its inception to the conclusion of the merits phase totalled $123,323.90. Staff emphasized that the Merits Hearing was 12 days in length, they proved all of the allegations in the NOH, and Ward did not make any formal admissions that would have saved hearing time.

[109] As Staff acknowledged that some discount from the total Bill of Costs may be appropriate to reflect the fact that two Staff counsel were involved in the proceeding, they seek a costs order in the amount of $100,000. They also pointed out that their Bill of Costs does not include any costs for their sanction submissions, which is tantamount to a further reduction from the total costs incurred. In their submission, given the findings made against him in the Merits Decision, "it is reasonable for Ward to pay a significant proportion of the investigation and hearing costs".

[110] Ward argued that the costs requested by Staff should be discounted for several reasons:

(i) "[c]osts should be proportionate to disgorgement and administrative penalty orders";

(ii) Staff alleged that more money had been misappropriated than they proved at the Merits Hearing;

(iii) he succeeded with an argument he made concerning the date range set out in the Investigation Order, which meant that the total amount of money we found had been raised illegally was lower than the amount alleged by Staff;

(iv) other arguments he made appeared to have made an impact on our findings in the Merits Decision, which demonstrates that he was justified in raising those issues;

(v) Staff took more time than was necessary to cross-examine Ward at the Merits Hearing;

(vi) Staff took more time than was warranted to address the evidence in their Source and Use Analysis which, in Ward's submission, was of limited utility; and

(vii) some of Staff's claimed disbursements are unclear, such as the $1,782.66 claimed for investigators as "personal expense[s]".

[111] In addition, at the Sanction Hearing, Ward's counsel explained that at least one reason Ward could not make any factual admissions that might have shortened the Merits Hearing was because counsel was retained too late in the proceedings and had too much trouble understanding Staff's financial evidence to have done so.

[112] Accordingly, Ward submitted that it would be appropriate for us to issue a costs order of $35,000.

C. Analysis and Conclusion on Costs

[113] Beginning with Ward's arguments, we are unaware of any authority to support his contention that a costs order must be in an amount that is proportionate to the amount of the disgorgement and administrative penalty orders. Ward did not cite any. As mentioned, costs orders are not sanctions and have a much different purpose. In a very serious case involving egregious misconduct resulting in a large disgorgement order and administrative penalty, a respondent may still have made significant contributions to the case's efficient resolution. In such an instance, a lower costs order may be appropriate, while the reverse may be true in a less egregious case where a respondent did not contribute to an efficient resolution, or behaved in a way that extended the proceedings unnecessarily – see, for example, *Re Cerato*, 2022 ABASC 121. In that case, there was no disgorgement order and the administrative penalty was only $40,000, but the respondent was directed to pay $125,000 in costs. As explained in *Bartel* (at para. 50):

> An order for payment of costs under section 202 of the Act is not dictated by the nature or magnitude of the capital market misconduct, and is not part of our consideration of the appropriate sanctions to order. . . . [W]e believe that, when a respondent has been found to have contravened Alberta securities laws or acted contrary to the public interest, it is generally appropriate that the respondent pay at least a portion of the costs of the investigation and hearing that led to such findings. The extent to which the respondent facilitated or impeded an efficient investigation and hearing process is a factor that we consider when determining the amount of the costs incurred that ought to be paid by the respondent.

[114] It is true that some of Ward's arguments at the merits phase of the proceeding were sustained and had an impact on our findings, including with respect to the amount of money raised and misappropriated. However, those findings resulted in less severe sanctions than might otherwise have been imposed rather than in a shortened or more efficient proceeding. Insofar as they represented some measure of success for Ward in defending the allegations, we are satisfied that that success is reflected in the discounts from the actual costs incurred as mentioned above.

[115] We disagree that Staff took too long in cross-examination of Ward or in presenting the Source and Use Analysis. Both resulted in useful evidence that assisted us in making our findings in the Merits Decision.

[116] Having reviewed the Bill of Costs in detail, we also disagree that any of the claimed disbursements are unclear. It is apparent from the back-up documentation attached to the Bill of Costs that the $1,782.66 in "personal expense[s]" were Staff investigator travel costs, which are properly recoverable under Rule 20(d).

[117] As for counsel's explanation as to why Ward did not make any admissions, it was Ward's choice not to retain counsel until shortly before the Merits Hearing. His arguments in that regard were addressed by the panel that heard his February 2021 application, as described in the Merits Decision (at paras. 20-26).

[118] Overall, we are satisfied that all of the costs claimed by Staff in the Bill of Costs are recoverable under the Rules. We did not find that there was much in the way of duplicated effort by the Staff counsel on the file because they appeared to have taken on different responsibilities in the prosecution. However, there was some duplication in management-level review at the investigations stage – for example, it is unclear why both a "Team Lead" and the Manager, Investigations needed to review the investigation report.

[119] There was also an error in the calculation of costs associated with one of the Staff counsel – on the first page of the Bill of Costs, 202 hours at $200 per hour is claimed ($40,400), while in the back-up material, 206 hours are claimed for the same individual (16 at $300 per hour and 190 at $200 per hour). Presumably, $200 is the amount that should have been applied to all 206 hours ($41,200). Neither number accords with the $42,800 claimed for that counsel. Despite the fact that this error is more than offset by the recording of little or no time by the investigative analysts who were responsible for preparing the Source and Use Analysis and who testified at the Merits Hearing, we have deducted $1,600 from the amount of the costs order sought by Staff.

[120] We do not consider it necessary to apply any further discounts to Staff's claim for costs, and are ordering that Ward pay costs of $98,400.

V. CONCLUSION AND ORDERS

[121] For the foregoing reasons, we make the following orders against Ward:

- under s. 198(1)(d) of the Act, he must immediately resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization, designated information processor, recognized quotation and trade reporting system, or designated benchmark administrator;

- with permanent effect:

    - under s. 198(1)(b), he must cease trading in or purchasing any security or derivative, except that this order does not preclude him from trading in or purchasing securities or derivatives through a registrant (who has first been given a copy of this decision) in registered retirement savings plans, registered retirement income funds, registered education savings plans and tax-free savings accounts (each as defined in the *Income Tax Act* (Canada)), and locked-in retirement accounts;

    - under s. 198(1)(c), 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), he is prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization, designated information processor, recognized quotation and trade reporting system, or designated benchmark administrator;

- under s. 198(1)(e.1), he is prohibited from advising in securities or derivatives;

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

- 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. 198(1)(i), he must pay to the ASC $106,610.22 obtained as a result of his non-compliance with Alberta securities laws;

- under s. 199, he must pay to the ASC an administrative penalty of $100,000; and

- under s. 202(1), he must pay to the ASC $98,400 of the costs of the investigation and hearing.

[122] These proceedings are now concluded.

May 8, 2023

For the Commission:

"original signed by"
Kari Horn

"original signed by"
Karen Kim

"original signed by"
Maryse Saint-Laurent, KC