**ALBERTA SECURITIES COMMISSION**

**DECISION**

**Citation: Re Budzinski, 2023 ABASC 146** **Date: 20231031**

**Gerald Michael Budzinski**

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| **Panel:** | Kari Horn<br>Matthew Bootle<br>Steven Cohen |
| **Representation:** | Carson Pillar<br>Adam Karbani<br>Sakeb Nazim<br>for Commission Staff<br><br>Gerald Budzinski<br>for himself |
| **Submissions Completed:** | May 25, 2023 |
| **Decision:** | October 31, 2023 |

**TABLE OF CONTENTS**


I. INTRODUCTION ..... 1

II. BACKGROUND ..... 1
A. Procedural Background ..... 1
B. Merits Decision – Summary of Facts and Findings ..... 3

III. SANCTION ..... 5
A. Sanctioning Principles ..... 5
1. Seriousness of the Misconduct ..... 5
(a) Nature and Significance of the Misconduct ..... 6
(b) Degree of Intention ..... 7
(c) Exposure to Harm ..... 9
(d) Conclusion on Seriousness of Misconduct ..... 9
2. Respondent's Characteristics and History ..... 10
(a) Budzinski's Capital-Market Experience ..... 10
(b) Impecuniosity ..... 11
3. Benefits Sought and Obtained by Budzinski ..... 12
4. Mitigating and Aggravating Considerations ..... 13
(a) Contempt Towards Staff and the ASC ..... 13
(b) Reliance on Legal Advice ..... 14
5. Conclusions on Sanctioning Factors ..... 14
6. Outcomes in Other Proceedings ..... 15
B. Types of Sanction Orders ..... 17
C. Summary of Parties' Position on Sanction ..... 17
1. Staff ..... 17
2. Budzinski ..... 18
D. Analysis and Conclusions on Sanction Orders ..... 18

IV. COSTS ..... 19
A. Cost-Recovery Principles ..... 19
B. Positions of the Parties ..... 19
1. Staff ..... 19
2. Budzinski ..... 20
C. Analysis and Conclusions on Cost-Recovery ..... 20

V. CONCLUSIONS AND ORDERS ..... 20

## I. INTRODUCTION

[1] In a decision dated February 3, 2023 (the **Merits Decision**, cited as *Re Budzinski*, 2023 ABASC 13), we determined that Gerald Michael Budzinski (**Budzinski**) contravened Alberta securities laws by failing to comply with insider reporting, early warning disclosure and reporting, and take-over bid requirements. This proceeding then continued into the next phase to determine what, if any, sanction or cost-recovery orders (or both) should be issued based on Budzinski's misconduct.

[2] The parties were given an opportunity to provide supplemental evidence and submissions relevant to sanction and costs, and we held an oral hearing on May 25, 2023 (the **Sanction Hearing**) to hear argument on these issues. We consider that it is in the public interest for Budzinski to pay an administrative penalty of $30,000, to be subject to certain market-access bans until the later of three years or payment in full of the administrative penalty, and to pay $30,000 towards the investigation and hearing costs. Reasons for our decision are set our below.

## II. BACKGROUND

### A. Procedural Background

[3] Staff (**Staff**) of the Alberta Securities Commission (the **ASC**) issued a notice of hearing dated June 7, 2019 (the **NOH**) alleging that Budzinski contravened Alberta securities laws. After a ten-month adjournment due to the COVID pandemic, we held a 12-day hearing (the **Merits Hearing**) beginning in January 2021. Staff and Budzinski called 12 witnesses, adduced documentary evidence, and made written and oral submissions.

[4] Budzinski represented himself throughout and participated via telephone from Edmonton. He claimed to be limited by various challenges and, as discussed in greater detail in the Merits Decision, numerous accommodations were made to facilitate his participation in the Merits Hearing.

[5] Budzinski also received written and verbal guidance and information prior to and during the Merits Hearing. This guidance indicated, among other things, that he needed evidence – in the form of either witness testimony or documents – to support any factual assertions he wanted to make in his oral and written submissions. Despite this guidance (and numerous reminders), Budzinski's submissions frequently relied on assertions that lacked any evidential support. We were therefore unable to substantiate many of Budzinski's arguments.

[6] Following our determination in the Merits Decision that Budzinski contravened Alberta securities laws, we directed the parties to advise the ASC Registrar (and each other) by March 3, 2023 whether they intended to submit additional evidence and their timing requirements for making submissions respecting sanction and cost-recovery orders.

[7] Staff advised the Registrar and Budzinski in late February 2023 that they planned to submit additional affidavit evidence along with a summary of their investigation and litigation costs (the **Bill of Costs**). Staff also proposed a schedule for the delivery of written submissions and a date for the hearing of oral submissions. Budzinski indicated in a voice message with the Registrar on March 1, 2023 that certain physical limitations hindered his ability to provide a response and that

he wanted to request an extension of several months. He did not indicate whether he sought to adduce additional evidence relevant to sanction or cost-recovery orders.

[8] On March 2, 2023, the panel communicated (via email and registered mail from the Registrar) the following schedule for the sanction phase of the hearing:

- Staff's materials were to be delivered by April 3, 2023;
- Budzinski's materials were to be delivered by May 3, 2023;
- Staff's reply submissions (if any) were to be delivered by May 10, 2023; and
- oral submissions would be heard on May 17, 2023 (which was later rescheduled to May 25, 2023).

[9] The communication indicated that reasonable accommodations could be made to Budzinski's deadline to provide materials but that any further request for an extension of time based on his medical concerns required supporting documentation. Budzinski was also provided a document containing guidance to him as a self-represented respondent in respect of the sanction phase of the proceeding, a copy of the relevant statutory provisions relative to sanction and cost-recovery orders, and a copy of *Re Homerun International Inc.*, 2016 ABASC 95 (with the relevant paragraphs highlighted) as it concisely outlines the ASC's rationale and principles for assessing sanction (including the factors relevant to the issue of sanction) and cost-recovery orders. The guidance reiterated the need for Budzinski's submissions to be based on evidence relevant to such principles and factors.

[10] On April 3, 2023, Staff provided their written submissions, along with the Bill of Costs and an affidavit sworn by a Staff assistant. That affidavit attached two documents that had previously been sent to the Registrar by HP (on behalf of Budzinski) on July 29, 2020, namely:

- a document authored by Budzinski dated November 19, 2019, titled "Re: Concern #9" and "Re: Deceptive Practices" that contained ten assertions or complaints, including statements referring to the use of ". . . news releases to cause religious persecutions, religious bigotry and intolerance", ". . . KGB interrogation procedures" and ". . . Hitler 'SS' interrogation techniques for abuse, extortion and obtaining manipulative confessions . . ."; and

- a document authored by Budzinski dated June 25, 2020, titled "Re: Concern #1 Updated", which included statements referencing Stalin and Hitler and allegations of religious persecution and extortion.

[11] Budzinski did not request a further extension of time for the delivery of his materials and he provided written submissions on May 3, 2023, comprised of 11 separate documents totaling 33 pages. Only one document explicitly addressed the issue of appropriate sanction and cost-recovery orders. In his submissions, Budzinski claimed that he had only eight "half days" to prepare his response because he had been preoccupied with religious events throughout most of April (although he made no reference to his March schedule). He also said that he could not schedule an appointment with his doctor or neurologist in that time, he could not read the documents provided

to him because of "[w]eak ink, extra small print and coloring over the print", and that setting an unreasonable time limit was "abusive, full of intimidation acts and reeks of religious persecution".

[12] A common theme to Budzinski's submissions was an assertion that the ASC was engaging in various forms of misconduct. For example, he claimed that:

- the ASC should ". . . go back to the way it was in the 60's and 70's", and that since "the mid 90's" it has become a "Nazi organization";

- Staff investigators adopted a "NAZI styled phishing technique" and he complained of religious persecution, elder abuse and general harassment; and

- a complete audit should be made of all ASC rules, regulations and judgments, but that it would be hard to effect any changes while the ASC "is defending Nazi policies and setting itself up as the church of Hitler".

[13] These and many other of his assertions were unsupported by evidence. Budzinski's written submissions also contained various arguments that had been previously dismissed in the Merits Decision and were irrelevant to our consideration of sanction and cost-recovery orders. We do not propose to recite all of the points raised in his submissions, although we carefully reviewed and considered them as part of our deliberation process.

[14] At the outset of the oral hearing, Budzinski indicated that we did not have all of his written materials and claimed that he had sent an additional document for the panel, although it was not among the materials received and provided to the panel by the Registrar. Budzinski could not provide a date on which the document was purportedly sent. He also said that he was waiting for numerous other documents to be transcribed for him. Budzinski did not request an adjournment, and we invited him to include any points from those materials in his oral submissions.

**B. Merits Decision – Summary of Facts and Findings**

[15] For convenience, we summarize the background facts and circumstances underlying Budzinski's misconduct, as described more fully in the Merits Decision.

[16] The allegations against Budzinski in the NOH were based on his trading activity between August 31, 2015 and June 7, 2016 (the **Relevant Period**). In that time, he retained trading authority over certain brokerage accounts (the **Accounts**) that were beneficially owned by individuals or entities closely aligned with him, namely Malachi 4 – Foundation for Family Unity (**Malachi**) (a charitable, non-profit organization he led as Managing Director), Freedom Investors (**Freedom Investors**) (an investment club largely comprised of individuals belonging to a religious organization that he founded), Budzinski's daughter-in-law (**LP**), and HP (LP's sibling). In the Relevant Period, Budzinski exercised his trading authority over these Accounts to acquire millions of shares of BCM Resources Corporation (**BCM**), a Vancouver-based, TSX Venture Exchange-listed mineral-exploration company. In that time, the aggregate BCM shareholdings in the Accounts increased from 5.51% to nearly 30% of BCM's outstanding shares. We found in the Merits Decision that Budzinski exercised control or direction over those shares throughout the Relevant Period.

[17] Staff alleged that Budzinski failed to comply with provisions of the *Securities Act* (Alberta) (the **Act**) relating to insider reporting, early warning disclosure and reporting, and take-over bid requirements. We determined in the Merits Decision that the quantity of BCM shares in the Accounts – all of which were subject to Budzinski's control or direction in the Relevant Period – cumulatively exceeded the prescribed thresholds established by National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**) and National Instrument 62-104 *Take-Over Bids and Issuer Bids* (previously Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* and collectively referred to as **62-104**). We therefore found that Budzinski was obligated to meet certain requirements established by these instruments. In particular:

- once the BCM shares in the Accounts exceeded 10% of the outstanding BCM shares, pursuant to ss. 3.2 and 3.3 of NI 55-104, Budzinski was required to:
    - file an initial insider report (as a "significant shareholder" and "reporting insider") disclosing his control or direction over BCM shares; and
    - file a supplemental insider report after any changes to his control or direction over BCM shares;
- once the BCM shares in the Accounts met or exceeded 10% of the outstanding BCM shares, pursuant to Part 5 of 62-104, Budzinski was required to:
    - issue an early warning news release and file an early warning report disclosing his control or direction over BCM shares; and
    - issue an additional news release and file another early warning report each time the BCM shares subject to his control or direction increased by an additional two percent or more of the outstanding BCM shares; and
- once the BCM shares in the Accounts met or exceeded 20% of the outstanding BCM shares, the take-over bid requirements in ss. 2.9 and 2.10 of 62-104 were triggered and required Budzinski to commence a take-over bid by (among other things) filing a take-over bid and a take-over bid circular.

[18] At no point in the Relevant Period did Budzinski comply with the requisite requirements, despite his control or direction over BCM shares in the Accounts that collectively triggered these obligations, including the multiple instances in the Relevant Period in which an increase in the BCM shares subject to Budzinski's control or direction required that he file supplemental insider or early warning reports and disclosure.

[19] Accordingly, we concluded in the Merits Decision that Budzinski breached:

- s. 182 of the Act by failing to file insider reports in accordance with the requirements of ss. 3.2 and 3.3 of NI 55-104;

- s. 182.1 of the Act by failing to make and file early warning reports or disclosure in accordance with the requirements of Part 5 of 62-104; and

- s. 159 of the Act by failing to comply with the take-over bid requirements in ss. 2.9 and 2.10 of 62-104.

[20] The NOH also alleged that Budzinski engaged in a course of conduct relating to a security that he knew or reasonably ought to have known may result in or contribute to a false or misleading appearance of trading activity or an artificial price for BCM's shares, contrary to ss. 93(a)(i) and 93(a)(ii) of the Act. Staff did not proceed with the allegation that Budzinski contravened s. 93(a)(i), and we dismissed the allegation that he contravened s. 93(a)(ii).

[21] In a related matter, Budzinski's investment advisor, Henry Thor (**Thor**), voluntarily (and with the benefit of independent legal advice) entered into a settlement agreement with the ASC in which he admitted to contravening Alberta securities laws and undertook to pay a monetary settlement of $30,000 plus $10,000 for investigation costs (*Re Thor*, 2019 ABASC 89).

## III. SANCTION

### A. Sanctioning Principles

[22] Sections 198 and 199 of the Act authorize ASC panels to issue sanction orders that are in the public interest. The objective of a sanction order is not to punish a respondent or remediate any harm resulting from their misconduct but to protect the public and prevent future misconduct (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45).

[23] In determining the appropriate sanction order for particular misconduct, a panel may consider both general deterrence (deterring future misconduct by others) and specific deterrence (deterring future misconduct by the respondent) (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; *Homerun* at para. 13-15). However, sanction orders must be both reasonable and proportionate in light of the overall circumstances, including the gravity of the misconduct and the respondent's personal circumstances (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (leave to appeal to the Supreme Court of Canada refused [2014] S.C.C.A. No. 476) at paras. 154 and 156). Prior decisions and settlement outcomes may assist in this analysis (*Homerun* at para. 16).

[24] The ASC has previously identified and refined certain factors relevant to the sanctioning analysis, namely 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. These factors, as discussed in greater detail in *Homerun* (at paras. 20-46), along with our consideration of these factors in respect of Budzinski and his misconduct, are set out below.

#### 1. Seriousness of the Misconduct

[25] Serious misconduct can indicate an increased risk of future harm and typically reflects the need for deterrence (*Homerun* at para. 26). Assessing the seriousness of a respondent's misconduct takes into account the nature of the misconduct, the respondent's intent (i.e., whether the

respondent acted deliberately, recklessly, or inadvertently), and the harm to which the misconduct exposed identifiable investors or the capital market generally (*Homerun* at para. 22).

**(a) Nature and Significance of the Misconduct**

[26] Staff submitted that Budzinski's misconduct represented a serious breach of Alberta securities laws because the insider reporting, early warning and take-over bid requirements were designed to foster a fair and efficient capital market and promote investor confidence by providing transparency to trading activity. Staff also noted that Budzinski engaged in multiple violations of the insider and early warning disclosure requirements.

[27] Budzinski did not explicitly address the seriousness of his misconduct, other than to suggest that he had done his "due diligence" and was only told to "stay below 10% interest". He also considered the ASC's regulatory framework to be misguided and founded on incorrect principles. In addition to his call for an "audit" of Alberta securities laws, he stated that the insider reporting framework "is at least 100 years out of date" and that "[i]t is redundant, it is abusive and it is squandering in every aspect". We understood from these statements that Budzinski had little appreciation for the public interest objectives underlying the securities law requirements he was found to have contravened.

[28] While the insider reporting, early warning and take-over bid regimes serve a number of important purposes and objectives, certain of these – disclosure and fairness – are particularly relevant to Budzinski's misconduct. Specifically:

- One of the purposes of the insider reporting regime is to ensure that investors have timely and accurate access to information about the trading activities of insiders, which provides insight into an insider's views about the prospects of the relevant issuer (see s. 1.3 of Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions*; *Re McLeary*, 2016 BCSECCOM 191 at para. 8; *Re North America Frac Sand, Inc.*, 2022 ABASC 110 at para. 498; *Re Rowan*, 2009 ONSEC 46 at paras. 138-139).

- Similarly, a key purpose of the early warning system is to ensure the market is alerted to the accumulation of a significant number of securities of a particular issuer. In *Genesis Land Development Corp. v. Smoothwater Capital Corporation*, 2013 ABQB 509 at paras. 9-11, the following rationale for the early warning system noted in the September 4, 1998 Canadian Securities Administrators' notice of proposed National Instrument 62-103 was cited with approval:

> The early warning system contained in the securities legislation of most jurisdictions requires disclosure of holdings of securities that exceed certain prescribed thresholds in order to ensure that the market is advised of accumulations of significant blocks of securities that may influence control of a reporting issuer. Dissemination of this information is important because the securities acquired can be voted or sold, and the accumulation of the securities may signal that a take-over bid for the issuer is imminent. In addition, accumulations may be material information to the market even when not made to change or influence control of the issuer. Significant accumulations of securities may affect investment decisions as they may effectively reduce the public float,

> which limits liquidity and may increase price volatility of the stock. Market participants also may be concerned about who has the ability to vote significant blocks as these can affect the outcome of control transactions, the constitution of the issuer's board of directors and the approval of significant proposals or transactions. The mere identity and presence of an institutional shareholder may be material to some investors. [original emphasis]

- An important objective of the take-over bid regime is the protection of shareholder interests – in addition to appropriate disclosure and transparency, the regime requires the equal treatment of shareholders (see s. 1.1(2) of National Policy 62-202 *Take-Over Bids – Defensive Tactics*; s. 2.1 of National Policy 62-203 *Take-Over Bids and Issuer Bids*; D. Johnston, K. Rockwell, and C. Ford, *Canadian Securities Regulation*, 5th ed. (Markham: LexisNexis, 2014) at paras. 11.8-11.9). Specifically, where a person or company offers to purchase shares that, together with the shares over which the purchaser already has control or direction, equals 20% or more of the relevant issuer's outstanding shares, the same offer must be extended to all of the issuer's shareholders.

[29] These regulatory frameworks contribute to the public interest by fostering a fair and efficient capital market and protecting the integrity of, and confidence in, that market. Budzinski undermined these objectives by failing to disclose the accumulation of BCM shares in the Accounts that triggered the insider reporting and early warning requirements in September 2015. These contraventions were not isolated events, as he also failed to make the supplemental filings and disclosure as he continued to accumulate BCM shares in the Accounts in the ensuing months, well beyond the point at which the cumulative number of BCM shares in the Accounts represented an undisclosed control position in BCM and triggered take-over bid requirements with which he failed to comply. We have no evidence to indicate that this has ever been corrected by Budzinski.

**(b) Degree of Intention**

[30] Intentional misconduct is generally considered to be more serious and can indicate that the wrongdoer may be less likely to adhere to the law in the future, although inadvertent misconduct may still raise questions about the wrongdoer's propensity to engage in future misconduct (*Homerun* at paras. 24 and 26).

[31] Staff submitted that Budzinski's misconduct was, at a minimum, reckless, and that he may have acted intentionally given his knowledge of the 10% reporting threshold. As observed in *Homerun* at para. 29, a wrongdoer who acted despite having understood the need to adhere to securities laws can elevate ". . . what might otherwise be thought mere inadvertence into recklessness". Staff argued that Budzinski clearly knew of the 10% reporting threshold, but acknowledged that it was not entirely clear whether he accumulated BCM shares across multiple Accounts for the specific purpose of avoiding reporting obligations. Staff suggested that Budzinski's attempts to downplay his role in the face of his brokerage's concerns about his trading activity in some of the Accounts implied a more nefarious intent.

[32] Budzinski asserted that he did not intend to contravene any rules or regulations, that he had little understanding of the early warning regime, and that he "never wanted, desired, considered taking over BCM" nor did he intend to be an insider. We reiterate the point made in the Merits

Decision that one need not intend to be an insider or to engage in a take-over bid to trigger the associated restrictions and requirements under NI 55-104 and 62-104.

[33] In our view, Budzinski knew that certain regulatory obligations were associated with the accumulation of 10% or more of the outstanding BCM shares. Not only did he acknowledge in his written submissions that he had been told of the need to "stay below 10% interest", the evidence established that he was well aware of the 10% threshold. In particular:

- a BCM director recalled Budzinski calling to inquire about the number of outstanding BCM shares because he did not want to exceed the 10% threshold;
- HP learned of certain reporting requirements associated with the 10% threshold based on his conversations with Budzinski (and by way of warning from Budzinski's investment advisor, Thor, when HP opened his Account);
- brokerage account documents signed by Budzinski required that he confirm whether the account holder, either individually or as part of a group, owned or controlled "10% or more (insider) of the voting rights of a publicly traded company", or "20% or more (control) of the voting rights of a publicly traded company";
- those same documents reflected that Budzinski was a relatively sophisticated and experienced investor;
- as discussed in greater detail below, Budzinski was sufficiently experienced in the capital market to understand that the securities industry is highly regulated; and
- each of the Accounts accumulated BCM shares slightly below the 10% threshold by the end of the Relevant Period.

[34] Budzinski raised several points that touched on his knowledge of the reporting thresholds and whether he knowingly exceeded them in the circumstances. For example, he argued that he was not warned of any filing requirements and that he did not know what obligations existed once the 10% threshold was exceeded. He also claimed to have spoken with a lawyer, two managers at his brokerage firm, and to Thor, none of whom foresaw any problem unless anyone "went over 10%". These arguments were unsupported by any evidence. In particular, in the Merits Decision (at paras. 290-293), we dismissed his apparent claim that he relied on legal or professional advice.

[35] Budzinski also maintained that he did not know how many BCM shares were held in LP and HP's Accounts. That suggestion was inconsistent with admissions from his investigative interview, in which he indicated that he carefully monitored the total number of BCM Shares across the Accounts to ensure he "didn't get anywheres [sic] near the 10 percent mark" in any Account. Regardless, Budzinski's control and direction over BCM shares in Malachi and Freedom Investors' Accounts alone exceeded the 10% threshold, well before any shares were acquired in LP and HP's Accounts.

[36] Ultimately, we concluded that Budzinski was aware of the 10% threshold and he knowingly accumulated BCM shares in the Accounts well in excess of that threshold. While we accept that he may have been uncertain about whether the 10% threshold could be triggered by having control or direction over accounts that collectively held BCM shares in excess of that threshold, at minimum, we would have expected Budzinski to have taken reasonable steps to inform himself whether his trading authority over the Accounts could result in the 10% threshold being exceeded. As discussed, we had no evidence that he took such steps, or that he posed this question to anyone whom he claimed to have approached. In the circumstances, we consider that Budzinski did not make such inquiries because he did not want to know the answer.

[37] Whether Budzinski acted recklessly or with wilful blindness, we find that his actions demonstrate a heightened risk of future misconduct.

**(c) Exposure to Harm**

[38] Misconduct will be considered more or less serious depending on the extent to which the misconduct exposed identifiable investors or the capital market in general to harm or potential harm (*Homerun* at para. 22). Although we lacked evidence of actual harm or loss of confidence in respect of particular investors, also relevant to our assessment is the extent to which the misconduct may have resulted in any general loss of confidence in the capital market (*Re Aitkens*, 2019 ABASC 151 at para. 21).

[39] Staff submitted that Budzinski's misconduct resulted in the indirect harm to the market by depriving participants of prescribed disclosure about his trading activities. Budzinski suggested that his actions were beneficial in various ways, including that he "sought only to help others, [to] avoid erratic markets, and to bring property to Alberta".

[40] Disclosure is a fundamental component of the securities regulatory framework – the objective being to ensure that market participants have material information available to them when making their investment decisions. Consistent with this objective, each of the insider, early warning and take-over bid regimes include requirements for the dissemination of important information to existing shareholders and prospective investors alike.

[41] Budzinski's insider, early warning, and take-over bid breaches enabled him to acquire a significant number of BCM shares in the Accounts without the market having been alerted to the ongoing and significant accumulation of BCM shares, ultimately enough to potentially change or influence the control of BCM. Further, by disregarding the take-over bid requirements, Budzinski was able to accumulate more than 20% of the outstanding shares of BCM without making the requisite offer to all BCM shareholders. Budzinski's misconduct undermined the objectives that underpin important securities law requirements, exposing the capital market to potential harm.

**(d) Conclusion on Seriousness of Misconduct**

[42] Budzinski failed to comply with important requirements and he did so repeatedly. He failed to acknowledge the significance of those requirements and was either wilfully blind or reckless towards his regulatory obligations. Further, his misconduct compromised the fair and efficient operation of the capital market. Consequently, Budzinski engaged in serious misconduct that warrants meaningful sanction orders to convey strong messages of general and specific deterrence

– demonstrating to Budzinski and to others, that ignoring important obligations under Alberta securities laws will have significant consequences.

### 2. Respondent's Characteristics and History

[43] A respondent's characteristics and history may indicate the degree of risk the respondent will pose in the future and the associated need for deterrence. This factor may also affect the assessment of the proportionality of the sanctions being contemplated (*Homerun* at para. 27).

[44] Relevant characteristics may include a respondent's education, work experience, registration or other history of participation in the capital market, as well as any history of past discipline. Each of these elements may signify the extent to which the respondent was or should have been aware of relevant securities law requirements. This in turn may be indicative of the extent to which the misconduct was deliberate rather than inadvertent, and of the risk of recurrence (*Homerun* at paras. 28-29). However, as the panel in *Homerun* stated (at para. 31):

> . . . an absence of relevant education, experience or disciplinary history is not necessarily a moderating consideration. This will depend on all the circumstances, including the nature of the misconduct found, and evidence of what the respondent has learned from the events giving rise to the misconduct found.

[45] Also relevant is any substantiated claim of impecuniosity made by a respondent, which can provide important context to the proportionality assessment (*Homerun* at paras. 28, 34).

#### (a) Budzinski's Capital-Market Experience

[46] Staff acknowledged that Budzinski was not previously a capital market registrant, and there was no evidence that he was previously sanctioned for capital market misconduct. While "such a history might have indicated a heightened need for specific deterrence . . ., the contrary does not apply; no one, after all, should engage in sanctionable conduct, so an absence of prior sanction does not merit reward" (*Homerun* at para. 85).

[47] Staff submitted that Budzinski was a relatively sophisticated investor who was knowledgeable about financial markets, such that he knew or ought to have known that his method of accumulating shares through the Accounts would contravene Alberta securities laws. This, Staff argued, reflects a particular need for specific deterrence.

[48] According to his investigative interview statements, Budzinski:

- "made a lot of money" in the stock market in the late 1960s and early 1970s, and had told members of his congregation about his involvement with the capital market at various times since 1963;
- was the president of a public issuer for a few months in the early 1970s;
- considered himself to be knowledgeable about financial markets, though not "super knowledgeable", and noted that he knew how to buy and sell and "how to investigate certain mining stocks"; and

- had not taken any formal courses relating to investing and his education was unrelated to the securities industry.

[49] One witness in the Merits Hearing testified that Budzinski ". . . always talked about having a lot of knowledge of the stock market . . .", and brokerage account documents indicated that Budzinski was relatively sophisticated and experienced in the capital market.

[50] Budzinski's experience and level of sophistication was such that he would have appreciated that the capital market is highly regulated and that he ought to follow securities law requirements, including those associated with the accumulation of a significant number of BCM shares in the Accounts. We earlier found that despite knowing that the 10% threshold had certain regulatory requirements and that the aggregate number of BCM shares in the Accounts significantly exceeded that threshold, Budzinski was either reckless or wilfully blind regarding his regulatory obligations.

[51] Of particular concern to this panel was Budzinski's apparent unwillingness to adhere to Alberta securities laws. The evidence suggested that Budzinski was informed by Raymond James by at least June 9, 2016 that he was potentially a "control person". Armed with such advice, Budzinski made no apparent attempt to make the requisite disclosure or filings and instead contrived a series of letters denying his control over the HP, LP and Malachi Accounts. Evidence about Budzinski's subsequent trading activity through an online brokerage account also indicated that he was uncooperative with the brokerage's compliance personnel – he continued to engage in trading practices respecting which he had been repeatedly warned against – which ultimately resulted in the loss of his account privileges.

[52] These circumstances demonstrate that Budzinski poses a heightened risk of future misconduct warranting an emphasis on specific deterrence in any sanction order.

**(b) Impecuniosity**

[53] Budzinski claimed that he lacked the resources to pay any monetary sanction, specifically noting that his recent income level was below the poverty line. Staff's position was that Budzinski had not presented clear evidence about his financial circumstances and that the available evidence indicated that he likely had assets available to him to pay out any monetary orders. However, Staff also noted Budzinski's age – 74 as of the date of the Sanction Hearing – and acknowledged that a respondent's advanced age may suggest moderation in respect of any monetary sanction.

[54] Budzinski pointed to income tax records that he claimed had been "acknowledged" in the Merits Hearing. While Budzinski presented certain tax records – comprised of a single page from his notices of assessment for 2014 and 2017-2019 – to Staff's investigator when cross-examining her in the Merits Hearing, these records were not admitted into evidence because she could not authenticate them. Indeed, Budzinski acknowledged at the time that they had not been admitted into evidence and said that he would have them "verified by other people". Budzinski did not testify nor did he attempt to admit these records through any other witness.

[55] Other evidence identified by Staff included online account statements for discount brokerage accounts registered to Budzinski, which he used to acquire BCM shares after depositing approximately $49,000 into one account from mid-June 2016 to the end of October 2016 and

nearly $21,000 into another account from May 2018 to the end of February 2019. In his investigative interview, Budzinski also acknowledged that he had deposited $15,000 into the Malachi Account in May 2016, which he said derived from his pension cheques and other "payments" he had received.

[56] Budzinski claimed to have held securities on behalf of others in one of his online accounts, but he offered no supporting evidence. The associated account form for that online brokerage listed Budzinski as the primary account holder, without any reference to a joint or beneficial holder. Budzinski also claimed – again with no supporting evidence – that he was unable to access that account and did not know what, if anything, remained in the account. Despite these claims, Budzinski specified what his funds would be used for "[w]hen BCM pays out . . .".

[57] Staff also referred to representations in Budzinski's online brokerage account documents – which he signed in 2018 – indicating that his annual income was estimated to be $30,000 while his estimated "total family net worth" was approximately $2.25 million. This was consistent with statements from his investigative interview indicating that his primary source of income came from "pensions", but that he was also owed "[p]robably at least [$]2 million" from loans advanced to various individuals. Budzinski seemed to acknowledge these loans in his oral submissions but claimed that he could not rely on their repayment and that any funds he might receive would be "loaned out again to people in extreme need". Again, we had no evidence to support Budzinski's assertions, although we did not interpret this claim as a denial that he had resources to pay an administrative penalty, rather that he would choose to divert those funds to some other use.

[58] The limited evidence about Budzinski's financial circumstances indicated that he receives pension income, that he may still have BCM shares that were purchased through online brokerage accounts, and that he also has various sums owed to him. Accordingly, we did not find Budzinski's claims of impecuniosity to be substantiated. We do agree with Staff that slight moderation may be warranted given Budzinski's age and his ability to earn income in the future, and we have factored that into our assessment of the proportionality of any administrative penalty.

### 3. Benefits Sought and Obtained by Budzinski

[59] Capital-market misconduct motivated by a wrongdoer seeking to benefit (financially or otherwise) reflects an increased risk of future misconduct and therefore demands a greater emphasis on deterrence (*Homerun* at paras. 35-36).

[60] Staff acknowledged the lack of evidence about Budzinski's motivation to benefit from his misconduct. Budzinski submitted that he had no beneficial interest in any of the Accounts, that he received no commissions and exercised no voting rights associated with the BCM shares held in the Accounts and, as noted, that his motivation was to assist others, avoid erratic markets, and ". . . bring property to Alberta".

[61] Although the evidence did not establish that Budzinski's misconduct was motivated by a desire for personal benefit, we did not entirely accept his ostensibly altruistic motives as mitigating in the circumstances. Even if he was seeking to help others, that objective could have been accomplished while adhering to Alberta securities laws. Accordingly, we consider Budzinski's lack of intent to benefit from his misconduct as a neutral factor.

### 4. Mitigating and Aggravating Considerations

[62] A proper sanctioning analysis requires consideration of all relevant circumstances, whether mitigating or aggravating (*Homerun* at para. 39). Mitigating considerations may include "a genuine acceptance of responsibility", reasonable reliance on "faulty professional advice", or other "[p]ersuasive indications that a respondent appreciates the wrong done, and its seriousness", whereas aggravating circumstances reflect risk of future misconduct, including a "belligerent contempt for either the victims of the misconduct or the law" (*Homerun* at paras. 40-46). However, a general denial of responsibility or the failure to express remorse is not aggravating, given a respondent's right to mount a defence and maintain their innocence (*Walton* at para. 155; *Homerun* at para. 41).

#### (a) Contempt Towards Staff and the ASC

[63] Staff submitted that certain of Budzinski's actions should be considered aggravating. Specifically, Staff submitted that Budzinski made baseless accusations comparing Staff's investigation techniques to methods used by Hitler and Stalin. Staff also cited inappropriate comments that he made in his cross-examination of their primary investigator – alleging that she "was in bed with" and had a "cash arrangement" with a third party – and in his closing submissions when he asserted that one of Staff's counsel was acting, in essence, as a terrorist and that both he and Staff's investigator used "terrorist brainwashing techniques". None of these allegations were supported by evidence.

[64] Staff argued that Budzinski's comments about Staff and the ASC, made throughout the proceeding, reflected his contempt and lack of respect for Alberta securities laws and represented an aggravating factor. Staff submitted this conduct posed an increased risk that Budzinski might engage in similar future misconduct, necessitating a message of specific deterrence. Staff conceded that they did not establish all of the allegations in their NOH but submitted that their investigation was not a baseless "inquisition", as alleged by Budzinski. Staff suggested that Budzinski's concerns related to the confidentiality requirements associated with ASC investigations, which prevented him from coaching witnesses before they were interviewed by Staff's investigators.

[65] An ASC panel in *Re Felgate*, 2021 ABASC 68 at para. 50 found that the respondent's ". . . aggressive and contemptuous" statements in that proceeding, in which the ASC investigator was accused of defamation and harassment, were aggravating in the circumstances. The panel cited the following commentary from *Homerun* at para. 46:

> An aggravating consideration might take the form of a respondent displaying a belligerent contempt for either the victims of the misconduct or the law. Such behavior might reasonably indicate a pronounced risk of future misconduct (and send a disconcerting message of defiance to observers), demanding heightened specific and general deterrence.

[66] Budzinski denied that his communications reflected contempt for Staff. He argued that his lack of understanding of the legal intricacies of an enforcement hearing did not constitute contempt, abuse, or disregard for Alberta securities laws.

[67] We find Budzinski's statements throughout this proceeding to be replete with inflammatory commentary that was disrespectful, inappropriate, and offensive. He questioned the ASC's

motives, and asserted corruption, abuse, defamation, and persecution on the part of the ASC and its personnel. He also claimed that the ASC employed "strategies and techniques that create intimidation, abuse, senior abuse, handicap abuse, Nazi persecution, religious persecution, harassments, criminal activities, lying, misleading and deceptive practices", and he characterized the Merits Hearing as a "kangaroo court" with procedures taken "word for word out of the Gestapo + SS handbook".

[68] While every attempt was made to ensure Budzinski had a fair opportunity to defend himself against Staff's allegations, his entitlement to raise a credible defence is not a licence to make unnecessary and unwarranted personal attacks against virtually every ASC representative involved in these proceedings. While we accept his asserted lack of familiarity with ASC proceedings, this does not excuse his conduct. Even after having received Staff's submissions which included their complaints as to the tenor of his comments, Budzinski did not exhibit any sort of restraint and instead continued to make inappropriate statements in both his written and oral submissions.

[69] The comments and accusations Budzinski made throughout the proceeding indicated contempt for Staff and the ASC in general, and demonstrated his lack of respect for Alberta securities laws. We consider this conduct to be an aggravating factor weighing in favour of a sanction order sending a strong message of specific deterrence.

**(b) Reliance on Legal Advice**

[70] Budzinski submitted that consideration ought to be given to his reliance on legal or professional advice. As mentioned earlier, Budzinski claimed that he contacted the ASC in August 2015 and was told that he needed to speak with a lawyer. He said that he then contacted a lawyer, who apparently told him that he did not see any problems "[u]nless anyone went over 10%". He also claimed to have talked to two managers at his brokerage firm, who did not see any problems unless someone went over 10% (and that no one did). Budzinski said that this left him with the understanding that "everything was OK" because he did not personally own the shares, nor did he receive commissions from BCM or from those whom he helped to acquire BCM shares.

[71] Budzinski made similar assertions in the Merits Hearing, which we found to be unsupported by any evidence and therefore could not form the basis of a defence to Staff's allegations (Merits Decision at paras. 290-293). While a respondent's reliance on legal advice may be a mitigating consideration at the sanction phase of a proceeding (*Aitkens* at para. 81), without any evidence, we cannot assess the veracity of Budzinski's asserted reliance on legal or professional advice. Consequently, we do not consider this a mitigating factor in our determination on the issue of sanction.

**5. Conclusions on Sanctioning Factors**

[72] Based on our assessment of the various sanctioning factors, we considered that Budzinski presents an ongoing risk to the capital market. He neglected to follow important insider, early warning and take-over bid requirements despite knowing that the accumulation of BCM shares in the Accounts exceeded key regulatory thresholds (first 10%, then 20% of the outstanding BCM shares). His unwillingness to follow advice from his online brokerage's compliance personnel, and the contempt with which he treated the ASC and Staff, reinforced our view of the risk he presents to the public interest.

[73] In these circumstances, a sanction order delivering a message of both specific and general deterrence is necessary to make clear to Budzinski, and to other market participants, that noncompliance with the insider reporting, early warning disclosure and reporting and take-over bid requirements will result in meaningful sanction orders.

### 6. Outcomes in Other Proceedings

[74] Previous decisions and outcomes involving similar misconduct and circumstances can help in assessing the proportionality of a proposed sanction order (*Re Holtby*, 2015 ABASC 891 at para. 54). While the circumstances in prior decisions will not be identical to the current matter, they can still be useful in determining a sanction order that will be "proportionate to the offence, and fit and proper for the individual offender" (*Walton* at para. 156).

[75] Staff identified four previous decisions, noting that although they were dated and involved only one aspect of Budzinski's misconduct – failure to file insider reports – they nonetheless provide some assistance in assessing appropriate sanction in this matter:

- In *Re McLean*, 2003 BCSECCOM 301, the respondent admitted that he failed to file insider trading reports in connection with more than 333 trades representing approximately 18% of all trading in a two-year period (including in two accounts in the names of others), and he was ordered to pay (among other things) an administrative penalty of $10,000 (which was reduced to account for his financial constraints) along with five-year market-access bans;

- *Re Andrew Cheung*, 2005 ONSEC 6, an Ontario Securities Commission panel approved a settlement agreement in which the respondent – who actively cooperated and was unlikely to engage in future misconduct – agreed to pay an administrative penalty of $5,000 for his failure to file insider reports;

- *Re Thomas Hinke*, 2006 ONSEC 9, an Ontario Securities Commission panel approved a settlement based on admissions that resulted in a finding that the respondent failed to file insider trading reports for a nine-month period (which was also contrary to a prior settlement involving similar misconduct) and his agreement to sanctions consisting of a $32,000 administrative penalty and trading bans ranging from six months to one year in duration; and

- In *McLeary*, following a contested hearing in which the respondent was found to have contravened the insider reporting requirements in connection with at least 105 trades representing more than $1.2M in securities of two issuers, the respondent (whose misconduct was considered intentional and secretly carried out through offshore accounts) received a $25,000 administrative penalty and permanent market-access bans.

[76] More recent settlements involved the failure to file insider trading and early warning reports. In *Re Liem*, 2023 BCSECCOM 144, the respondent undertook to pay $40,000 and received 20-year market-access bans after admitting that he contravened insider and early warning reporting

requirements. While he cooperated with the investigation and his admissions saved certain costs and time, he used two other identities to obtain nearly 25% of the reporting issuer's shares and it was considered aggravating that he previously pled guilty to three counts of theft over $5,000 in relation to publicly traded securities (for which he received a nine-month conditional sentence).

[77] In *Re Penn*, 2021 BCSECCOM 472 and *Re Rubin*, 2021 BCSECCOM 473, the respondents (each a registrant and a director of the relevant issuer) entered into settlements where they admitted to failing to accurately file insider and early warning reports (as well as authorizing, permitting or acquiescing to the issuer's false or misleading statements in management information circulars about their respective shareholdings). Neither attempted to hide their trading activity, and both made late filings (including payment of late fees) and cooperated with BCSC staff. Penn undertook to pay a total of $75,000, whereas Rubin undertook to pay $65,000 for the misconduct. While the respondents did not agree to any market-access bans, each undertook to take a course addressing their duties as directors or officers.

[78] As frequently observed by ASC panels at the sanction phase of proceedings, none of the cited decisions are on all fours with the circumstances in this case. Nonetheless, they indicated a range of sanction orders for reasonably similar misconduct and provided some assistance in our assessment of appropriate sanction for Budzinski.

[79] While the unreported trading activity in most of these cases was generally analogous to Budzinski's circumstances, most also involved admissions and some expressly identified the respondent's cooperation as a mitigating factor. Most of the cases also indicated that the requisite reports were eventually filed, and in half of those cases the associated late fee was paid. Further, the comparable misconduct in most of these cases was limited to the failure to file insider reports, although several also involved the intentional use of offshore accounts or accounts using different identities (*Liem*, *McLeary*). We considered Budzinski to have been wilfully blind or reckless in his contravention of multiple requirements (some on a repeated basis) and that there were no mitigating elements such as cooperating with Staff, making admissions, filing any of the delinquent reports, or paying any associated late fees.

[80] At a minimum, the comparable cases suggested that failing to file insider trading reports will typically be met with a combination of administrative penalties and an array of market-access bans of relatively modest duration.

[81] While the administrative penalties issued in the two earliest cases were $10,000 or less – though in *McLean* the panel considered a $20,000 figure, but reduced the amount based on evidence of the respondent's financial circumstances – the appropriate range seems to have since increased. In *McLeary*, the panel considered comparable cases decided between 13 and 20 years prior that resulted in administrative penalties ranging from $10,000 to $20,000. In assessing a $25,000 penalty (and permanent market-access bans), the panel noted that inflation would diminish the deterrent effect of a penalty commensurate with those ordered in the older cases, and that there had since been legislative increases to the maximum monetary sanction (similar Act amendments were also made in Alberta) (*McLeary* at para. 26). More recently, increased amounts – ranging from $40,000 to $75,000 – resulted from misconduct that also included the failure to file early warning reports (*Liem*, *Penn* and *Rubin*).

[82] As to the duration of the market-access bans, most of the above cases resulted in bans of five years or less. Notable exceptions being the permanent and 20-year bans ordered in *McLeary* and *Liem*, respectively. In *McLeary*, the panel noted the respondent's existing lifetime bans for more serious, unrelated misconduct, and in *Liem*, an aggravating factor was the respondent's prior securities-related misconduct – three counts of theft over $5,000. In some instances where the respondent cooperated with Staff, no bans were issued.

## B. Types of Sanction Orders

[83] An ASC panel has considerable discretion to formulate a sanction order consisting of market-access bans or monetary sanctions (or both) pursuant to ss. 198(1) and 199(1) of the Act. As described by the ASC panel in *Re Fauth*, 2019 ABASC 102 (at para. 68), bans issued pursuant to s. 198(1) necessarily restrict a wrongdoer's participation in the Alberta capital market:

> 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).

[84] Despite the imposition of any other sanction, an ASC panel may direct a wrongdoer to pay an administrative penalty of not more than $1 million for each contravention or failure to comply with any provision of Alberta securities laws (s. 199 of the Act). An administrative penalty is an important sanctioning tool meant to address both specific and general deterrence by imposing a direct financial cost on a respondent to ensure that a sanction is not considered merely another cost of doing business (*Re Workum and Hennig*, 2008 ABASC 719 at para. 135, affirmed on other grounds *sub nom. Alberta (Securities Commission) v. Workum*, 2010 ABCA 405; *Holtby* at para. 65).

## C. Summary of Parties' Position on Sanction

### 1. Staff

[85] Staff contended that Budzinski's misconduct deprived the investing public of important information pertaining to BCM shares, showed disregard for Alberta securities laws, and that his conduct throughout the enforcement proceedings reflected his contempt towards Staff and the ASC. Staff argued that Budzinski therefore poses a risk of engaging in similar misconduct in the future, and that any sanction order should focus on the need for specific deterrence.

[86] Staff pointed to the reckless and repeated nature of Budzinski's misconduct, his aggravating behaviour throughout this proceeding, and his advanced age, in support of their request for a sanction order consisting of a $30,000 administrative penalty and market-access bans for the latter of three years or the date on which the administrative penalty is fully paid. Staff's request to link the duration of the bans to full payment of the administrative penalty was to ensure that the bans remain in effect for a minimum period of time while reinforcing the deterrent effect of the administrative penalty by precluding any future market activity pending full compliance with the sanctions order (*Re Cerato*, 2022 ABASC 121 at para. 52).

[87] In light of the significant number of BCM shares accumulated in the Accounts and because Budzinski made investment decisions on behalf of others, Staff sought market-access bans that would restrict Budzinski's trading and advising in securities.

### 2. Budzinski

[88] Budzinski argued that there was no harm resulting from his actions and that he was not a risk to the public interest, ostensibly because he is now aware of the filing requirements, he faces "a series of health problems", and he cannot access his accounts or any funds to trade. He also submitted that a sanction order was not warranted or justified because he did not intend to break any rule or regulation and that in the absence of ongoing misconduct, any sanction would be "overkill".

[89] He also argued that he would have had to submit false filings to avoid the contraventions cited in the Merits Decision, and submitted that he should not be sanctioned for refusing to lie. Instead, Budzinski suggested that a letter of undertaking be placed on file, apparently to ensure his future compliance with the insider reporting, early warning and take-over bid rules. He also suggested that a letter be sent to anyone acting with trading authority, to remain cognizant of, and abide by, the various reporting regimes. He otherwise denied that he should be made subject to any sanction, and argued that any order would be "crushing and endless" and "[r]eligious persecution to the extreme".

## D. Analysis and Conclusions on Sanction Orders

[90] Having assessed the *Homerun* sanctioning factors in respect of Budzinski and his misconduct, and taking into account the outcomes in comparable cases, we find that a sanction order comprised of both an administrative penalty and market-access bans is in the public interest.

[91] We are satisfied that the proposed $30,000 administrative penalty is reasonable and proportionate in the circumstances. In our view, this amount reflects the seriousness of Budzinski's misconduct, and accounts for the aggravating factors and his personal circumstances, including his age. It is also commensurate with monetary sanctions imposed in other cases.

[92] Budzinski did not establish that he was unable to pay an administrative penalty of $30,000, and his unsubstantiated assertion that such an order would be "crushing" for him is not determinative. Of course, a monetary sanction invariably imposes a burden on a wrongdoer, but that alone does not "demonstrate disproportion or unreasonableness", given that "an order with no real effect on the recipient may be no sanction at all" (*Homerun* at para. 18). The fact that an administrative penalty has a burdensome effect does not invalidate the regulatory need to encourage lawful conduct by market participants (*Alberta Securities Commission v Brost*, 2008 ABCA 326 at para. 54).

[93] We are also satisfied that the type of market-access bans proposed by Staff – prohibitions on trading, advising, and on the availability of any exemptions under Alberta securities laws – are appropriate and responsive to Budzinski's misconduct. Although we considered whether the proposed three-year term for the bans was of sufficient duration, we are satisfied that linking the expiration of the bans to full payment of the administrative penalty appropriately serves the public interest and conveys the requisite level of specific and general deterrence.

## IV. COSTS

### A. Cost-Recovery Principles

[94] After conducting a hearing and having determined that a respondent contravened Alberta securities laws or acted contrary to the public interest, an ASC hearing panel may order the respondent to pay costs of or related to the hearing and the investigation that led to the hearing (s. 202 of the Act). Such an order differs from a sanction and provides a means of recovering certain costs from a wrongdoer that would otherwise come from the fees paid by law-abiding market participants (*Homerun* at para. 48).

[95] Section 20 of the *Alberta Securities Commission Rules (General)* prescribes certain categories of costs that, if considered reasonable in all the circumstances, can be ordered under s. 202 of the Act. Such categories include the time and expenses incurred in the investigation or hearing (or both), along with costs paid or payable in respect of witnesses.

[96] Factors relevant to the assessment of the appropriate amount of a costs order include:

- the efficiency (or lack thereof) contributed by each party to the proceeding (for example, by making 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
- any prior recovery of costs arising from the same matter (for example, through settlement with another respondent) (see *Homerun* at paras. 49-50 and 52).

### B. Positions of the Parties

#### 1. Staff

[97] Staff's Bill of Costs indicated investigation and hearing costs of nearly $160,000, consisting of approximately $12,000 in investigation costs, more than $116,000 in litigation costs, nearly $2,000 in witness expenses and approximately $30,000 in other costs.

[98] Staff conceded that a significant portion of these costs were attributable to the unsuccessful market manipulation allegations, but contended that the remaining allegations related to Budzinski's control or direction over the Accounts – a fact-intensive exercise that took up considerable hearing time. Considering Budzinski's failure to contribute to an efficient hearing and the increased hearing and disbursement costs associated with the many accommodations to enable his participation in the Merits Hearing, Staff sought a cost-recovery order of $30,000. In Staff's view, this figure reasonably and fairly reflected these considerations, as well as the $10,000 paid by Thor for costs of the investigation as part of his settlement with Staff and any inefficiencies or duplication of Staff's costs due to the involvement of multiple lawyers on this matter.

### 2. Budzinski

[99] Budzinski's submissions did not expressly address costs, other than a vague suggestion that, in his view, the matter could have been avoided had Staff reached out to address their concerns. He made little, if any, acknowledgement of the various attempts to assist his participation in the hearing, and instead characterized many as a form of abuse or persecution.

## C. Analysis and Conclusions on Cost-Recovery

[100] We considered the Bill of Costs and the supporting documentation carefully, and are satisfied that the claimed costs are recoverable under s. 202 of the Act, and that they are reasonable and appropriate for this particular investigation and hearing. Indeed, Staff's actual costs are certainly higher than those reflected in the Bill of Costs, which does not include costs associated with a pre-hearing application that Budzinski made or those tied to the sanction phase of this proceeding.

[101] We are also satisfied that the amounts claimed by Staff are reasonable, as they reflected appropriate reductions to account for investigation and hearing time spent on allegations that were not sustained, the recovery of some costs from Thor, and some duplication of Staff time and effort.

[102] We also considered that considerable costs were incurred as a result of the numerous accommodations made to address Budzinski's purported challenges (see Merits Decision, paras. 12-15), and that his conduct during the proceeding contributed to various inefficiencies. While a degree of inefficiency will necessarily be anticipated when an individual unfamiliar with an administrative hearing process attempts to represent him or herself, here the inefficiencies and associated costs encountered went beyond what might typically be expected in such circumstances – for example, significant photocopy costs, courier expenses, and inefficiencies related to the rescheduling of certain witnesses. Budzinski added further inefficiency by making numerous irrelevant submissions throughout both the merits and sanction portions of the proceeding, ignored assistance provided to him that could have streamlined his questioning of witnesses, and engaged in unnecessary and time consuming personal attacks on Staff and some of their witnesses.

[103] Given our finding that he engaged in serious capital market misconduct and that he contributed to an inefficient hearing process, we consider that Budzinski should bear at least some of the costs related to the investigation and associated hearing. While it is likely impossible to quantify the precise costs of the inefficiencies attributable to Budzinski, we find the costs order sought by Staff to be reasonable and we are therefore ordering that Budzinski pay investigation and hearing costs in the amount of $30,000.

## V. CONCLUSIONS AND ORDERS

[104] For the reasons given, we make the following orders against Budzinski:

- for a period of three years from the date of this decision or until the administrative penalty set out below has been paid in full, whichever is the later:
    - under s. 198(1)(b) of the Act, he must cease trading in or purchasing any security or derivative;

- under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him; and

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

- under s. 199, he must pay to the ASC an administrative penalty of $30,000; and

- under s. 202, he must pay to the ASC $30,000 of the costs of the investigation and hearing.

[105] This proceeding is concluded.

October 31, 2023

**For the Commission:**

"original signed by"
Kari Horn

"original signed by"
Matthew Bootle

"original signed by"
Steven Cohen