**ALBERTA SECURITIES COMMISSION**

**DECISION**

**Citation: Re DeBono, 2025 ABASC 14** **Date: 20250212**

**Charles DeBono**

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| **Panel:** | Kari Horn, K.C.<br>Tom Cotter |
| **Representation:** | Yasifina Somji<br>for Commission Staff |
| **Submissions Completed:** | January 17, 2025 |
| **Decision:** | February 12, 2025 |

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## I. INTRODUCTION

[1] Alberta Securities Commission (**ASC**) staff (**Staff**) applied for an order under s. 198.1(2)(a)(i) of the *Securities Act* (Alberta) (the **Act**) permanently banning Charles DeBono (**DeBono**) from participating in the Alberta capital market in certain capacities. Section 198.1(2)(a)(i) authorizes the ASC to make an order under ss. 198(1)(a) to (h) in respect of a person convicted of an offence "arising from a transaction, business or course of conduct related to securities or derivatives". These are typically referred to as reciprocal orders.

[2] On February 17, 2022, DeBono pleaded guilty to one count of fraud over $5000 contrary to s. 380(1)(a) of the *Criminal Code* (Canada) (the **CCC**) and one count of laundering the proceeds of crime contrary to s. 462.31(1)(a), both relating to the activities of an entity called "Debit Direct".

[3] On June 28, 2022, DeBono was sentenced to jail by Justice Fuerst of the Ontario Superior Court of Justice (**OSCJ**). Justice Fuerst also issued several ancillary orders against DeBono, including an order to pay $26,910,772 restitution to the victims of his crime and an order under the CCC permanently prohibiting him from being employed in a capacity having control over the real property, valuable security, or money of another person.

[4] Staff alleged that the offences arose from transactions, business, or a course of conduct related to securities or derivatives, and that it is in the public interest to issue the orders they seek against DeBono.

[5] DeBono was personally served with notice of Staff's application, as well as two affidavits with exhibits and written submissions in support. The notice advised DeBono that he could request an opportunity to be heard and provide evidence and submissions on the application by contacting the ASC Registrar within 10 days of service. He did not do so. Accordingly, we considered Staff's application on the basis of the written materials they provided.

[6] We find that DeBono's criminal offences arose from a transaction, business, or course of conduct related to securities, and that it is in the public interest to order permanent market-access bans against him as Staff requested. Our reasons for this determination follow.

## II. BACKGROUND

### A. The Debit Direct Ponzi Scheme

[7] The facts underlying DeBono's CCC offences were described in Justice Fuerst's Reasons for Sentence (the **Sentencing Decision**), cited as *R. v. DeBono*, 2022 ONSC 3809. Her summary was based on a statement of agreed facts entitled, *Charles DeBono – Facts in Support of Guilty Plea* (the **Agreed Facts**). A copy of the Agreed Facts was in evidence before us along with an attachment described as a "Business Opportunity Information Manual" for Debit Direct (the **Information Manual**).

[8] DeBono created and marketed Debit Direct through his umbrella corporation, K.I.S. Media Ventures Ltd. Ostensibly, Debit Direct was in the business of providing point of sale debit machines to merchants. Over a period of nearly five years from January 2013 to August 2017, DeBono sought and obtained investments in the venture from over 500 investors in multiple jurisdictions, including over 100 investors resident in Alberta.

[9] Investors in Debit Direct were told that they were purchasing debit terminals that would be placed in and used by small businesses across Canada. They paid approximately $2500 to $3100 per terminal, and were to earn returns of 15 cents per transaction. Debit Direct was to place the machines at the businesses and take care of all associated costs and maintenance. DeBono described it as a "passive" investment, as investors were not required to do anything to earn the returns other than provide their investment capital. The Information Manual confirmed the passive nature of the investment, as well as its "[g]uaranteed" profitability, safety, and security.

[10] Investors entered into contracts, and received lists of small businesses in various locations at which their debit terminals had purportedly been placed. They also received monthly payouts and reports claiming to show the performance of each terminal.

[11] Debit Direct listed its address as a suite at a prestigious building in Toronto's financial district. It was actually run from a small office in an automotive repair shop in Barrie, Ontario that DeBono had opened with what Justice Fuerst described as an "unsuspecting friend" who was an auto mechanic. DeBono operated Debit Direct under an alias – the name of another unsuspecting friend.

[12] Debit Direct did not operate a legitimate business or offer any real investment opportunities. It only owned approximately 10 debit terminals, and did not place them anywhere or use them to process any transactions. The lists of businesses and terminals sent to investors were false, as were the monthly performance reports. It was in fact a Ponzi scheme, and any returns investors received were paid from other investors' funds.

[13] In addition to the fraud, DeBono laundered investment funds he received in a number of different ways, misappropriating them for his personal benefit. Having met and married a woman from the Dominican Republic, in 2014 DeBono started moving large amounts of cash and personal property to that country, and ultimately fled there in August 2017.

[14] After Debit Direct investors stopped receiving their monthly returns in September 2017, they eventually reported it to various police agencies across Canada. The Ontario Provincial Police (**OPP**) took over the investigation. DeBono was arrested in the Dominican Republic on September 12, 2020, and deported to Canada the same day.

[15] The forensic accountant retained by the OPP concluded that DeBono had raised somewhere between $40 million and $48 million under the Debit Direct scheme, primarily from Canadian investors. Over $12 million was transferred to the Dominican Republic, and approximately $5.9 million to $17 million was paid to investors as purported returns. Investors lost approximately $24 million to $42 million. Apparently a closer calculation of these amounts was not possible from the available evidence, but the Agreed Facts indicated that the true amounts were likely nearer to the upper end of the ranges given.

**B. The Sentencing Decision – Findings and Sentence**

[16] Based on Statements on Restitution filed by numerous victims, Ontario Crown counsel concluded that the restitution amount was $26,910,722. Through his counsel, DeBono accepted the Crown's calculation and did not take issue with the prospect of a restitution order.

[17] Victims also provided the OSCJ numerous Victim Impact Statements. According to Justice Fuerst, victims reported financial losses creating significant economic insecurity, the loss of life savings and retirement funds, adverse impacts to standards of living, personal relationships damaged or destroyed, medical and emotional issues, and the need to put plans (such as retirement) on hold.

[18] Justice Fuerst noted the following with respect to DeBono:

- at the time of sentencing, he was 63 years old and had no prior criminal record;
- he has a high school diploma and a college diploma;
- he has worked in the past in the autobody and automobile industry;
- after he was deported back to Canada from the Dominican Republic, he waived bail and consented to his detention, serving 21 months and 17 days in pre-sentence custody;
- he was in particularly adverse conditions for part of his time in pre-sentence custody, as he was in full or partial lockdown for more than 220 days due to staffing shortages, COVID-19, and medical isolation/observation;
- he had various health issues, including a history of cancer and bipolar disorder requiring medication; and
- at the end of the sentencing hearing, he apologized for his offences and said he would "do his best" to make restitution to his victims.

[19] In their sentencing submissions, Crown counsel indicated that DeBono's was one of the larger frauds in Canadian history, and pointed to a number of aggravating factors on which Justice Fuerst also relied:

- the fraud was a five-year Ponzi scheme that required significant planning and acts of deceit to provide the scheme with an appearance of legitimacy;
- DeBono impersonated and used the name of a real person;
- there was a large number of victims – over 500 – and many suffered significant consequences;
- DeBono apparently destroyed or removed records evidencing his fraud; and
- the fraud was extensive, causing over $29 million in investor losses.

[20] Justice Fuerst also noted that DeBono was motivated by greed, misappropriating investment funds for himself so he could live in luxury. In addition, there was never a legitimate business underlying the fraud, yet DeBono prepared fake monthly statements so investors would believe they were earning the promised returns. He misused the services of several Canadian banks, and when one of the banks started to raise concerns about suspicious account activity, he fabricated invoices to assuage those concerns. Further, DeBono fled the jurisdiction and moved funds and assets offshore, out of the reach of investors and Canadian law enforcement.

[21] The mitigating factors pointed out by the Crown and the OSCJ were DeBono's guilty plea (suggesting remorse and acceptance of responsibility), his lack of a prior criminal record, and the harsher conditions of his pre-sentence custody.

[22] On the basis of the foregoing, Justice Fuerst sentenced DeBono to seven years in jail less time served, and, as mentioned, issued several ancillary orders including an order to pay restitution.

## III. ANALYSIS

[23] We noted previously that s. 198.1(2)(a)(i) of the Act authorizes us to make an order under ss. 198(1)(a) to (h) against a person convicted of an offence "arising from a transaction, business or course of conduct related to securities or derivatives". Section 198(1) provides that orders under that section may be issued where we find "that it is in the public interest to do so".

[24] Accordingly, we must first be satisfied that DeBono's conviction arose from a transaction, business, or course of conduct related to securities or derivatives.

### A. Transaction, Business, or Course of Conduct Related to Securities

[25] In their written submissions, Staff argued that DeBono's conviction arose from his fraudulent investment scheme, which involved securities. They acknowledged that Justice Fuerst did not use the word "security" in the Sentencing Decision, but argued that the contracts between investors and Debit Direct were "investment contracts" within the broad definition of "security" in s. 1(ggg) of the Act – specifically, s. 1(ggg)(xiv).

[26] "Investment contract" is not defined in the Act, but ASC hearing panels typically rely on the definition set out in the Supreme Court of Canada decision, *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112: an investment of money in a common enterprise with the expectation of profit derived significantly from the efforts of others (see also *Re Carruthers*, 2020 ABASC 177 at para. 24).

[27] We agree with Staff's analysis. Debit Direct investors provided money – $2500 to $3100 per terminal – for an enterprise in which both they and Debit Direct ostensibly had a common interest: the placing of debit terminals in small Canadian businesses for the purpose of generating a profit. Because the investors were not required to do anything other than provide their investment capital and were told that Debit Direct would take care of placing and maintaining the terminals, their expectation was that the profit would be derived significantly from the efforts of others – i.e., Debit Direct personnel.

[28] We therefore find that DeBono's conviction arose from a transaction, business, or course of conduct related to securities: the Debit Direct investment contracts. He perpetrated a fraud based on investment in those securities, and laundered the proceeds. Investors were enticed to participate based on DeBono's intentional misrepresentations and deceit about the intended use of funds. He then misappropriated a large portion of the funds for his personal benefit, causing the investors financial loss. As the principal of Debit Direct, he was aware of what investors were told and how he actually used their funds, and must have known that the funds were at risk if they were not used for legitimate business purposes.

[29] Next, we must be satisfied that the order Staff seeks is in the public interest.

## B. In the Public Interest

[30] Staff argued that securities fraud is consistently recognized by this commission and others as serious misconduct that undermines investor protection and public confidence in the integrity and fairness of our capital market. As stated in *Re Arbour Energy Inc.*, 2012 ABASC 416 (at para. 80):

> Investment fraud is reprehensible and completely unacceptable capital-market misconduct; instances of fraud in the capital market severely threaten the public's confidence and sense of fairness in the whole of our capital market.

[31] Staff relied on *Carruthers* (at para. 32) for the proposition that orders reciprocating criminal convictions for securities-related fraud perpetrated against investors are generally considered to be in the public interest. Staff also noted that on February 6, 2024, the Ontario Capital Markets Tribunal issued permanent market-access bans against DeBono based on the same convictions (see *Re DeBono*, 2024 LNONOSC 47). The *Securities Act* (Ontario) contains reciprocal order provisions similar to those in the Alberta Act.

### 1. Sanction Principles – General

[32] As argued by Staff, ASC sanction orders are intended to be protective and preventative, directed toward deterring a respondent and others from engaging in similar misconduct in the future (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). They must also be proportionate and reasonable in the circumstances of a particular case (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (leave to appeal denied [2014] S.C.C.A. No. 476) at para. 154).

[33] To determine whether a proposed order meets these criteria, we employ the analytical framework set out in *Re Homerun International Inc.*, 2016 ABASC 95, and consider several sanctioning factors: the seriousness of the misconduct, the respondent's characteristics and history, any benefit sought or obtained by the respondent, and any additional mitigating or aggravating considerations (at para. 20). We also consider the outcomes in past decisions involving similar circumstances.

### 2. Seriousness of DeBono's Misconduct

[34] We agree with Staff that DeBono's misconduct was extremely serious.

[35] Using an identity stolen from a friend, DeBono intentionally perpetrated a massive and sophisticated Ponzi scheme over a period of nearly five years. He victimized over 500 investors (including at least 100 Alberta investors), to the magnitude of as much as $48 million. As observed in *Carruthers* (at para. 35):

> Fraud is one of the most serious securities law contraventions due to its harmful effects on investors and the capital market. We agree with Staff's submission that fraud involving a Ponzi scheme is especially serious as it necessarily involves a substantial degree of deceit and dishonesty – there is "a pernicious aspect to the payments" made to investors in a Ponzi scheme in that they give "a

> comforting impression that the investments made were sound and otherwise as represented" ([*Re*] *TransCap* [*Corporation*, 2013 ABASC 201] at para. 108).

[36] Debit Direct was never a legitimate business. Rather, it was a scam motivated by personal greed and executed through deceit and misrepresentation. Investors lost as much as $42 million while DeBono took millions for himself. Bank accounts and assets that could have been frozen to compensate investors were deliberately removed from Canada, and DeBono removed himself from the jurisdiction, apparently to avoid legal consequences for his actions.

[37] We find that this serious misconduct calls for severe sanctions.

### 3. DeBono's Characteristics and History

[38] There was no evidence before us that DeBono had a disciplinary history, and the OSCJ noted that he did not have a prior criminal record. There was also no evidence that he had any education or experience in the capital market that might have suggested that he should have been aware of regulatory requirements and sought to comply with them.

[39] However, those considerations are largely irrelevant in circumstances such as these, involving deceit and misappropriation. One does not need education, experience, or past discipline to know that lying to people, obtaining their money under false pretenses, and then using the money for one's personal benefit is wrong. The apparent ease with which DeBono raised – and took – tens of millions of dollars calls for significant deterrent measures aimed at preventing similar misconduct by this respondent and others.

[40] We note that DeBono was 63 years old at the time he was sentenced in 2022, suggesting that he is approximately 65 or 66 years old today. We also note the health conditions described in the Sentencing Decision. Nonetheless, we discern nothing about those facts that would militate against issuing the orders sought by Staff.

### 4. Benefit DeBono Sought and Obtained

[41] As mentioned, the benefit DeBono sought and obtained from his crimes was significant. Given that there was never a legitimate business behind Debit Direct, it is likely that that was his intention from the outset. In the Sentencing Decision, Justice Fuerst described some of the uses DeBono made of investor funds, including:

- purchasing a hotel and several homes in the Dominican Republic that he largely hid under the names of nominees, associates, and shell companies;
- purchasing luxury vehicles and recreation vehicles such as all-terrain vehicles and Seadoos;
- purchasing two new townhomes in Ontario;
- starting several unsuccessful businesses in Ontario, including the automotive repair shop from which he ran Debit Direct; and
- making a syndicated mortgage investment for his own account.

[42] By contrast, Debit Direct investors not only lost their funds, they suffered the other negative consequences described previously: adverse impacts to their standards of living, personal relationships, and physical and mental health.

[43] The nature and extent of the personal benefits enjoyed by DeBono during the years he operated the Debit Direct fraud may tempt him and others to engage in similar illegal activity. This reinforces the need for significant deterrent sanctions.

### 5. Additional Mitigating and Aggravating Circumstances

[44] Justice Fuerst identified a number of mitigating and aggravating factors in this matter, and we concur in her assessment where those factors are consistent with the relevant factors in the securities regulatory context. DeBono's guilty plea and apparent cooperation with the criminal justice process after he was brought back to Canada are indicative of some acceptance of responsibility and recognition of the seriousness of his misconduct. So are his expressions of remorse to the OSCJ, his apology, and his stated intention to pay restitution.

[45] However, while we recognize these facts as mitigating, we agree with Staff that they are significantly outweighed by the aggravating facts already discussed.

### 6. Comparable Past Decisions

[46] Although they did not rely on them as comparable past cases *per se*, Staff cited several recent decisions of ASC panels that considered similar applications in similar circumstances – i.e., they concerned respondents who plead guilty to or were convicted of fraud under the CCC; the offences arose from transactions, business, or a course of conduct related to securities; and the panels found that it was in the public interest to issue the orders sought. This included: *Carruthers*, *supra*; *Re LaFramboise*, 2020 ABASC 12; *Re Braun*, 2007 ABASC 694; and most recently, *Re Del Bianco*, 2024 ABASC 193.

[47] In each of *Carruthers*, *LaFramboise*, and *Del Bianco*, the panels issued the same permanent market-access bans Staff seek against DeBono. In *Braun*, an older decision, the panel issued permanent market-access bans against the respondent, but only under ss. 198(1)(b) and (c) as requested by Staff.

[48] These outcomes assist in satisfying us that the permanent orders sought against DeBono are proportionate.

## IV. CONCLUSION AND ORDERS

[49] Having considered the circumstances of the offences and the offender as well as the outcomes of comparable past decisions, we find that Staff have met their burden to show that the offences arose from transactions, business, or a course of conduct related to securities (the Debit Direct investment contracts), and that the orders sought are in the public interest.

[50] As discussed, DeBono's misconduct – fraud – was extremely serious, involving hundreds of investors, a large amount of money, deceit, misrepresentation, and misappropriation of millions of dollars for his personal benefit. Many of the circumstances of DeBono's Ponzi scheme and his associated actions were significantly aggravating, including the level of sophistication and

planning behind the scheme, his use of an alias, the ongoing deceit involved in paying investors from other investors' funds and issuing false reports showing false profits, and his efforts to remove assets and abscond from Canada, beyond the reach of Canadian law enforcement. All of these facts indicate a significant need for strong sanctions to deter DeBono and others from similar misconduct in the future, and to protect Alberta investors and the Alberta capital market from further harm.

[51] Given these facts and circumstances – as well as the outcomes in similar past cases – we are satisfied that the permanent orders sought by Staff are reasonable, appropriate, and proportionate, and that they will give effect to the protective and preventative purposes of the Act. Simply put, we find that DeBono cannot be trusted to participate in our market in accordance with the law, and he must therefore be restrained from participating in it at all. As stated in *Del Bianco*, "the public interest demands the strongest message of deterrence that we can deliver – permanent market-access bans" (at para. 55).

[52] Accordingly, we make the following orders against DeBono:

- 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, or designated benchmark administrator;

- with permanent effect:
  - under ss. 198(1)(b) and (c), he must cease trading in or purchasing any securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to him;

  - 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; or

    - a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization, or designated benchmark administrator; and

  - under ss. 198(1)(c.1), (e.1), (e.2) and (e.3), he is prohibited from:
    - engaging in investor relations activities;
    - advising in securities or derivatives;
    - 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.

[53] This proceeding is now concluded.

February 12, 2025

**For the Commission:**

"original signed by"
Kari Horn, K.C.

"original signed by"
Tom Cotter