ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Cawaling, 2025 ABASC 96 **Date: 20250709**

Raymond Cawaling and RTAX Financial Corp.

Panel:	Tom Cotter Gail Harding, K.C. Kari Horn, K.C.
Representation:	Sakeb Nazim Richard Van Dorp for Commission Staff
Submissions Completed:	March 20, 2025
Decision:	July 9, 2025

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I. INTRODUCTION

[1] On December 13, 2024, we issued our decision on the merits of this matter, cited as *Re Cawaling*, 2024 ABASC 194 (the **Merits Decision**). We found that Raymond Cawaling (**Cawaling**) and RTAX Financial Corp. (**RTAX**, and together with Cawaling, the **Respondents**) contravened ss. 110(1) and 93(1)(b) of the *Securities Act* (Alberta) (the **Act**) by illegally distributing securities and perpetrating a fraud on RTAX investors (the **Investors**; for privacy reasons, we refer to individual investors by their initials herein).

[2] This proceeding then moved into its second phase for determination of what, if any, orders for sanctions and cost-recovery ought to be made against the Respondents as a consequence of our findings.

[3] We received written submissions from staff of the Alberta Securities Commission (**Staff** and **ASC**) on February 12, 2025. The Respondents were given the opportunity to make written submissions in reply, but did not do so.

[4] On March 20, 2025, we held a hearing on sanctions and costs (the **Sanction Hearing**). Staff made submissions and tendered into evidence their Bill of Costs. The Respondents were served with the Merits Decision and provided with notice of the Sanction Hearing, but did not appear or seek an adjournment.

[5] Given our findings in the Merits Decision, Staff's arguments, the applicable statutory provisions, and the relevant case law, we have determined that the Respondents must be permanently banned from participating in the Alberta capital market in certain capacities, and must pay an administrative penalty of $175,000 on a joint and several basis. In addition, they must disgorge $462,421 on a joint and several basis, being the amount we found that the Respondents misappropriated from the Investors.

[6] We also determined that the Respondents must pay $81,755 in costs.

[7] Our reasons for these findings follow.

II. SUMMARY OF FACT-FINDINGS FROM THE MERITS DECISION

[8] While this decision should be read together with the Merits Decision for a full understanding of the background underpinning our findings, we briefly summarize the essential facts here for ease of reference.

A. The Parties

[9] Cawaling, a Calgary resident, holds an accounting degree, and was a financial advisor licensed with the Alberta Insurance Council for approximately 10 years. He has held mortgage and insurance licences in the past, and ran an insurance brokerage. For approximately eight years, he was a trust safety audit technician at the Law Society of Alberta (**LSA**), and was trained in fraud and forensic accounting.

[10] Cawaling was a director, the guiding mind, and the majority shareholder of RTAX. The Respondents raised capital from the public under two forms of agreement: short-term loan

agreements we described in the Merits Decision as the **RTAX Chimera Agreements**, and partnership or joint venture (**Joint Venture**) agreements we described as the **RTAX JV Agreements** (collectively, we refer to the RTAX Chimera Agreements and the RTAX JV Agreements as the **RTAX Investments**).

B. The RTAX Investments

[11] At least 17 Investors entered into RTAX Chimera Agreements, and paid RTAX an aggregate of $675,500 (unless stated otherwise, all dollar amounts in these reasons are CAD). Four Investors entered into RTAX JV Agreements, and paid RTAX an aggregate of $61,000 and $174,084.61 USD. Under both RTAX Investments, the Investors were promised exceptionally high rates of return in short periods of time. The RTAX JV Agreements, for example, promised a return of four to 10 times the amount invested within 45 to 90 days.

1. Chimera Corporation

[12] The genesis of the RTAX Chimera Agreements was Cawaling's relationship with a company called Chimera Corporation (**Chimera**), and Chimera's principal, Michael Bridge (**Bridge**). Ostensibly, Chimera was in the business of providing funding for various types of projects around the world, including in the oil and gas and mining sectors. In exchange for loan funds from investors, Chimera would provide full security for the funds and pay a two- to five-percent monthly return over a four-month term.

[13] Initially, through their jointly-held numbered company (**9800 Canada**), Cawaling and a friend entered into two successive agreements with Chimera pursuant to which they loaned money to Chimera and were supposed to receive returns ranging from double the initial loan amount to 10 times the initial loan amount within a few months.

[14] Through another company, RTAX Mining Inc. (**RTAX Mining**), Cawaling entered into a third agreement with Chimera. Chimera was to provide $10,000,000 in funding for a gold mining project Cawaling and another friend were involved with in Guyana. RTAX Mining was required to provide $1,000,000 "to start the process of securing" Chimera's $10,000,000 investment. The $1,000,000 was to be secured by a stand-by letter of credit (**SBLC**) Chimera arranged to be issued to RTAX by Santander Bank (**Santander**) in December 2016.

[15] Also in December 2016, the Respondents entered into a separate $1,000,000 agreement to raise capital for Chimera from third-party investors who did not have sufficient funds to make large investments on their own. Instead, the third parties would enter into RTAX Chimera Agreements with RTAX, provide their money to the Respondents so it could be pooled with funds from other investors, and the Respondents would provide the funds to Chimera (or use them to pay other parties if Chimera instructed them to do so). Chimera was to pay returns to the Respondents, who would take a fee and then pay the RTAX Chimera Investors. Investor funds were ostensibly secured by the SBLC.

[16] Cawaling testified that when he spoke to people interested in the opportunity – some of whom were his bookkeeping clients or friends – he discussed the mining venture in Guyana and explained RTAX's relationship with Chimera. He also told them that they could enter into an agreement directly with Chimera if they had sufficient funds, showed or gave them Chimera

marketing documents and a copy of the SBLC, and explained that their funds would be secured by the SBLC.

[17] Cawaling was interviewed under oath by ASC investigative Staff in 2022 (the **Interview**), and the transcripts were entered into evidence at the hearing on the merits of this matter (the **Merits Hearing**). During the Interview, Cawaling told Staff that the purpose of collecting funds from the Investors who entered into RTAX Chimera Agreements was to provide the funds to Chimera for investment purposes. However, in his Merits Hearing testimony, Cawaling maintained that the RTAX Chimera Agreements were simple loan contracts, and that the Respondents were entitled to use the loan funds however they wished. He denied ever discussing the use of the funds with any of the Investors.

[18] Several of the Investors who entered into RTAX Chimera Agreements testified at the Merits Hearing, and Staff investigators spoke to or formally interviewed several others. Two of the earliest investors, **LB** and **ML**, were in a position to loan larger sums of money and therefore entered into short-term loan agreements directly with Chimera. However, the Respondents still arranged for the transactions on Chimera's behalf and received LB's and ML's loan funds, ostensibly so that they could be transferred to Chimera.

[19] Whether they contracted with RTAX or Chimera, the RTAX Chimera Investors described their interactions with the Respondents, what Cawaling told them, and what they expected from their investments. There were a number of commonalities:

- They loaned or invested amounts ranging from $10,000 to $100,000 between October 2016 and December 2017, and remitted the funds to the Respondents or to other bank accounts under Cawaling's direction and control (the **Accounts**).

- To fund their loans, many Investors incurred debt or accessed savings (including retirement savings).

- Before advancing their funds, Cawaling showed or gave them Chimera promotional material and a copy of the SBLC, which they understood would secure their funds.

- They understood that the Respondents had a commercial relationship with Chimera, and that their loans were for Chimera, to be used for investment purposes. Some specifically referred to a mining project or mining activities, or to the energy industry. Some did not have a clear idea as to what their funds would be used for, but confirmed that they were for investment purposes and were not personal loans for the Respondents to use at their discretion.

- Those that contracted with RTAX signed RTAX Chimera Agreements that either provided for: (a) a return of five percent payable monthly for four months; (b) a return of five percent monthly, but payable in a lump sum after four months; or (c) the option to receive monthly payments of three percent, or a lump sum payment of five percent per month paid at the end of the four-month term. Otherwise, the

terms of the RTAX Chimera Agreements were largely identical, and most included references to the SBLC.

- A few Investors received full payment of the returns due under their agreements along with full repayment of their principal, but despite their efforts to collect, most received only partial payments or nothing at all.

[20] Cawaling testified that despite the "crazy" returns Chimera offered, he thought he had done sufficient due diligence and had sufficient assurances from sources he trusted that he could conclude it was a legitimate opportunity. Moreover, he relied on the fact that he had the SBLC to backstop the RTAX Chimera Agreements should Chimera fail to pay what was owed.

[21] However, Cawaling also acknowledged that he began to have concerns about Chimera as early as late 2016, because it had not paid any of the returns owing under the agreements it had with 9800 Canada. Instead, Bridge instructed him to "keep" the $100,000 LB had invested, which made him suspect a Ponzi scheme. Cawaling nonetheless continued to raise funds under RTAX Chimera Agreements in reliance on his due diligence and the involvement of two lawyers, as well as the SBLC. He did not tell the Investors that Chimera was delinquent in its payment obligations.

[22] Because Chimera was not paying what it owed to 9800 Canada or the Respondents and later, what it owed to the RTAX Chimera Investors, Cawaling said that he started to make some of the interest payments due to the Investors from his own resources. He hoped Chimera would reimburse him eventually, but by the spring of 2017, he had received little. He therefore stopped remitting any Investor funds to Chimera after April 13, 2017, but continued to enter into RTAX Chimera Agreements. He did not change what he told people about the opportunity, but instead of paying Chimera, he kept all new funds for RTAX.

[23] In August 2017, Cawaling was informed by one of Chimera's lawyers that the SBLC had been withdrawn because the Respondents had failed to raise the agreed $1,000,000 from third parties. Cawaling testified that he did not believe the lawyer had the authority to revoke the SBLC, so he continued to rely on it until its expiry date, December 15, 2017. He wrote emails to various parties involved with Chimera and Santander over the following months trying to claim against the SBLC and get paid, but received neither a satisfactory reply nor any money.

[24] In the spring of 2018, the United States Federal Bureau of Investigation (**FBI**) contacted the Respondents because they had been identified as possible victims of crime. Cawaling told Staff during the Interview that he eventually learned that Chimera was a fraud and the SBLC was a forgery.

2. The Joint Venture

[25] In 2019, a contact referred Cawaling to a company called Definitely Green Investments LDA (**Definitely Green**), ostensibly a Portuguese entity attempting to raise funds to monetize a precious ruby. It offered a $1,000,000 USD return on a $150,000 USD investment, guaranteed to be paid within 45 days.

[26] Under RTAX JV Agreements, Cawaling raised approximately $175,000 USD from two individuals, **KP** and his friend, **AP**, in July 2019. RTAX entered into a contract with Definitely Green, and Cawaling advanced $150,000 USD to Definitely Green and another party. RTAX also received a $1,000,000 USD promissory note. The Respondents retained KP's and AP's excess funds, and planned to keep 30 percent of the $1,000,000 USD return. Cawaling deposed in the Interview that he intended to split the 30 percent with the friend who was involved with him in the Guyana gold mining project.

[27] Because Definitely Green did not pay the returns owing when they came due, Cawaling said he approached RTAX Chimera Investor **RP** for further investment, apparently seeking a total of $61,000. RP had his co-worker **DP** join him in the opportunity, and they each provided Cawaling $30,500 under separate RTAX JV Agreements in October 2019.

[28] During his Interview, Cawaling acknowledged that the $30,500 he received from RP was for the purpose of monetizing the ruby with Definitely Green. More generally, he acknowledged that when he spoke with the RTAX JV Investors about the opportunity, he showed them documentation about the ruby, as well as Definitely Green, its assets, and a business evaluation. He may also have provided them with a copy of RTAX's agreement with Definitely Green.

[29] AP, RP, and DP testified at the Merits Hearing, and investigative Staff interviewed KP over the telephone. As with the RTAX Chimera Investors, there were a number of similarities in their evidence:

- KP and AP understood that their funds would be paid to a company in Portugal or somewhere in Europe to monetize a ruby. RP and DP were less clear about the details, but nonetheless said they understood their funds were for investment purposes. None of the RTAX JV Investors indicated that Cawaling had informed them that their money might be used for other reasons.

- RP and DP funded their investments from retirement funds, plus savings (RP) and loan proceeds (DP).

- They did not receive any of their capital back, nor any returns.

[30] Cawaling testified that Definitely Green never paid any of the returns owing under RTAX's contract. He attributed this to the death of someone involved, the assets getting "stuck" in some manner, and ongoing litigation.

C. The Respondents' Use of Investor Funds

[31] Based primarily on bank records admitted into evidence at the Merits Hearing, we found that despite the amount of money raised from the RTAX Chimera Investors ($675,500) – all of which the Investors understood would be provided to Chimera for investment purposes as set out above – only $77,240 was actually paid to or on behalf of Chimera.

[32] The Respondents received a total of $174,084.61 USD and $61,000 from the RTAX JV Investors. Of these funds, only $150,141.81 USD was remitted to the Joint Venture.

[33] We traced the use of Investor funds after they were deposited to the Accounts and found that large amounts were used in ways that were not disclosed to the Investors, including:

- transfers to Cawaling's personal bank accounts and credit facilities, where they were generally spent on personal expenses such as utility bills, retail purchases, property taxes, and luxury car payments;
- payments to other Investors;
- payments to parties with no apparent connection to Chimera or the Joint Venture, including Cawaling's family members and other contacts who had given him personal loans;
- transfers to unknown recipients (i.e., parties that could not be identified from the bank records available or other evidence);
- cash withdrawals, including withdrawals from ATMs located in casinos, which Cawaling acknowledged were for his personal gambling; and
- retail purchases.

[34] While payments to Investors were sometimes made from other Investors' funds, we found that the Respondents also made payments to certain Investors from other sources. We found that a total of $216,550 was repaid to RTAX Chimera Investors.

III. SUMMARY OF FINDINGS ON THE MERITS OF THE ALLEGATIONS

A. Illegal Distribution

[35] We found that, as alleged by Staff, the Respondents breached s. 110(1) of the Act by distributing securities – the RTAX Investments – without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for most of the relevant distributions.

[36] The Respondents did not admit the allegation, but Cawaling confirmed in both the Interview and his Merits Hearing testimony that he did not file offering documents for the RTAX Investments with the ASC, and he did not determine the availability of any exemptions. This was because he considered the impugned transactions to be individual loans rather than investments or purchases of securities, and he therefore thought they were not subject to securities laws.

[37] We found that both the RTAX Chimera Agreements and the RTAX JV Agreements were securities as defined in the Act, as were the agreements two of the RTAX Chimera Investors entered into directly with Chimera. We also found that the Respondents traded and distributed the RTAX Investments and the two Investor agreements with Chimera within the meaning of the Act. The evidence in addition to Cawaling's testimony confirmed that neither a preliminary prospectus nor a prospectus was filed with and receipted by the ASC as required.

[38] The final issue was whether any exemptions from the prospectus requirement were available for the distributions, even though Cawaling admitted that he did not take any steps to establish their availability. We determined that the evidence indicated a few of the RTAX Chimera Investors may have fallen within the friends, family, and close business associates exemption set out in Alberta securities laws – specifically, JB, RM, NB, and ER, whom Cawaling identified as personal friends, as well as ML, who identified himself as a Cawaling family friend.

[39] Apart from these individuals, RTAX was not able to rely on an exemption for the vast majority of RTAX Investors.

B. Fraud

[40] We found that as alleged by Staff, the Respondents breached s. 93(1)(b) of the Act by perpetrating a fraud on the RTAX Investors. The evidence showed that the Respondents:

- knowingly provided false and misleading information to the Investors about Chimera and the Joint Venture, and about the intended and actual use of their investment funds;

- failed to invest or use Investor funds for business and investment purposes as represented; and

- instead misappropriated the funds for Cawaling's personal use or other uses that were undisclosed to and unauthorized by the RTAX Investors, including the payment of debts unrelated to either Chimera or the Joint Venture and the payment of returns and capital to other RTAX Investors.

[41] Even after Cawaling – and through him, RTAX – began to question Chimera's legitimacy and later stopped sending it any of the funds the Respondents raised, he continued to provide the same information about the opportunity to prospective investors, receive their money, and use it as he wished. He did not warn them about his concerns or disclose that Chimera was not paying the sums it owed under previous agreements.

[42] Concerning the RTAX Chimera Investors, at the Merits Hearing, Cawaling contended that because he was simply entering into private loan contracts with them, there were no constraints on his use of their funds and he did not tell them how he planned to use those funds. This was contrary to the RTAX Chimera Investors' evidence, none of whom indicated that they were extending loans for Cawaling's discretionary use. It was also contrary to certain documentary evidence and Cawaling's Interview evidence.

[43] We found that the same was true of the RTAX JV Investors. They believed their funds would be used for business purposes associated with the Joint Venture and did not understand that the Respondents were going to use the funds as they wished. As with Chimera, even though Definitely Green did not pay returns to the first two JV Investors when they became due, the Respondents sought and received additional funds from two more JV Investors, which they then misappropriated.

[44] As mentioned, as a consequence of this misconduct, most of the Investors lost their capital and received minimal or no returns. All were exposed to undisclosed risks of loss.

[45] We concluded that the amount of the fraud was $462,421. This represents the total amount of money the Respondents misappropriated, calculated by adding together the amounts raised from the Investors and subtracting the amounts repaid to certain Investors and the amounts remitted to Chimera or the parties involved in the Joint Venture. It includes over $220,000 transferred to Cawaling or his accounts (including credit accounts), nearly $74,000 transferred to Cawaling's family and personal lenders, and other amounts for personal expenses such as retail purchases, insurance, luxury car payments, and gambling.

IV. SANCTION

A. General Principles

[46] Sections 198 and 199 of the Act provide ASC hearing panels with the authority to impose certain sanctions against respondents found liable for breaching Alberta securities laws following a hearing, should a panel consider it to be in the public interest to do so.

[47] Orders under s. 198(1)(a) through (h) – typically referred to as market-access bans – limit or prohibit a respondent's participation in the capital market in certain capacities, either permanently or for a set period.

[48] Orders under s. 198(1)(i) require a respondent to pay to the ASC any amounts obtained or payments or losses avoided as a result of non-compliance with Alberta securities laws. These are typically referred to as disgorgement orders, and are intended to remove any monetary benefit the respondent realized as a result of the misconduct at issue (*Re Kitts*, 2019 ABASC 173 at para. 45).

[49] Section 199 empowers a panel to impose a further monetary sanction of up to $1,000,000 per contravention of Alberta securities laws – typically referred to as an administrative penalty. In *Alberta Securities Commission v. Brost*, 2008 ABCA 326 (at para. 54), the Alberta Court of Appeal (**ABCA**) noted that this amount:

> . . . reflects a legislative intent that these penalties ought not to be so low that they amount to nothing more than another cost of doing business. It also signals the Legislature's intent that the [ASC] should fit the sanction to the circumstances, including the magnitude of the illegality and the need to encourage lawful conduct by those involved with securities.

[50] Administrative penalties are aimed at imposing direct financial consequences for the misconduct at issue (*Kitts* at para. 45).

[51] In the securities regulatory context in Canada, sanctions for breaches of securities laws are not intended to be punitive or remedial. They are intended to be prospective and preventative, aimed at protecting the capital market and the investing public by implementing measures that will deter repetition of the misconduct by others (general deterrence) and by the respondents involved in the matter under consideration (specific deterrence) (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 41-45; *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52, 58 and 60-61; *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 154, leave denied [2014] S.C.C.A. No. 476).

[52] Appropriate sanctions are fact-dependent and will vary with the circumstances of each case and of each respondent. At the same time, they must be proportionate and reasonable for each respondent, and consistent with the sanctions imposed in similar matters (*Walton* at paras. 154 and 156).

[53] To assist us in determining whether sanctions are warranted in the public interest and, if so, the particular sanction or combination of sanctions that are proportionate to the facts and circumstances and will achieve the necessary levels of deterrence in a given case, we rely on the decision in *Re Homerun International Inc.*, 2016 ABASC 95. In that decision, the panel reformulated a set of factors intended to guide our analysis and focus it on the relevant facts. The analysis is directed toward assessing the risk of recurrence, either by the respondent or by others who might be tempted to undertake similar misconduct (at para. 14).

[54] In their written and oral submissions, Staff applied the factors in *Homerun* to arrive at their position on sanction, and we do the same in the following analysis.

B. Analysis

1. Seriousness of the Misconduct

[55] The first factor discussed in *Homerun* is the seriousness of the misconduct, which has three aspects: the nature of the misconduct, the respondent's intention (i.e., whether the misconduct was planned and deliberate, negligent, or inadvertent), and the harm caused to the investors and the capital market (at para. 22). Generally, more serious misconduct implies a greater risk of recurrence and therefore a greater need for strong deterrent measures (*ibid.* at para. 26).

[56] Certain types of misconduct are obviously more serious than others, and fraud is typically characterized as the most serious (*Re Optam Holdings Inc.*, 2015 ABASC 996 at para. 31). This is because fraud usually involves deceit and either the risk of economic loss by its victims or actual loss (*Homerun* at para. 23). Typically, it is intentional misconduct, rather than the result of recklessness or inadvertence (*ibid.* at paras. 22 and 24).

[57] Staff argued that in this case, the Respondents' misconduct occurred over an extended period of time and involved serious, deliberate, and repeated breaches of key provisions in the Act intended to protect investors and foster a fair and efficient capital market.

[58] Staff noted that illegal distributions deprive investors of the fundamental protection of reliable prospectus disclosure and that here, the majority of the RTAX Investors did not qualify for an exemption from the prospectus requirement. Accordingly, they were exposed to "the risks of ill-informed investment decisions, . . . undermining the fairness and efficiency of the capital market and jeopardizing confidence in that market" (*Re Bradbury*, 2016 ABASC 272 at para. 26).

[59] Concerning the fraud, Staff submitted that the Respondents' conduct was deliberately dishonest and resulted in actual harm. The Respondents may also have been defrauded, Staff argued, but that did not justify their conduct *vis-à-vis* RTAX Investors, whom the Respondents deceived intentionally and repeatedly about the RTAX Investments and the use of funds. Even after Cawaling began to suspect that Chimera was a Ponzi scheme, he continued raising money

and misleading Investors. Staff described the result – financial loss and other impacts on the investors and their trust in our capital market – as "one of the most aggravating factors of this case".

[60] We agree with Staff's submissions concerning the seriousness of both illegal distributions and fraud.

[61] The prospectus requirement is, as stated in *Homerun* (at para. 76), one of the "cornerstones" of securities regulation in Alberta, requiring issuers to provide reliable disclosure about themselves, the offered securities, and any associated risks. Exemptions from the requirement are only available in certain circumstances, where investors are sophisticated enough not to need the same level of disclosure, have sufficient resources to withstand the risks, or have close enough relationships with the issuer or its principals to be able to obtain and rely on the information they require to assess the opportunity. When these requirements are not met, investors may be exposed to unintended risk and financial loss, thus undermining confidence in the Alberta capital market.

[62] We have mentioned that fraud is generally considered the most serious misconduct prohibited by the Act. It is especially so in cases such as this, where the Respondents deceived others about the RTAX Investments and used Investor funds in ways that were neither disclosed to nor authorized by those advancing the funds. This created risks the Investors could not have anticipated, and resulted in financial loss.

[63] At the Merits Hearing, a number of the RTAX Chimera Investors testified about the financial harm they suffered, and the impacts it had and continues to have on their lives. Those impacts went beyond monetary loss, and included the disruption of present and future plans, compromised personal relationships, stress and other mental health issues, and loss of trust in others. Some also indicated that they will be more wary of making investments and will be reluctant to do so again. For example:

- JA testified to the stress of losing his money and still having to clear the debt he incurred to invest, which he estimated would take him five to seven years to pay off. He noted that he had not been able to pay for his children to participate in certain activities because he could no longer afford it, and that he had lost at least one close friend as a result of their involvement with RTAX and Chimera. He also stated he will be much more cautious about investing in the future.

- EA said that because the Chimera investment did not work out, he was unable to pay existing debts as planned and ended up having to file a consumer proposal. He regretted getting his boss involved in the investment, and testified that the experience has affected his trust in other people, including those in the Filipino community, of which he and Cawaling are both members.

- RA stated that she lost the money she had been saving to buy a house and is no longer sure she will ever be able to afford one. She spoke of being depressed and of her loss of trust in others, and stated that she will never invest with anyone ever again.

- ML similarly testified that losing his money affected his plans to buy a house. He also said that he has had to cut back on charitable endeavours such as sponsoring students at a school in Uganda.

- DN testified that the loss of his funds has damaged his relationships with his friends and his wife. He was having a hard time keeping up with the interest payments on the line of credit he used to invest, which affected his creditworthiness. His confidence in the capital market was also negatively affected.

- AP indicated that the loss of the funds he put into the Joint Venture affected his retirement plans, and said that he is no longer interested in investing in Alberta.

[64] From this and other evidence, it was readily apparent that the Respondents' misconduct caused considerable harm to both the RTAX Investors and the Alberta capital market. Not only are these Investors hesitant to invest again, it is reasonable to infer that others who learn of this case will also have less confidence in doing so.

[65] It may be considered somewhat mitigating that the Respondents did not set out to defraud anyone, and appear to have believed in both Chimera and the Joint Venture – at least initially. They, too, lost money on these schemes, and the evidence at the Merits Hearing showed that at certain points, Cawaling used some of his own resources to pay certain Investors. He also made efforts to get Chimera to pay and to collect on the SBLC.

[66] However, in our view, the mitigating effect of those facts is outweighed by a number of significantly aggravating facts:

- The Respondents continued raising funds for Chimera from third parties despite Cawaling's early suspicions about its legitimacy and its failure to pay amounts owed. He may not have started out intending to deceive anyone, but Cawaling soon resorted to deceit to solicit funds from others in circumstances where he should have known that there was enhanced risk.

- Similarly, even though RTAX JV Investors KP and AP were not paid as promised, Cawaling raised another $61,000 from RP and DP for the same venture several months later. Again, he should have known the enhanced risk.

- Cawaling misappropriated investor funds for personal purposes. This included immediately keeping some of the money advanced by the initial RTAX JV Investors, KP and AP, without disclosing his intentions, and later keeping the entire amount advanced by RP and DP.

[67] In *Re Arbour Energy Inc.*, 2012 ABASC 416, the panel stated (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. A high level of both specific and general deterrence is required against each [r]espondent on the basis of our fraud findings alone.

[68] We concur, and draw the same conclusion here: fraud – especially fraud involving misappropriation of funds to the benefit of the perpetrator – is serious misconduct that merits significant deterrent measures, both to dissuade these Respondents from repeating such misconduct in the future and to dissuade others who might see and seek to emulate the relative ease with which the Respondents raised money and then used it for discretionary spending.

[69] This conclusion is reinforced by the fact that the fraud was based on illegal distributions of securities that gave the Respondents access to the funds misappropriated and deprived the Investors of the disclosure that might have led them to understand the risks and make different decisions.

[70] Earlier we observed that a few of the RTAX Chimera Investors may have qualified as friends, family, and close business associates within the meaning of National Instrument 45-106 *Prospectus Exemptions*, even though the Respondents made no effort to ascertain whether that was the case. In some instances, where respondents make a genuine effort to establish the availability of exemptions, this can diminish the seriousness of an illegal distribution.

[71] That was not the case here. Not only was it clear that the Respondents, by their own admission, did not consider the issue and did not try to establish exemptions, the evidence was also insufficient for us to conclude that the necessary criteria were all met. Moreover, given the fraud and the amounts of money at issue, even if established, exemptions for a few RTAX Investors would not have materially affected our determination of the appropriate sanctions. We again rely on this passage from *Re Cloutier*, 2014 ABASC 2 (at para. 308), which we cited in the Merits Decision:

> It is insufficient to assume or hope that an exemption was available at the time of the trade or distribution of the security. Nor is it sufficient that some, but not others, of the trades within a distribution qualify for a claimed exemption.

[72] Accordingly, the possible availability of exemptions for a few individuals did not affect our view of the seriousness of the misconduct in this case.

2. Respondent's Characteristics and History

[73] The second factor set out in *Homerun* is the respondent's characteristics and history, which again may indicate the degree of risk of the misconduct recurring and the extent of the deterrent measures necessary to counter the risk (at para. 27). The respondent's characteristics and history may also be relevant to the proportionality of the sanctions being contemplated (*ibid.*).

[74] For individuals, hearing panels will typically consider that person's educational background, work experience, past participation and experience in the capital market, any pertinent disciplinary history, and financial circumstances (*ibid.* at para. 28). Experience and familiarity with the regulated capital market may indicate an enhanced need for deterrence, as it may be that the individual contravened securities laws despite being aware of the requirements, which suggests an increased risk of recurrence (*ibid.* at para. 29).

[75] Likewise, a disciplinary history may indicate that strong deterrence is required, because it is generally expected that past discipline will draw an individual's attention to the need for caution and compliance (*ibid.* at para. 30). Failure to adhere to the law following discipline also suggests that the individual is prone to recidivism and requires a reminder that there will be significant consequences for any misconduct (*ibid.* at paras. 30 and 32). Such consequences are intended not only to deter the individual, but also to serve as a deterrent and a reminder to others that similar misconduct will be met with a similar response (*ibid.* at para. 32).

[76] Concerning corporate respondents, hearing panels may find the same considerations pertinent, or will impute to a closely-held corporation like RTAX the characteristics and history of its principal or principals (*ibid.* at para. 33). Like Staff, we have taken the latter approach.

[77] Staff noted that there was no evidence Cawaling had ever been sanctioned by a securities regulator, but submitted that that did not reduce the need for deterrent sanctions in this case. They also noted that Cawaling had experience as a financial professional, and appears to be a prominent figure in the local Filipino-Canadian community. This, they argued, is what led many of the investors to trust him and refer him to their friends and family: he leveraged his position of influence to perpetrate the misconduct.

[78] In Staff's submission, Cawaling's background in finance means he ought to have known his obligations and the legal ramifications of his actions. They argued that he acted as he did despite that knowledge and is still relatively young (47 years old at the time of this decision), which suggests that he presents an enhanced risk of engaging in similar misconduct in the future. Therefore, permanent market-access bans and other significant deterrent measures are required.

[79] We are of the view that Cawaling's education as an accountant and experience as a licensed financial advisor, mortgage broker, and insurance broker should have made him aware that financial services are highly regulated, and those operating in the industry are required to have a specified level of proficiency. Even if he was not aware of the securities laws governing his RTAX business, he knew enough to understand that it would have been prudent to get professional advice.

[80] As one of the reasons he felt confident that Chimera was legitimate, Cawaling relied on the involvement of two lawyers acting for Chimera, knowing from his LSA work experience that lawyers are held to high standards of ethics and competence. However, his experience as an LSA trust safety audit technician trained in fraud and forensic accounting would have also made him aware that lawyers do not always meet those standards, and it is therefore necessary to remain vigilant.

[81] This should have been even more apparent where there were obvious red flags – including promised returns that even he characterized as "crazy". Moreover, by the time the Definitely Green Joint Venture opportunity arose, the FBI had alerted Cawaling to Chimera's fraud. With the benefit of that experience, it is difficult to understand how he fell for another equally implausible scheme so soon.

[82] Moreover, it is self-evident that no particular education or experience is necessary to understand that deceit is unacceptable.

[83] We agree with Staff that Cawaling's lack of a disciplinary history is not mitigating. A history of relevant discipline may be an aggravating factor suggesting a need for stronger deterrent measures, but the opposite is not true. Everyone is expected to comply with the law and avoid sanctionable conduct, "so an absence of prior sanction does not merit reward" (*Homerun* at para. 85).

[84] The evidence was insufficient to draw any conclusions about Cawaling's level of prominence and influence in the local Filipino community, but the uncontroverted evidence was that several Investors were his bookkeeping and tax accounting clients before investing. This likely made them more inclined to trust him and refer others.

[85] Since the Respondents did not participate in the sanction phase of this proceeding, there was no evidence of their current financial condition or ability to pay monetary sanctions. The most we know is that at the Merits Hearing, Cawaling testified to having lost considerable (but unspecified) amounts of money as a result of the COVID-19 pandemic, and that at the time of his Interview with investigative Staff at the end of August 2022, he said he had been having difficulty finding a job and was prepared to file for bankruptcy if necessary.

[86] Accordingly, while a respondent's proved impecuniosity may be relevant to assessing the proportionality of any administrative penalty (see *Re Shaw*, 2023 ABASC 110 at para. 109), the Respondents made no claim nor led any cogent evidence of impecuniosity.

[87] In a similar vein, in some circumstances, a respondent's age and subsistence on a modest pension or savings may raise a concern about their ability to withstand monetary penalties. We have no such concern about Cawaling who, as mentioned, is 47 years old.

[88] We conclude that there is nothing about the Respondents' – specifically, Cawaling's – characteristics and history that would suggest a lowered risk of recurrence of their misconduct and thus argue in favour of moderation in the package of sanctions we otherwise find appropriate. To the contrary, that Cawaling acted as he did despite his knowledge and experience in finance and regulation and the obvious warning signs about the Chimera and Definitely Green transactions suggests an increased risk of recurrence, and a heightened need for deterrence.

3. Benefit Sought or Obtained by the Respondents

[89] The third sanctioning factor considered in *Homerun* is the benefit sought or obtained by a respondent from the misconduct at issue, which may be a further indicator of the risk of recurrence (at para. 35). The greater the benefit, the greater the incentive for the misconduct to be repeated, by the respondent or by others (*ibid.* at paras 37-38).

[90] In Staff's submission, Cawaling sought and obtained significant financial benefits from his misconduct – i.e., the considerable amount of money he misappropriated for his own use, while acting as though he was entitled to use investment funds as he wished. This, Staff argued, calls for

strong deterrent measures that will discourage him from similar misconduct in the future, and will discourage others from seeking to emulate him.

[91] We agree. The Respondents misappropriated at least $462,421 for their own purposes – primarily Cawaling's personal living expenses and entertainment – rather than invest the money in Chimera or the Joint Venture as the RTAX Investors expected.

[92] This may not have been the Respondents' intention at the outset of their agreement with Chimera, but they soon stopped sending funds to Chimera while still telling Investors that their money would be used for investment purposes. By the time of the Joint Venture in 2019, misappropriation may have become at least part of the Respondents' intention from the outset, given that they only needed $150,000 USD, but collected nearly $175,000 USD and immediately kept the remainder. Subsequently, though no further funds were required, the Respondents raised another $61,000 and retained the entire amount.

[93] The prospect of diverting a large amount of money is an incentive to repeat the Respondents' misconduct. This calls for significant sanctions that will deter these Respondents and others from doing so.

4. Other Mitigating or Aggravating Considerations

[94] The final factor discussed in *Homerun* is whether there are other relevant mitigating or aggravating circumstances that do not fall within the factors discussed previously and may affect the assessment of the risk of recurrence and the deterrent measures required to address that risk (at para. 39).

[95] Mitigating or aggravating circumstances are case-dependent, but in *Homerun*, the panel cited a few examples of each. Those that may be considered mitigating and indicate a reduced risk of recidivism include (at paras. 40-43):

- efforts by a respondent to ameliorate the harm caused to the victims of the capital-market misconduct, such as efforts to repay amounts lost;
- indications that a respondent appreciates the harm caused by the misconduct and its seriousness;
- indications that a respondent genuinely accepts responsibility for the misconduct and is remorseful; and
- reasonable reliance on professional advice, which suggests that a respondent intended to comply with legal requirements.

[96] Circumstances that may be considered aggravating include "a respondent displaying a belligerent contempt for either the victims of the misconduct or the law" (*ibid.* at para. 46). Such contempt would suggest a higher risk of recurrence and a greater need for serious deterrent measures (*ibid.*).

[97] In its discussion of the foregoing, the panel in *Homerun* was careful to note that "[a]n absence of mitigation is not the same as an aggravating consideration" (at para. 45). Respondents are entitled to defend themselves against and deny allegations brought by Staff, so it is not aggravating for them to fail to repay investors, accept responsibility, or show remorse (*ibid.* at para. 41; see also *Walton* at para. 155).

[98] Staff argued that there are no mitigating factors in this case. In their view, Cawaling has never accepted responsibility for his actions or expressed remorse. To the contrary, during the Merits Hearing, he blamed others for what happened – including in his cross-examinations of the Investor witnesses – and gave self-serving justifications. However, Staff were careful to note that they were not submitting that these are aggravating factors, but rather that they are neutral considerations.

[99] We do not discern any mitigating circumstances, either. Since the Respondents did not participate in the sanction phase of the proceedings, we do not know what their position is on the findings we made in the Merits Decision and therefore we do not know if they appreciate the seriousness of their misconduct and the harm caused, or if they accept responsibility and are remorseful. Like Staff, we do not consider the absence of such indications aggravating, but they are not mitigating.

[100] It might be argued that there is mitigation in the fact that the Respondents made some interest payments and repaid the principal advanced by certain Investors, sometimes by using funds that appeared to have come from other endeavours and resources. However, we do not find this mitigating because it was the Respondents' obligation under the RTAX Investment documents to pay returns and repay capital.

[101] Moreover – and as mentioned – in some instances, RTAX Investors were paid with funds from other RTAX Investors, in the manner of a Ponzi scheme. That is aggravating rather than mitigating because receiving returns as promised no doubt helped perpetuate the scheme: based on the illusion of success, Investors would likely have been more inclined to re-invest, add to their investments, and refer their friends and family.

[102] In some cases, a respondent's cooperation with Staff during the investigation and hearing process may be considered mitigating because it is thought to demonstrate some acknowledgement of the misconduct and acceptance of the consequences. There are ways that these Respondents were cooperative in this matter, but they are relevant to costs, which we discuss later in these reasons. What is relevant at this stage of our analysis is Cawaling's deceit during his investigative Interview. We consider it aggravating that as discussed in the Merits Decision (see paras. 258-267), he deliberately misled Staff.

[103] When confronted with the discrepancies in his evidence, Cawaling attempted to justify the way he answered certain Interview questions and blamed Staff for his failure to answer in a straightforward and candid manner. We did not find this persuasive at the Merits Hearing, and at the sanction stage, we find that Cawaling's willingness to resort to deception and obfuscation is indicative of an enhanced risk of future misconduct. He and others who might consider deception

an effective way to conduct themselves during an ASC investigation must be made to appreciate that it will not be tolerated, and will be met with significant consequences.

5. Comparable Past Decisions

[104] Although not included among the *Homerun* sanctioning factors *per se*, the panel in that case observed that it is commonplace in determining sanction to have reference to the outcomes in past decisions with comparable facts. Consideration of prior relevant decisions assists panels in assessing the proportionality of the orders they are considering (*Homerun* at para. 16).

[105] Staff cited several cases in support of their sanction submissions: *Re Currey*, 2018 ABASC 34; *Bradbury*; *Shaw*; *Re Ward*, 2023 ABASC 62; and *Re Ghani*, 2024 ABASC 48.

[106] In *Currey*, the individual respondent admitted to illegal dealing, unregistered advising, and fraud. Through two corporate respondents, he raised $3.2 million from nine investors over approximately two years, and misappropriated at least $695,200 of that amount for unauthorized purposes, including personal use and making payments to other investors.

[107] Most of the investors were unlikely to recover their losses, although Currey entered into a $595,000 consent judgment with one. The panel accepted his claim of impecuniosity and took it and the consent judgment into account when determining the appropriate monetary orders.

[108] In accordance with the parties' joint submission, the panel ordered 20-year market-access bans, a $200,000 administrative penalty, and disgorgement of $120,200. The corporate respondents were made subject to some of the same 20-year market-access bans.

[109] In *Bradbury*, the respondent admitted to unregistered dealing, illegal distribution, making misrepresentations to Staff, and fraud. He raised over $1.5 million from at least 16 investors over approximately three years, and diverted at least $370,000 to his own use. Some investors lost all of their money, but some were paid with other investors' funds. Bradbury claimed impecuniosity at the time of sanctioning.

[110] In accordance with the parties' joint submission, Bradbury was permanently banned from participation in the Alberta capital market, and ordered to pay $370,000 in disgorgement and a $150,000 administrative penalty. The panel noted that it considered the administrative penalty to be at the low end of the appropriate range in the circumstances.

[111] After a contested hearing in *Shaw*, the individual respondent was found liable for fraud. He raised $940,000 from six investors in just a few weeks – approximately $807,000 of which he converted to his own use to buy a house. Although much of the money was lost, one investor recovered $524,000 through legal proceedings.

[112] The panel ordered permanent market-access bans, a $150,000 administrative penalty, and disgorgement of $283,780. The panel stated that it would have ordered a $200,000 administrative penalty but for Shaw's financial and health difficulties. The corporate respondent was also permanently banned from the market in certain capacities.

[113] After a contested hearing in *Ward*, the respondent was found liable for illegal distribution, misrepresentation, and fraud. He raised at least $500,000 from investors and lost all of the funds, including by misappropriating at least $106,610 for personal and other unauthorized uses. It was considered aggravating that he sought legal advice but ignored it, took advantage of prior personal relationships and vulnerable investors, and tried to dissuade investors from suing. It was considered mitigating that he acknowledged the seriousness of his misconduct and indicated regret for investor losses.

[114] Like Shaw, Ward was permanently banned from the market, ordered to pay a $100,000 administrative penalty, and ordered to disgorge the $106,610 misappropriated. The amount of the administrative penalty was the amount sought by Staff, but the panel described it as "bordering on lenient".

[115] The respondents in *Ghani* were found liable for fraud after a hearing. They misappropriated at least $3.4 million of approximately $4.4 million raised for investment in a commercial real estate project, and used it for the individual respondent's benefit or for the benefit of other projects and businesses, all without authorization or disclosure to the investors. Ghani had extensive capital-market experience (which was considered aggravating), but there was some evidence of impecuniosity (which was considered mitigating).

[116] Ghani was permanently banned from participating in the Alberta capital market, ordered to pay a $325,000 administrative penalty, and to disgorge $3.4 million. The panel indicated that the administrative penalty was less than what they would have ordered but for the evidence of impecuniosity and the disgorgement order.

[117] Two of the corporate respondents were made jointly and severally liable for part of the disgorgement order, and all of the corporate respondents were made subject to permanent market-access bans. They were also made jointly and severally liable with Ghani for the administrative penalty.

[118] Clearly, there are differences – some significant – between the facts in these five cases and those here. Some involved somewhat different breaches of the Act, varying amounts were raised and misappropriated, some respondents were impecunious, some were involved in court proceedings that resulted in orders offsetting investor losses, and some had different aggravating and mitigating circumstances.

[119] However, there are also sufficient similarities for us to draw certain conclusions about the orders that would be proportionate here. All of the cases involved breaches of comparable seriousness: fraud and misappropriation of funds. For the individual respondents, all resulted in market-access bans (usually permanent), disgorgement orders in the amount of the sum misappropriated, and administrative penalties ranging from $100,000 ($105,000 when adjusted for inflation) to $325,000 ($332,000). Where corporate respondents were involved, they were sanctioned with market-access bans (usually permanent). Monetary orders against corporate respondents were not typical, often because they were no longer going concerns and had no assets.

[120] Given that the sanctions in *Currey* and *Bradbury* followed admissions and joint submissions on sanction, we consider them less comparable than cases with orders that followed a contested hearing on the merits. When such agreements are in place, administrative penalties (and sometimes other sanctions) are generally reduced in consideration of an agreement, and panels view a respondent's admission of misconduct and acceptance of sanctions as a mitigating acknowledgement of responsibility with a concomitant lower risk of recurrence (see *Ward* at para. 79).

[121] In our view, the administrative penalties in *Ward* and *Ghani* were, respectively, too low and too high to be appropriate and proportionate for these Respondents. Ward raised half as much money as Cawaling and RTAX, but the panel made a point of noting that they considered Staff's request for a $100,000 ($105,000) order "bordering on lenient" in the circumstances. Ghani raised and misappropriated much more money than Cawaling and RTAX and therefore faced a much larger disgorgement order and administrative penalty.

[122] Of the cases cited by Staff, we find *Shaw* the most comparable in terms of the amount of money that was raised, even though there was no illegal distribution finding and the panel accepted that the individual respondent was facing constrained finances and health challenges. This suggests a narrower range for Cawaling: the $150,000 ($158,000) actually imposed in *Shaw* to the $200,000 ($210,000) the panel said it would have imposed but for the financial and health concerns.

[123] This range is also consistent with *Bradbury*. Approximately $500,000 more was raised in that case, but the admissions, joint submission on sanction, and the respondent's impecuniosity brought the administrative penalty down to $150,000 ($192,000). Despite those mitigating factors, the panel still described $150,000 as the low end of the range in the circumstances.

[124] We find further support for this range in two other fairly recent ASC decisions: *Re Magee*, 2015 ABASC 846, and *Re Nyadongo*, 2022 ABASC 19.

[125] In *Magee*, the respondents raised approximately $2 million from at least 29 investors over approximately three years. About $100,000 was used to repay investors, but $893,837 was converted to the respondents' use. The rest was lost. The respondents made admissions on the second day of a contested hearing (the primary individual respondent admitted to unregistered dealing, illegal distribution, misrepresentations, and fraud), but the panel found that was only slightly mitigating because the individual respondents made arguments at the hearing that contradicted the admissions. No other mitigating factors were noted.

[126] The principal individual respondent received permanent market-access bans and a $200,000 ($259,000) administrative penalty, and was ordered to disgorge $893,837 on a joint and several basis with the other individual respondents. The corporate respondents received permanent market-access bans in certain capacities.

[127] After adjusting for inflation, the administrative penalty in *Magee* is significantly more than the $150,000 ($158,000) to $200,000 ($210,000) range mentioned in *Shaw*. However, there were additional breaches of the Act and twice as much money was raised than in this case. In addition,

the panel considered it aggravating that the principal respondent continued to solicit investments even after he was advised by a lawyer that he had to be registered with the ASC.

[128] In *Nyadongo*, somewhat more money was raised than in this case – $1.2 million – but the breaches admitted were the same: illegal distribution and fraud. Approximately $234,000 was misappropriated by the individual respondent.

[129] Further to a joint submission by the parties, Nyadongo was given 20-year market-access bans, while the corporate respondent received certain permanent bans. Nyadongo was also ordered to pay $234,000 in disgorgement and a $150,000 ($165,000) administrative penalty. He was impecunious, and in addition to his admissions and agreement on sanction, he was given the benefit of ASC Policy 15-601 *Credit for Exemplary Cooperation in Enforcement Matters*. These mitigating factors suggest that the bans and administrative penalty were set at the low end of the appropriate range.

[130] In the result, we concluded that a minimum of $150,000 to a maximum of $210,000 is the appropriate range for the administrative penalty in this case.

C. Conclusions on Sanction

[131] To summarize, we find that the Respondents' misconduct was extremely serious. It caused financial loss and other harm to the Investors, and harmed the reputation of our capital market. Its seriousness was exacerbated by Cawaling's decision to ignore the warning signs about the legitimacy of the underlying investment schemes and to raise money deceitfully.

[132] By misappropriating Investor funds, the Respondents received a considerable financial benefit from their misconduct. This added to the seriousness of the misconduct and the risk that the Respondents or others will be tempted to repeat it.

[133] We also find that there was nothing about the Respondents' characteristics or history that would change our view about the measures necessary to reduce the risk of similar misconduct in the future. Cawaling had sufficient education and experience to know better. Moreover, it is trite to repeat: education and experience are not necessary for a person to know that deception is wrong.

[134] There is no evidence of the Respondents' financial situation at this time, and no other mitigating circumstances. To the contrary, we find aggravating circumstances in the Ponzi scheme-like aspects of the Respondents' misconduct, and Cawaling's deliberate deceit during his investigative Interview.

[135] All of the foregoing leads us to conclude that significant sanctions are necessary in this case to achieve the requisite specific and general deterrence. As the panel stated in *Re Reeves*, 2011 ABASC 107 (at para. 20), fraudsters and other market participants "must appreciate that findings of fraud will attract the most severe consequences". Consequences must also fall on those who illegally distribute securities and deprive investors of the protections our regulatory system is intended to provide.

[136] We now turn to the specific orders we will make.

1. Market-Access Bans

[137] Given what they characterized as Cawaling's repeated and deliberate violations of securities laws, his lack of remorse, and his relatively young age, Staff sought permanent market-access bans against him to protect investors and the Alberta capital market from him and from others of like mind. Further, Staff argued, permanent market-access bans are consistent with the sanctions imposed against the respondents in the comparable decisions cited.

[138] Specifically, Staff seek bans under ss. 198(1)(b), (c), (c.1), (e), (e.1), (e.2), and (e.3) of the Act, and an order under s. 198(1)(d) directing Cawaling to resign from all positions he holds as a director or officer of certain types of entities. The bans would prohibit him from:

- trading in or purchasing any security or derivative, and from relying on any exemptions contained in Alberta securities laws;
- engaging in investor relations activities;
- becoming or acting as a director or officer (or both) of any issuer or other person or company that is authorized to issue securities, and of other specified entities;
- 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 the securities market.

[139] Staff did not seek any bans against RTAX or provide any reasons for not seeking such an order.

[140] We conclude that all of the permanent bans and the order under s. 198(1)(d) against Cawaling sought by Staff are appropriate and necessary. We agree with the panel in *Re Planned Legacies Inc.*, 2011 ABASC 278 (at para. 42):

> As this Commission has noted in many other cases, 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.

[141] It must be made clear to market participants that contravening securities laws will not be tolerated, and that serious misconduct – especially fraud and misappropriation of investment funds – will result in very lengthy or permanent market-access bans.

[142] In terms of specific deterrence, Cawaling should have known better than to conduct himself as he did. In view of his deceit and the other circumstances described in this decision, we do not believe that he can be trusted to act in any capacity that would allow him to give investment advice or access other people's money in connection with the securities market. We would say the same of Cawaling as the panel said of the respondent in *Re Fauth*, 2019 ABASC 102 (at para. 70):

> He should be prohibited from raising money from the public ever again. Further, we do not believe that he is fit to act as a director or officer or in any other management or consultative capacity in connection with the securities market, now or in the future.

[143] In short, we find that it is in the public interest to make the orders sought so that it is clear to Cawaling and others that "egregious misconduct in breach of the law will result in a permanent denial of [market] access" (*Ward* at para. 86).

[144] Given that it was principally RTAX securities that were illegally distributed and that RTAX was the vehicle for the fraud, we are of the view that permanent market-access bans like those imposed against corporate respondents in similar past cases are also appropriate and in the public interest here. RTAX will be prevented from trading in securities and relying on the exemptions contained in Alberta securities laws, and, like Cawaling, it will be prohibited from acting in any capacity that involves investment advice or investment funds.

2. Disgorgement

[145] As mentioned, disgorgement orders issued under s. 198(1)(i) of the Act require respondents that have not complied with Alberta securities laws to pay to the ASC "any amounts obtained or payments or losses avoided as a result of the non-compliance". The intention is to ensure that those who contravene the law do not retain any monetary benefit from their misconduct, and thereby deter recurrence by removing the profit motive (see *Ghani* at para. 36). Particularly in cases involving fraud, we agree with the panel in *Ward* (at para. 95) that, "[i]f securities fraud is to be deterred effectively, those who engage in it must not be permitted to retain any benefit from it."

[146] The *Fauth* decision included a summary of the law applicable to disgorgement orders (see paras. 76-87) that we adopt for the purpose of this decision. The main principles were distilled in *Ward* as follows (at para. 34):

- 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 . . . *Magee* . . . (at para. 191), "[We are mindful of what was said about a respondent's ability to pay in *Walton* . . . , but it would seem inapplicable to disgorgement orders. Indeed,] 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".

[147] Staff seek an order directing the Respondents to disgorge the entire amount found to have been misappropriated, $462,421, on a joint and several basis. They pointed out the unauthorized uses to which those funds were put, and emphasized that the investors were not made aware of these uses, or that Cawaling would take any of the funds as personal compensation. Such an order, Staff argued, would achieve both specific and general deterrence by eliminating any financial benefit realized by Cawaling as a result of his deception. Further, a disgorgement order for the amount misappropriated would be consistent with the results in the comparable cases Staff cited.

[148] We agree with Staff's submissions. As set out in the Merits Decision, the evidence satisfies us that the Respondents obtained at least $462,421 as a result of their misconduct, and the Respondents made no effort to demonstrate that this amount was inaccurate or unreasonable. We are also satisfied that an order requiring them to disgorge this amount is in the public interest for the reasons Staff cited.

[149] Since the funds were obtained by both Respondents and RTAX's bank accounts were primarily used to receive them, it is appropriate that both are made responsible for them on a joint and several basis.

3. Administrative Penalty

[150] In addition to a disgorgement order, Staff seek a $175,000 administrative penalty against both of the Respondents on a joint and several basis. They argued that such a penalty is necessary to send a message to the Respondents and others about the financial consequences of serious misconduct. In support, they cited the "extensive violations of securities laws, the amount of money raised and misappropriated[,] and the degree of deliberation and planning" behind the misconduct in this case, and said that they based the amount sought on the decisions cited in their submissions.

[151] As discussed, the administrative penalties in those cases ranged from $100,000 to $325,000. Staff argued that while the Respondents' misconduct was most similar to that in *Currey* and *Bradbury* given the number of investors, the amount of the illegal distributions, and the amount misappropriated, there were other factors in those cases that affected the analysis. Unlike *Currey* and *Bradbury*, Staff submitted that here there are no mitigating factors or evidence of impecuniosity. In addition, those cases involved admissions and joint submissions on sanction, while this was a contested hearing. Staff also pointed out that the *Currey* and *Bradbury* decisions are both over seven years old.

[152] In *Currey*, the panel explained the reasoning behind ordering both disgorgement and an administrative penalty, even though both are monetary sanctions intended to achieve deterrence (at para. 44):

> Disgorgement orders and administrative penalties serve different purposes. While disgorgement is intended to remove any profit incentive behind securities misconduct and addresses the calculable financial benefit a respondent may have gained, the addition of an administrative penalty is meant to ensure that the respondent does not view a sanction as merely a cost of doing business. The panel in *Re Holtby*, 2015 ABASC 891, while noting that both are "aimed at protecting through deterrence",

> described the difference as follows (at para. 65): ". . . a disgorgement order is directed at ensuring that a respondent does not retain any financial benefit from breaching Alberta securities laws, whereas an administrative penalty imposes a direct financial cost on a respondent for the respondent's breach of Alberta securities laws."

[153] Although there is no persuasive evidence of impecuniosity in this matter, determining the appropriate administrative penalty does require a balancing of various considerations. Earlier we cited the ABCA's direction in *Walton* that administrative penalties must be proportionate and reasonable for each respondent, given the specific circumstances of the case and the outcomes in comparable past decisions.

[154] As a starting point, s. 199 of the Act requires us to determine if an administrative penalty is in the public interest. Since the goal is prevention and protection, we consider whether the market-access bans and disgorgement order we have already decided to impose will achieve that goal without a further order.

[155] In our view, permanent market-access bans and a $462,421 disgorgement order will in some measure deter the Respondents and others from illegally distributing securities and fraud, but they are insufficient without an administrative penalty.

[156] Market-access bans are important for preventing the Respondents from participating in and causing additional harm to the Alberta capital market, but some tempted to contravene securities laws to obtain significant amounts of money will not be sufficiently deterred by such bans, especially if they do not have careers dependent on future market participation. Determined recidivists have ignored market-access bans in the past.

[157] Disgorgement is ordered in appropriate cases to ensure that wrongdoers do not retain the benefit of their ill-gotten gains. Money is often the goal of securities misconduct, and the specter of losing any gains has a further deterrent effect.

[158] However, as the ABCA observed in *Walton*, if the maximum financial consequence for misconduct were giving up the money gained, "there would be no true deterrent. Anyone caught would at worst 'break even'" (at para. 156). Therefore, an additional monetary penalty is appropriate.

[159] That said, sanctions must be considered as a package, and in determining the amount of an administrative penalty that is a sufficient deterrent but not disproportionate, we take into account the deterrent effects that the market-access bans and disgorgement order will have. As the panel in *Fauth* explained (at para. 109):

> A lower administrative penalty in combination with a disgorgement order recognizes the deterrent effect of the latter, which attenuates the magnitude of the administrative penalty required to achieve the necessary levels of specific and general deterrence – especially when further combined with permanent market-access bans.

[160] In many cases, administrative penalties are considerably larger where no disgorgement order is made, and smaller when combined with disgorgement. At the same time, an administrative penalty must still be large enough not "to communicate too mild a rebuke to the misconduct, or

perhaps a licensing fee for its occurrence, [or] the opposite to deterrence may result" (*Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 at para. 21; see also *Walton* at para. 165).

[161] Based on the circumstances of this case and these Respondents and on the comparable decisions described earlier, we concluded that the appropriate range for the administrative penalty in this case is from $150,000 to $210,000. Staff's request for an order in the amount of $175,000 is around the midpoint of this range, and we find it to be an appropriate middle ground. It is a sum that is neither too lenient nor "crushing or unfit" (*Walton* at para. 154) for these Respondents. Considered in combination with the market-access bans and disgorgement order, it is sufficient to achieve the requisite specific and general deterrence without being disproportionate, and, in our view, an order in this amount is in the public interest.

V. COSTS

A. Law

[162] Following a hearing at which a respondent has been found to have contravened Alberta securities laws, s. 202(1) of the Act allows ASC hearing panels to issue orders directing respondents to pay all or a portion of the costs incurred by Staff to investigate and prosecute those contraventions. The categories of recoverable costs are set out in s. 20 of the *Alberta Securities Commission Rules (General)* (the **Rules**), and include Staff time and witness costs.

[163] Although costs are typically assessed at the sanction stage of a proceeding, costs orders are not sanctions. They are a means of recovering from the wrongdoer at least some of the amount expended by the ASC to enforce Alberta securities laws, which would otherwise be paid indirectly from fees collected from law-abiding market participants who fund the ASC's operations (*Re Marcotte*, 2011 ABASC 287 at para. 20).

[164] On October 31, 2024, s. 20(a) of the Rules was amended to establish tariff rates for Staff time in lieu of the hourly rates that were formerly applied to the calculation of costs orders following a hearing. Staff's investigation and litigation time are now based on the tariff. For example, for each half-day pre-hearing conference or hearing management session held in relation to a matter, Staff may claim $500. For each of the first 15 days or partial days of a hearing, they may claim $8,000, or $4,000 for each half-day.

[165] In *Re Lackan*, 2024 ABASC 186 (at para. 88), an ASC hearing panel cited from the October 17, 2024 Notice of Implementation for the tariff system:

> A costs tariff provides benefits to both Staff and market participants. A costs tariff provides more transparency to [r]espondents, as it allows them to approximate in advance the potential costs award that they may face following a hearing. Second, given case loads and the number of matters that ultimately result in the issuance of a costs order, it is more efficient and expedient to utilize a tariff approach as opposed to a time-tracking system.

[166] The Notice of Implementation also explains that notwithstanding the tariff, "costs ultimately remain in the discretion of the [ASC panel] to make an award that is reasonable in the circumstances of the case".

[167] Before the tariff was promulgated, panels were guided in their costs determinations by a number of general principles set out in *Homerun* (at paras. 49-53). Those principles may be summarized as follows:

- costs ordered to be paid by a respondent should only be those related to that respondent and the specific allegations proved, and not to allegations that were withdrawn or dismissed;

- as it may be difficult to apportion costs exactly along these lines, panels may have to estimate the costs "fairly attributable to specific respondents and specific allegations";

- panels must assess the reasonableness of the costs claimed by Staff, with attention to indications of duplicated efforts, the nature and amount of claimed disbursements, and any previous recovery of costs arising from the same proceeding (e.g., from a respondent that has reached a settlement with Staff);

- a reduction in the costs that might otherwise be awarded may be appropriate if a respondent has contributed to the efficiency of a proceeding (e.g., by cooperating with Staff, admitting uncontroversial facts, or reaching agreements concerning the admissibility of documents); and

- panels should consider the effect a costs order may have on the investor victims' efforts to recover their funds, and whether that should result in a reduced costs order or no order at all.

[168] These underlying principles generally remain applicable with the tariff, with certain modifications. As the *Lackan* panel explained (at para. 90):

> A panel will no longer engage (as was done before the tariff system) in an assessment of "recoverable fees" after an analysis of Staff's total fees, claimed fees, and potential further relevant adjustments to those claimed fees. However, it is important to note that the tariff amounts encompass more than the specific enumerated category. For example, there is now no separate amount claimed or awarded for time spent by Staff to: investigate a matter; review and prepare documents to fulfil their disclosure obligations to respondents; prepare for examining and cross-examining witnesses during a hearing; or prepare written and oral submissions. Therefore, the $8,000 allocated for a hearing day cannot be taken as representing a cost-recovery amount solely for Staff's time on that hearing day – it is also a representation of all those other costs.

[169] We would add that a panel will no longer review Staff's costs for indications of duplicated efforts, because the amounts that may be claimed under the tariff for certain steps in the proceedings do not vary depending on how many Staff members were involved in the matter. We would also add that just as the costs to be paid by a respondent should only be those related to the specific allegations Staff successfully proved against that respondent, the costs ordered for certain other steps in the litigation – for example, a contested interim application – should only be those where Staff was successful.

[170] A further consideration (though not relevant in this case) is the effect of a respondent's proved claim of impecuniosity on the calculation of costs. We agree with the statements in numerous past ASC decisions that impecuniosity is not generally relevant (see, e.g., *Ghani* at para. 111; *Lackan* at para. 92; and *Fauth* at para. 117, in which it was noted that costs orders have not been in issue in recent ABCA decisions that have considered impecuniosity in the ASC context, including *Walton*).

B. Analysis and Conclusion on Costs

[171] Staff seek costs of $81,755 from the Respondents on a joint and several basis. They argued that this is a reasonable amount following a contested hearing on the merits, and based their claims for Staff time on the tariff in s. 20(a) of the Rules.

[172] As there were three hearing management sessions plus six full and two half days of hearing time at the merits stage of this proceeding, Staff claim a total of $57,500 in fees. We are satisfied this accurately reflects the time spent and recoverable under the tariff.

[173] Staff also claim $24,255 in disbursements, comprised of witness costs under s. 20(c) of the Rules (such as process server fees and conduct money), and other costs under s. 20(d) (such as court reporter fees). We reviewed these claims in detail and are satisfied that they accurately reflect expenses incurred in investigating and prosecuting this matter.

[174] We have also considered whether we should exercise our discretion and make any adjustments to the total claimed based on the principles discussed in the previous section of these reasons. We conclude that no adjustments are necessary because:

- Staff was successful in proving all of their allegations, and there were no pre-hearing applications.

- There is no basis for apportioning the costs between the Respondents. They acted in concert throughout the relevant time, faced the same allegations, and asserted a common defence. Cawaling was RTAX's sole guiding mind, such that his conduct and knowledge were imputed to RTAX. It was used by Cawaling to issue securities, collect investment funds, and disburse those funds.

- As mentioned, we reviewed Staff's claims for fees and disbursements and find them reasonable and appropriate. There was no prior recovery of costs arising from this proceeding.

- The Respondents contributed to the efficiency of the Merits Hearing by agreeing to the admissibility of most of the exhibits. However, this was outweighed by other conduct that impeded its efficiency, and the efficiency of Staff's investigation. This included:

    - misleading Staff investigators during the Cawaling Interview, and adducing contrary evidence during the Merits Hearing; and

- failing to disclose all of the documents they intended to enter as evidence at the Merits Hearing in accordance with Rule 15-501 *Rules of Practice and Procedure for Commission Proceedings* (a number of the Respondents' documents were undisclosed until the day before Cawaling testified at the Merits Hearing, despite Staff's requests for certain of them at the time of his Interview).

[175] Accordingly, we find no basis on which to moderate the amount of the cost-recovery order Staff seeks and are ordering that the Respondents pay $81,755 on a joint and several basis. Joint and several responsibility is appropriate for the reasons mentioned: the Respondents acted in concert throughout the relevant time, faced the same allegations, and asserted a common defence.

VI. CONCLUSION AND ORDERS

[176] For the foregoing reasons, we are satisfied that the package of sanctions we are imposing will provide the necessary levels of protection and deterrence – both specific and general – and are therefore in the public interest. The sanctions are intended to convey to these Respondents and others that market misconduct will not be tolerated in Alberta and will be met with severe consequences, especially in serious matters involving fraud and deceit.

[177] As stated in *Planned Legacies* (at para. 81), "those who engage in such misconduct will be denied the privilege of access to the Alberta capital market, will not be allowed to profit from such misconduct[,] and will find such misconduct comes at a direct and substantial financial cost to them."

[178] Against Cawaling, we order that:

- under s. 198(1)(d) of the Act, he must resign all positions he holds as a director or officer 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; and

- with permanent effect:

    - under s. 198(1)(b), he must cease trading in or purchasing securities or derivatives;

    - 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.

[179] Against RTAX, we order that, with permanent effect:

- under s. 198(1)(a) of the Act, all trading in or purchasing of RTAX securities must cease;

- under s. 198(1)(b), it must cease trading in or purchasing securities or derivatives;

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

- under s. 198(1)(c.1), it is prohibited from engaging in investor relations activities;

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

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

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

[180] In addition, against the Respondents jointly and severally, we order that:

- under s. 198(1)(i) of the Act, they must pay to the ASC the $462,421 obtained as a result of their non-compliance with Alberta securities laws;

- under s. 199, they must pay to the ASC an administrative penalty of $175,000; and

- under s. 202, they must pay to the ASC $81,755 in costs of the investigation and hearing.

[181] This matter is now concluded.

July 9, 2025

For the Commission:

"original signed by"
Tom Cotter

"original signed by"
Gail Harding, K.C.

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