ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Black Box Management Corp., 2025 ABASC 113 **Date: 20250827**

Black Box Management Corp., Invader Management Ltd., and Craig Michael Thompson

Panel:	Kari Horn, K.C. Tom Cotter Gail Harding, K.C.
Representation:	Richard Van Dorp Peter Verschoote for Commission Staff Cory Wilson for the Respondents
Submissions Completed:	November 28, 2024
Decision:	August 27, 2025

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I. INTRODUCTION

[1] In a Notice of Hearing dated April 2, 2024, staff (**Staff**) of the Alberta Securities Commission (the **ASC**) alleged that Black Box Management Corp. (**Black Box**), Invader Management Ltd. (**Invader**), and Craig Michael Thompson (**Thompson**, and together with Black Box and Invader, the **Respondents**) each contravened ss. 93(1)(b) and 75(1) of the *Securities Act* (Alberta) (the **Act**) by engaging in fraud and acting as a dealer or investment fund manager (or both) without being registered in accordance with Alberta securities laws. The Notice of Hearing also alleged that Thompson authorized, permitted, or acquiesced in Black Box's misconduct, but Staff did not pursue that allegation at the merits hearing.

[2] The Respondents have been subject to an interim order issued on October 27, 2023 (cited as *Re Black Box Management Corp.*, 2023 ABASC 144) and extended on August 9, 2024 (cited as *Re Black Box Management Corp.*, 2024 ABASC 135) (collectively, the **Interim Order**), prohibiting the Respondents from trading in securities until the allegations in the Notice of Hearing have been finally determined.

[3] The Respondents, represented by counsel, admitted to the alleged contraventions in a Statement of Agreed Facts and Admissions (the **Joint Statement**). We received written submissions from Staff and heard oral argument from both Staff and the Respondents at the merits hearing that took place on October 28, 2024. Staff tendered the Joint Statement and 125 other agreed exhibits, all of which we admitted into evidence at the merits hearing. One of the agreed exhibits was a spreadsheet that compiled and summarized credits and debits to and from various accounts held by the Respondents (the **Source and Use Analysis**).

[4] At the conclusion of the merits hearing, we indicated that we would hear submissions on sanctions and following that, issue a decision for both the merits and sanctions.

[5] The sanction hearing was held on November 28, 2024, prior to which we received written submissions from Staff and the Respondents about the appropriate orders we should make if we were to conclude that the Respondents contravened the Act. At the sanction hearing, we also heard from Staff, Respondents' counsel, and directly from Thompson. With our permission, Thompson filed an affidavit on November 28, 2024 deposing to certain facts that Staff agreed were not controversial.

[6] On December 12, 2024, Staff withdrew the allegation that each of the Respondents contravened s. 75(1)(c) of the Act by acting as an unregistered investment fund manager.

[7] Our decision and reasons follow. Stated briefly, we find that the Respondents contravened ss. 93(1)(b) of the Act, that Thompson and Black Box contravened s. 75(1)(a), and we dismiss the allegation that Invader contravened s. 75(1)(a). We also find that it is in the public interest to order permanent market-access bans against the Respondents, together with monetary sanctions and costs, all on a joint and several basis, as follows:

- Administrative penalty of $750,000;
- Disgorgement of $8,180,108; and
- Costs of $14,000.

II. FACTUAL BACKGROUND

[8] The agreed facts in the Joint Statement form the basis of our decision, and we adopt them as findings of fact. The relevant facts are summarized below.

[9] At all times, Thompson, a Calgary resident, was the sole shareholder, director and guiding mind of both Black Box and Invader (each an Alberta company).

[10] From March 2020 through December 2023 (the **Relevant Period**), Thompson raised approximately $150 million from over 1,000 investors located in the United States (**US**) and Canada. He raised funds for two different schemes: in one, Thompson told investors that their funds would be pooled and used for day trading on the stock market (the **Trading Scheme**); in the other, Thompson told investors that their funds would be used for invoice factoring (the **Factoring Scheme**). The "vast majority" of investor funds were misappropriated, commingled in Black Box bank accounts, and used to carry out a large-scale Ponzi scheme.

A. The Trading Scheme

[11] Thompson was able to raise funds for the Trading Scheme by representing to investors that he was an experienced and successful day trader. He typically had an initial call with prospective investors, during which he explained how he earned money. One such call with investor BH (whose name was not included in the record for privacy reasons) was recorded and in evidence before us. Thompson represented, for example:

- how he became a skilled day trader, starting with being financially responsible for his parents at the age of 12;
- that he had not had a negative [trading] day since 2014;
- that he used "stop-losses" to automatically sell any stock that was decreasing in value, to prevent losses; and
- that he cashed out daily, so that investors could withdraw their funds at any time.

[12] In reality, Thompson was neither skilled nor successful at day trading. He lied to induce new investors.

[13] The arrangement between each investor and Black Box was formalized in a "Joint Venture Agreement" or "Joint Venture Demand Note" (collectively, the **Trading Agreements**). The investor, referred to as the "Financial Partner", provided a payment to Black Box, referred to as the "Managing JV Partner" for "the sole purpose of … [i]nvestments in publicly traded companies or currencies…". Investors could "recall" their capital and accumulated earnings at any time. Black Box was entitled to a 10% fee on the increase in value of the investor's capital. According to the Trading Agreements, investors were to be informed of their proportionate earnings on a monthly basis, thus allowing them to see the growth of their capital and their available account balance.

[14] Thompson emailed detailed, albeit mostly fabricated, weekly reports to Trading Scheme investors describing the positive performance of his trading activity during the week, which usually indicated returns in the range of two to three percent from the prior week. The weekly emails included an updated investor account balance, always showing growth, leading investors

to believe that they were earning substantial profits even though most of their money had been used to pay other investors.

[15] One Alberta investor, TF, made the largest investment and suffered the greatest loss. He first invested $6,000 with Thompson in March 2020. Subsequently, he received a substantial inheritance and, over the course of 12 months, invested an additional $25.5 million with Black Box, understanding the funds would be used for trading. The money was instead diverted, in large part, to pay other investors. TF received weekly reports from Thompson showing fictitious returns on his investment, and the last report dated November 3, 2023 showed that TF's account balance was roughly $37 million, when in reality the balance was zero. His entire life savings and inheritance were lost.

[16] The Respondents acknowledged that, in respect of the Trading Scheme, the investors only authorized their funds to be used for trading in securities. In fact, "the majority of the funds [Thompson] collected from investors were being cycled back to other investors as their purported returns".

B. Factoring Scheme

[17] Thompson also raised funds through his friend, SD, for invoice factoring. Thompson told SD that the invoice factoring business made short-term, high interest loans to contractors that had not yet been paid for work already performed. In exchange for SD's invoice factoring investment, Thompson offered to pay SD an attractive interest rate. Eventually, Thompson offered to pay SD additional returns for bringing in new investors, which SD did. During the Relevant Period, Thompson raised approximately $7 million for the Factoring Scheme.

[18] As with the Trading Scheme, the Respondents memorialized the terms of each invoice factoring investment agreement in a "Joint Venture Demand Note" (collectively, the **Demand Notes**). Pursuant to the Demand Notes, investors gave funds to Black Box and Thompson for "the sole purpose" of investments in invoice factoring. Black Box was obliged to make monthly payments to the investor at the rate of five percent per month on the outstanding principal. The investor had the option to demand repayment of the outstanding balance (principal and interest) at any time.

[19] The Respondents also acknowledged that those who invested in the Factoring Scheme only authorized their funds to be used for invoice factoring. Yet, most of the money raised was instead commingled with deposits from, and used to pay, other investors.

C. Overall Use of Investor Funds

[20] Based on Thompson's client ledger, together with the Respondents' admissions, we find that during the Relevant Period, the Respondents raised approximately:

(a) US$98.4 million and TF's $25.5 million from investors related to the Trading Scheme; and

(b) $7 million related to the Factoring Scheme.

Depending on the exchange rate applied to the total raised in US dollars, the Respondents likely raised in excess of $150 million during the Relevant Period.

1. Personal Trading Account

[21] Thompson transferred approximately $21 million of investors' funds into his personal trading account. A review of Thompson's trading account history indicated that he was actively day trading, sometimes making numerous trades each day. While there were occasional small gains, overall Thompson's trading was not profitable. Comparing the cumulative value of purchases and sales in the trading account during the Relevant Period, we conclude that Thompson had a net trading loss of nearly $14.9 million.

2. Invoice Factoring

[22] The Respondents acknowledge that most of the funds raised in the Factoring Scheme were commingled with other investors' funds in Black Box accounts and largely used to further the Ponzi scheme. We note, however, that the Joint Statement indicates that a portion of the funds were used for invoice factoring as represented to investors. Although the parties did not address it in their submissions, the Source and Use Analysis shows that $365,000 was transferred to "Structure Group", as authorized by most of the JV Demand Notes in evidence.

3. Repayment of Capital and Purported Returns to Investors

[23] As is the nature of a Ponzi scheme, a substantial portion of investor funds were used to pay returns to other investors. Thompson's client ledger indicated a total of approximately US$51 million in capital repayments made to certain Trading Scheme investors. We consider any additional payments in excess of capital to have been artificial earnings, or "fake profit". Using Thompson's client ledger, we estimated that approximately US$52.8 million was paid to investors as fake profit.

[24] While Thompson's client ledger does not include payments made to Factoring Scheme investors, the Source and Use Analysis indicates that, during the Relevant Period, approximately $3.46 million was repaid to those investors. We do not know whether this amount was paid to Factoring Scheme investors as return of principal, "fake" profit, or both.

4. Dean Global Payment

[25] Thompson learned of an investment opportunity with Dean Global Industries LLC (**Dean Global**), a company purportedly in need of capital to close a pending sale of jet fuel. According to Thompson, a representative of Dean Global told him that Dean Global would pay a significant return (in excess of US$30 million) if Thompson loaned Dean Global the money needed to close the sale. Banking records show that Black Box transferred a total of US$5.5 million of investor deposits from a Black Box account to Dean Global and Dean Global Energy Trading LLC. Thompson understood Dean Global would pay Black Box the sum of US$37 million before the end of 2023. As at the date of the merits hearing, Dean Global had not paid any portion of the funds.

5. Personal Benefit

[26] The precise amount of investor funds used for Thompson's personal benefit was contested. Staff calculated $767,494 and Thompson calculated $115,748. The difference was attributable to

loan and interest payments reflected in the Source and Use Analysis between April 15, 2020 and September 15, 2023. The Respondents submitted that the payments were loans that Thompson made to two investors – one for US$250,000 and the other for CDN$300,000 – in July and September 2023. In oral submissions, the Respondents explained that the payments were applied against debt incurred prior to the Relevant Period. Neither submission is supported by the evidence in the Source and Use Analysis, and even if they were, we would be left with the same conclusion: Thompson put investor funds to an unauthorized use, either as loans to third parties or for loan payments. Therefore, we find that $767,494 of investor funds were misappropriated for Thompson's personal use.

D. Admissions

[27] The Respondents have admitted that the Trading Agreements and Demand Notes are securities (specifically, investment contracts) under the Act, and that their conduct contravened s. 75(1)(a) by acting as a dealer without being registered, and s. 93(1)(b) by perpetrating a fraud on investors.

[28] Notwithstanding the Respondents' admissions, we must assess whether, on a balance of probabilities, the evidence proves the requisite elements to support the admitted contraventions.

III. LAW AND ANALYSIS

A. Securities

[29] We first consider whether the Respondents' conduct related to securities. The term "security" is broadly defined in s. 1(ggg) of the Act and includes: evidence of indebtedness (s. 1(ggg)(v)); agreements under which money received will be repaid (s. 1(ggg)(vii)); profit-sharing agreements (s. 1(ggg)(ix)); and investment contracts (s. 1(ggg)(xiv)). While Staff argued that the Trading Agreements and Demand Notes fell within all of these categories in the definition of "security", we focus our analysis on the investment contract category in light of the Respondents' admission in that regard.

[30] While "investment contract" is not defined in the Act, ASC hearing panels have applied the definition articulated by the Supreme Court of Canada (**SCC**) in *Pacific Coast Coin Exchange of Canada Ltd. v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 (at pp. 126-129): an investment contract is an investment of money in a common enterprise with the expectation of profit derived significantly from the efforts of others (see also *Re Ward*, 2022 ABASC 139 at para. 81).

[31] The following elements were present in both the Trading Scheme and the Factoring Scheme: they involved the investment of money (evidenced by a Trading Agreement or a Demand Note) in a common enterprise (investment in publicly traded companies or currencies, or invoice factoring activities) with the expectation of profit (either earnings from Thompson's trading activities or interest generated by Thompson and Black Box through invoice factoring) derived solely from the efforts of others (Thompson or Black Box). Investors had no role in generating the expected returns, nor did they have any control over how their money was used – the investors' only role was to provide capital and they relied solely on Thompson and Black Box to generate returns for them.

[32] We are therefore satisfied that the evidence supports the Respondents' admission and we find that the Trading Agreements and Demand Notes are investment contracts, thus securities within the meaning of s. 1(ggg)(xiv) of the Act.

B. Fraud

1. Applicable Law

[33] Section 93(1)(b) of the Act states:

> 93(1) No person or company shall, directly or indirectly, engage or participate or attempt to engage or participate in any act, practice or course of conduct relating to a security … that the person or company knows or reasonably ought to know may
>
> …
>
> (b) perpetrate a fraud on any person or company.

[34] Staff must prove the *actus reus* and *mens rea* elements of fraud (see *R. v. Théroux*, [1993] 2 S.C.R. 5 (QL) at para. 27, as adopted by ASC hearing panels in *Ward* at para. 277, or more recently, *Re Lackan*, 2024 ABASC 103 at para. 49).

[35] The *actus reus* of fraud is established by proof that a prohibited act was carried out and that the prohibited act caused deprivation to a victim, be it actual loss or placing a victim's pecuniary interests at risk (*Théroux* at para. 27). The "prohibited act" may be "an act of deceit, a falsehood, or some other fraudulent means". The SCC explained in *Théroux* that conduct considered "other fraudulent means" includes "the use of corporate funds for personal purposes, non-disclosure of important facts, exploiting the weakness of another, unauthorized diversion of funds, and unauthorized arrogation of funds or property" and that in instances of fraud involving deceit or falsehood, "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not" (at para. 18).

[36] The *mens rea* of fraud is established by proof that a respondent had "subjective knowledge" or "subjective awareness" of the prohibited act and the possibility that the prohibited act could cause deprivation to another (*Théroux* at paras. 21-22, 27-29). Staff are not required to prove that the Respondents knew they were doing something wrong or that they intended to cause economic loss. Staff need only prove that they intentionally committed a prohibited act while aware of the actual or potential consequences (deprivation of another, including putting another's pecuniary interests at risk) (*ibid*.).

[37] A Ponzi scheme involves the payment of purported returns to existing investors from funds contributed by new investors. ASC panels and courts have found Ponzi schemes to be fraudulent misconduct (for example, *R. v. Breitkreutz*, 2022 ABQB 449 and *Re Kitts,* 2019 ABASC 91).

[38] Given that two of the Respondents are companies, we note prior decisions of ASC panels have noted that "corporations carry on their activities through their guiding minds" and therefore, the acts, knowledge, or intention of a guiding mind may be imputed as the acts, knowledge, or intention of the corporation (*Re Magneson*, 2021 ABASC 129 at para. 218).

2. Analysis

[39] Thompson, through his corporations, Black Box and Invader, carried out a large-scale Ponzi scheme. Thompson raised funds from unwitting investors, inducing them to invest by promising significant returns and telling them that he was a successful day trader who "had not suffered a day of losses since 2014". He also claimed to have fail-safe measures in place to limit losses, and that because of these safeguards and closing all positions daily, investors could withdraw their money at any time. All of the representations that Thompson made to the investors created a clear picture that their investments would earn high returns with minimal risk.

[40] Investors relied on Thompson's representations. Each week, he sent carefully contrived emails to Trading Scheme investors reporting false earnings. In many cases, investors began with small amounts, testing their ability to withdraw earnings before increasing their investment, reinforcing their perception that their funds were being used in the manner represented (and correspondingly increasing in value). The word spread quickly: Thompson was able to raise large amounts of capital without marketing his scheme because of referrals.

[41] Thompson used some investor funds to day trade, but he was unsuccessful. Small gains were overtaken by losses totalling over $14 million. Most of the funds were not used for trading, as authorized by the investors, but were instead used to pay other investors, perpetuating the Ponzi scheme.

[42] While most of the funds were raised through the Trading Scheme, the Respondents also raised funds through the Factoring Scheme. Contrary to representations made to Factoring Scheme investors and contrary to the terms of the Demand Notes, their funds were used to pay other investors.

[43] Through acts of deceit, Thompson failed to disclose important facts and diverted investor funds for unauthorized purposes. While Thompson told investors he was earning profits for them, he was instead using investors' money to pay other investors, to pay himself, and to engage in unprofitable trading. Thompson put each investor's pecuniary interests at risk, and in most cases, caused significant losses.

[44] Thompson engaged in prohibited acts as defined by the SCC in *Théroux*, and those prohibited acts caused deprivation to investors. He alone was responsible for the representations made to the investors and he alone controlled the flow of funds. He knew, by misappropriating the money, that it would not be available to repay investors. He therefore had subjective knowledge that he was putting their pecuniary interests at risk.

[45] Thompson was the sole shareholder, director and guiding mind of Black Box and Invader. His actions and intentions are therefore imputed to Black Box and Invader.

[46] The Respondents admitted all of the foregoing. We therefore find that the Respondents breached s. 93(1)(b) by engaging in a course of conduct related to securities, that they knew or reasonably ought to have known, would perpetrate a fraud on investors.

C. Illegal Dealing

1. Applicable Law

[47] We next consider whether, by carrying out the Trading Scheme, the Respondents engaged in unregistered dealing contrary to s. 75(1)(a) of the Act, as alleged in the Notice of Hearing. Persons or companies act as a dealer within the meaning of s. 1(m) of the Act when engaging in or holding themselves out as engaging in the business of trading in securities or derivatives as principal or agent. The definition of "trade" in s. 1(jjj) includes "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation made directly or indirectly in furtherance" of a trade.

[48] An ASC panel in *Re Wealthstreet Inc*., 2011 ABASC 456 noted the following when considering acts in furtherance of a trade (at para. 103):

> Whether a particular act is in furtherance of a trade is a question of fact, which is considered in context, including its effect on investors. Actions that constitute acts in furtherance of a trade include: accepting investor money; depositing investor money into bank accounts; preparing and providing forms or agreements for signature by investors; meeting with individual investors; conducting or holding information sessions with investors; preparing and disseminating advertisements, newsletters and other promotional material; and hiring salespersons to sell securities.

[49] In considering whether or not a person is trading in securities for a business purpose necessitating registration under s. 75(1)(a) of the Act, ASC hearing panels typically refer to the non-exhaustive factors set out in the Companion Policy to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). Those factors include: "engaging in activities similar to that of a registrant; directly or indirectly carrying on the activity with repetition, regularity, or continuity; receiving, or expecting to receive, remuneration or compensation for the activity; and directly or indirectly soliciting transactions" (*Re Edwards*, 2024 ABASC 9 at para. 38).

[50] While certain exemptions from the dealer registration requirement are set out in NI 31-103, those who seek to rely on an exemption bear the onus of demonstrating its availability and compliance with its terms (*Re 2 Wongs Make it Right Enterprises Ltd.*, 2014 ABASC 475 at para. 26).

2. Analysis

[51] Thompson bought and sold securities in his personal trading account, using investor funds that were paid to Black Box "for the sole purpose of investing in publicly traded companies or currencies". Thompson also carried out acts in furtherance of trades through Black Box: he gave lengthy presentations during his calls with prospective Trading Scheme investors, accepted and directed the flow of investor money into the Respondents' accounts, prepared agreements for the investors to sign, and reported weekly to the investors. Thompson and Black Box solicited, contracted with, and reported to investors with regularity, continuity, and with an expectation of remuneration, as evidenced by the terms of the Trading Agreements. We therefore find that Thompson and Black Box traded in securities and did so for a business purpose.

[52] The Respondents acknowledged that they were not registered as dealers under Alberta securities laws. They bear the burden of showing exemptions were available, and have admitted

that none of the exemptions from registration under NI 31-103 applied to them or their trading activities. They have not asserted any other basis for exemption from the registration requirement.

[53] For the foregoing reasons, we conclude that contrary to s. 75(1)(a) of the Act, Thompson and Black Box engaged in, or held themselves out as engaging in, the business of trading in securities without being registered under the Act.

[54] Notwithstanding the admission by Invader that it acted as a dealer without being registered, we are unable to reach that conclusion on the evidence before us. TF paid almost $25.5 million to Thompson and Black Box by making deposits to Invader's account. Some of those funds were used for trading after being transferred into Thompson's personal trading account. We accept that by doing so, Invader traded in securities. To analyze whether Invader traded for a business purpose, we reviewed the evidence in the Joint Statement:

> 36. After discussions with Thompson, TF entered into an Investor Agreement with Black Box dated March 28, 2020, and first invested in March 2020. In 2022, TF received a substantial inheritance after the passing of one of TF's parents. The inherited funds were invested with Black Box. TF invested approximately $25 million CAD. These funds were deposited into Invader Account Ending 192 (CAD).
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> 37. At all times, Thompson represented to TF that TF's funds would be used for trading. As with the other Trading Investors, Thompson sent weekly reports by email to TF that each week showed positive returns and growth of TF's account balance. Just like the rest of the reports to Trading Investors, these reports were false.
>
> [emphasis added]

[55] The evidence suggests that it was Thompson and Black Box who transacted with TF, while Invader appeared to act as a passive vehicle for the transfer of funds. We have no documents to support a contract between Invader and TF, nor any other evidence that Invader expected to be remunerated. Therefore, even though we found that Invader traded in securities, we cannot conclude that Invader was in the business of trading in securities. Accordingly, we dismiss Staff's claim that Invader contravened s. 75(1)(a) of the Act.

D. Merits Conclusion

[56] Staff alleged that the Respondents engaged in fraud and unregistered dealing contrary to ss. 93(1)(b) and 75(1)(a) of the Act, respectively, and withdrew the allegation related to s. 75(1)(c). Based on the jointly submitted evidence, the Respondents' admissions, and our analysis of the applicable law, we are satisfied that Staff proved that the Respondents breached s. 93(1)(b) of the Act, and that Thompson and Black Box breached s. 75(1)(a). We next consider appropriate sanction and cost recovery orders.

IV. SANCTION

A. Parties' Positions on Sanction

[57] Staff sought, against all of the Respondents, an array of permanent market access bans together with monetary orders, each on a joint and several basis as follows:

- disgorgement of $8,180,108; and
- an administrative penalty of $2,000,000.

[58] The Respondents agreed that the market access bans sought by Staff are appropriate. However, they argued that disgorgement should be limited to Thompson's personal gain (which, as discussed, the Respondents argued was approximately $115,000) and that an appropriate administrative penalty should be $750,000, or alternatively, within the range of $750,000 to $1,000,000.

B. General Sanctioning Principles

[59] Sections 198 and 199 of the Act provide ASC panels with the discretion to make a variety of sanction orders if they consider that it is in the public interest to do so. Sanctions in the securities regulatory context are intended to be protective and preventative, not punitive or remedial (see *Re Homerun International Inc.*, 2016 ABASC 95 at paras. 12-13; *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45).

[60] Consistent with the ASC's mandate to protect investors from unfair, improper, or fraudulent practices, and to foster a fair and efficient capital market in which the public can have confidence, sanctions in the public interest are imposed with two goals in mind: to deter a respondent's future misconduct, and to deter others from engaging in similar misconduct (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-53, 55-56, 60-61).

[61] While all sanctions aim to achieve deterrence, they generally fall into three broad categories – disgorgement, market access bans, and administrative penalties – which may be imposed in combination to serve distinct purposes:

- Disgorgement orders deter by "remov[ing] the financial benefit realized by a respondent as a result of the misconduct at issue, thereby removing the incentive for the misconduct to be repeated by the respondent or by others" (*Re Ghani*, 2024 ABASC 48 at para. 36).

- Market access bans deter by prohibiting a respondent from participating in the capital market, and by signaling to others that to engage in the misconduct at issue is to risk losing the privilege of participation in the capital market (see *Re Fauth*, 2019 ABASC 102 at para. 68).

- Administrative penalties deter by imposing a direct financial consequence on the respondent for the misconduct at issue and by sending the message to others that there are serious consequences from not complying with securities laws (see *Re Rustulka*, 2021 ABASC 15 at para. 112).

[62] Before determining the appropriate package of sanctions required to serve the public interest, we first assess the risk of repeated misconduct – whether by the Respondents or by others who may be inclined to engage in similar misconduct (*Homerun* at para. 14) – with reference to the following factors (treated favourably in *Rashid v. Alberta (Securities Commission)*, 2023 ABCA 53 at paras. 11-12 and most recently applied in *Re Cawaling*, 2025 ABASC 96):

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

[63] Each factor was discussed at length in *Homerun*, which we use to inform our analysis below. In assessing proportionality, we also consider the market access bans and administrative penalties ordered in prior cases for comparable misconduct. However, we remain mindful that the unique facts of each case support a contextual approach to making orders that are proportionate and reasonable given the facts and circumstances before us.

1. Seriousness of the Respondents' Misconduct

[64] Seriousness of the misconduct is assessed by its nature, the respondent's intention, and the harm to which identifiable investors and the capital market were exposed (*Homerun* at para. 22). "Absent other considerations, the more serious the misconduct, the greater the future risk implied and thus the greater the deterrence required" (*ibid.* at para. 26).

(a) Fraud

[65] Fraud is considered one of the most serious types of securities law misconduct, and Ponzi schemes are considered "a particularly sinister form of fraud" (*Re Manna Trading Corp Ltd.*, 2009 BCSECCOM 426 at para. 333). Ponzi schemes require planning and calculated deception to maintain the scheme over time. The early payout of fake returns has the inevitable effect of making salespersons of unwitting victims to recruit family, friends and associates as new victims, which process continues until the certain collapse of the scheme under its own weight.

[66] It is undoubtedly one of the most pernicious forms of securities fraud, warranting harsh deterrent measures. As noted in *Re Kitts*, 2019 ABASC 173 [***Kitts***] at para. 25:

> … [it] demonstrates an overwhelming need to protect against future harm at the hands of the Respondents, along with a severe message of deterrence to others who might be tempted to emulate such misconduct. Ponzi schemes … pose a serious risk of harm to individual investors and to Alberta's capital market, and deserve strong and unequivocal condemnation.

[67] The Respondents did not need to market the scheme to attract new investors. Rather, the payment of artificial returns and the weekly reports showing fabricated gains caused existing investors to share their purported success with others, thus expanding the scope of the fraud and the number of victims. Prospective investors contacted Thompson and Thompson induced their investment through a number of false representations.

[68] In the face of the collapsing Ponzi scheme, the Respondents squandered most of the remaining investor funds by sending them to Dean Global. Further, through Thompson's ongoing emails, the Respondents continued to deceive the Trading Scheme investors by inventing a catastrophic loss and purporting to pursue a plan to recoup losses. In the case of TF, Thompson's deceit continued even after the Interim Order was issued; he advised TF in a November 2023 email that TF had $37 million in his account, when in fact the account was depleted to nothing.

[69] Investor losses were at least US$47 million. One Alberta investor lost all of his $25.5 million inheritance and the Respondents admitted that many investors lost their life savings. Such losses have devastating personal implications for investors, the market suffers because those funds are no longer available for legitimate investment, and public confidence in Alberta's capital market is undermined.

(b) Illegal Dealing

[70] Unregistered dealing undermines both the integrity of the capital market and investor protection (see *Re Bradbury*, 2016 ABASC 272 at para. 21). The registration requirement in s. 75(1)(a) of the Act is a cornerstone of securities regulation, serving an important gate-keeping function to ensure only qualified and suitable people are permitted to trade on behalf of the public, thereby protecting investors from unfair, improper, or fraudulent practices (*ibid*., *Re Mek Global Limited*, 2022 ONCMT 15 at para. 68, *Re Limelight Entertainment Inc.*, 2008 ONSEC 4 at para. 135).

[71] We consider unregistered dealing to be a serious contravention of the Act, the consequences of which are magnified by the facts of this case. Thompson and Black Box deprived investors of an important safeguard – having a proficient registrant acting with integrity – when making their investment decisions.

[72] The Respondents' misconduct – fraud and illegal dealing – was extremely serious and warrants significant deterrent measures to address any future risk of similar misconduct by the Respondents and to dissuade others who might seek to emulate it.

2. Respondents' Characteristics and History

[73] A respondent's pertinent characteristics and history are relevant to the assessment of requisite deterrence and proportionality of the proposed sanctions (*Homerun* at para. 27). Factors specific to a respondent's risk of future misconduct include educational background, work experience, and history of participation in the capital market, as well as any disciplinary history or claimed impecuniosity (*ibid*. at para. 28).

(a) Education and Background

[74] Thompson is 47 years old, has no post-secondary education, and no prior work experience in finance, investments, or trading. None of the Respondents have a disciplinary history.

[75] While a disciplinary history may suggest a higher risk of recidivism and therefore an elevated need for deterrence, the absence of a disciplinary history is not mitigating. This is because all market participants are expected to follow the law (*ibid*. at para. 85).

[76] The Respondents acknowledged that Thompson's personal characteristics are neutral factors and do not diminish his culpability. We agree.

(b) Capital Market Experience

[77] Prior registration, securities-related work experience, or other participation in the capital market may indicate the degree to which a respondent was or should have been aware of relevant securities regulatory requirements and, consequently whether the misconduct was inadvertent,

reckless, or deliberate – the latter demonstrating a heightened risk of future misconduct (*ibid*. at paras. 28 and 29). Whether the absence of such experience can be considered moderating "… will depend on all the circumstances, including the nature of the misconduct found, and evidence of what the respondent has learned from the events giving rise to the misconduct found" (*ibid*. at para. 31).

[78] Staff argued that the Respondents should be treated as having prior relevant work or capital market experience because of the representations made to investors about Thompson's extensive trading history and acumen. Even though the representations were false, Staff said they indicated at least a moderate level of investing-related sophistication, opportunism and outright connivance, and therefore, there is a greater risk of reoccurrence.

[79] The Respondents have never been registered under Alberta securities laws and there was no evidence before us of prior participation in the capital markets that would inform the measure of deterrence required. It is clear that Thompson knew how to buy and sell stocks, but we consider this a neutral factor. We earlier discussed the false representations Thompson made to potential investors regarding his capital market experience in our assessment of the seriousness of the misconduct.

(c) Impecuniosity

[80] ASC panels have taken into account a respondent's ability to pay when ordering administrative penalties. Proven impecuniosity is relevant to determining the proportionality of any administrative penalty and whether it reasonably achieves the deterrence required (*Homerun* at para. 34; *Re Shaw*, 2023 ABASC 110 at paras. 31, 109). A penalty "beyond the capacity of the individual offender cannot be justified on the basis that it will deter others who are in a better financial condition" (*Homerun* at para. 17, citing *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 165). "A monetary sanction typically imposes a burden on a respondent, but that in itself does not 'demonstrate disproportion or unreasonableness in the *Walton* sense; an order with no real effect on the recipient may be no sanction at all'" (*Shaw* at para. 31 citing *Homerun* at para. 18).

[81] The Respondents submitted that their financial circumstances are relevant for our consideration of deterrence.

[82] At the time of the sanction hearing, Thompson's net worth was roughly $210,000, of which a significant portion was being held in a lawyer's trust account related to his divorce proceeding. Thompson argued that he has limited earning capacity as a person without any qualifications and limited work experience. His 2024 income was approximately $50,000 from commission-based, seasonal work, and he was living in a rental suite at a cost of $1,575 per month. We have limited information about the current financial circumstances of Black Box and Invader other than the fact that a Black Box account with a balance of US$368,422 was frozen by order of the Executive Director on October 5, 2023.

[83] While it appears that Thompson has some money, his assets are insignificant in relation to investor losses. We have no evidence that Thompson has declared bankruptcy or has been reduced to penury, but in light of the sizeable disgorgement order he is facing, we consider Thompson's

limited earning capacity to be somewhat mitigating in determining the appropriate administrative penalty.

[84] Panels may consider the extent to which monetary sanctions would foreseeably diminish investors' prospects of financial recovery (*Homerun* at para. 34). Respondents' counsel submitted that Thompson is named in three civil proceedings related to the Ponzi scheme and faces claims for damages over $47 million. In reply, Staff emphasized that the Respondents had not tendered evidence of civil judgments against them, and noted Staff's practice is not to pursue collection of monetary sanctions ahead of investors enforcing civil recovery of their losses.

[85] We have no evidence that investors have obtained civil judgments against any of the Respondents and it is unknown whether Staff's civil enforcement of monetary orders (or postponement thereof) would support investors' steps to recover losses. Accordingly, we treat this consideration neutrally as there is no basis to conclude that the imposition of monetary sanctions will foreseeably diminish the investors' prospects of recovery. However, should there be a change in circumstances, we note that the Act allows a panel to consider applications to vary orders.

3. Benefit Sought or Obtained by the Respondents

[86] Obtaining a benefit from misconduct is an obvious incentive for respondents or others to engage in similar market misconduct in the future. Higher gains suggest an increased risk of future misconduct (see *Kitts* at para. 31, and *Re Magneson,* 2022 ABASC 101 [***Magneson***] at para. 27).

[87] Staff argued that Thompson raised $150 million in just three-and-a-half years and that most of those funds benefitted him because he used them to perpetuate the Ponzi scheme. He also personally benefitted from the misconduct by using $767,494 of investor funds for personal loans, credit cards, and payments to the Canada Revenue Agency.

[88] The Respondents argued that Thompson was not enriched by the schemes, a fact which should distinguish this case from other serious frauds such as *Kitts* and *Re Breitkreutz, 2019 ABASC 38* [***Breitkreutz***]. He did not use investor funds to live lavishly, buy expensive property, or advance his own financial interests. Of the $150 million raised, a minimal amount was used for paying personal debts.

[89] Earlier we determined that the Respondents paid a substantial portion of the $150 million raised to investors as return of capital or fake profits. We also determined that Thompson spent $794,494 on personal expenses and US$5.5 million on the Dean Global transaction, neither of which were authorized uses based on Thompsons' representations or the terms of the Trading Agreements and Demand Notes. While the Respondents squandered a significant amount of investor funds, the amount Thompson used for his own personal benefit was proportionately less than in other fraud cases considered by ASC panels (for example: *Magneson; Fauth*; *Breitkreutz; Re Narayan*, 2016 ABASC 228; and several other cases discussed later in these reasons). However, it remains that the Respondents misappropriated investor funds and the sanctions we impose must deter others motived by profit from emulating the same misconduct.

4. Mitigating and Aggravating Considerations

[90] Sanctioning decisions should take into account all other relevant circumstances not captured within consideration of the preceding factors (*Homerun* at para. 39). Circumstances

considered aggravating may call for more significant sanctions to address an enhanced risk of future misconduct, while actions considered mitigating may suggest a reduced risk requiring less severe sanctions (*Fauth* at para. 57).

[91] Staff argued that certain of the Respondents actions were aggravating. In particular, late in the Relevant Period, but *after* Staff commenced their investigation (of which Thompson was aware), Thompson continued to deceive investors by:

- diverting investor funds to Dean Global rather than using those funds for investor redress;
- continuing to deceive Trading Scheme investors when the Ponzi scheme was collapsing; in September 2023, he sent them an email in which he lied about a catastrophic loss, following up in October 2023 with further emails about the progress of his plan to rectify the losses; and
- sending a weekly report email to TF in November 2023 falsely reporting that TF's account balance was approximately $37 million when the actual balance was zero.

[92] The Respondents pointed to several actions as mitigating in this case. Specifically, they say that Thompson:

- cooperated in Staff's investigation, providing Staff with all records and information in a forthright manner;
- accepted full responsibility, having made extensive admissions in the Joint Statement in which the Respondents admitted their misconduct, and at no time did he deny his wrongdoing or try to excuse his wrongdoing;
- agreed to all of Staff's exhibits, thus expediting the hearing and removing the burden on investors who might otherwise have been called to testify; and
- is remorseful and appreciates the seriousness of his misconduct.

[93] Staff acknowledged that the Joint Statement suggested that the Respondents "accepted at least some responsibility for their misconduct", but argued that on balance there was no remorse demonstrated in the evidence.

[94] While we agree that Thompson's ongoing deception to the Trading Scheme investors and TF are very concerning, we considered these facts and the Dean Global payments as part of our earlier analysis, and therefore do not consider them to be additional aggravating factors.

[95] We accept that the Respondents' cooperation, such as Thompson's provision of detailed records to Staff, not only assisted Staff's investigation, but also formed the basis for our determination of the Respondents' use of funds, which informed our disgorgement analysis. The Respondents' willingness to admit to their wrongdoing in the Joint Statement and agree to Staff's exhibits has obviated the need for a potentially lengthy contested hearing, including saving investor witnesses from the ordeal of having to testify and be subjected to cross-examination.

[96] In addition, having heard from Thompson personally at the sanction hearing, we accept that he understands the seriousness and impact of his misconduct and we accept his expressed remorse as being sincere.

[97] *Homerun* suggests that cooperation is generally more relevant to cost-recovery orders than to sanctions, but "may reinforce a mitigating consideration (for example, appreciation of wrongdoing and acceptance of responsibility for it)" (at para. 44). In these circumstances, we find that the Respondents' significant cooperation and admissions, coupled with their appreciation of the misconduct and Thompson's expressed remorse, are significantly mitigating and indicative of a reduced need for specific deterrence.

[98] We turn now to consider the appropriate orders in this case.

C. Market Access Bans

[99] Participation in Alberta's capital market is considered a privilege, and those who participate "are to adhere scrupulously to all requirements of Alberta securities laws" or they "are subject to losing that privilege and facing other consequences" (*Re Planned Legacies Inc.*, 2011 ABASC 278 at para. 42). When warranted, the imposition of market access bans is an integral part of enforcing Alberta securities laws and protecting investors.

[100] Securities commissions have consistently issued orders that permanently remove from the capital market those who have engaged in fraud, particularly where the fraud is perpetrated through a Ponzi scheme (for example, *Kitts*; *Narayan*; *Breitkreutz*; *Fauth*; *Re Samji*, 2015 BCSECCOM 29 [***Samji***]; *Re Mughal Asset Management*, 2024 ONCMT 14).

[101] Staff sought permanent, comprehensive market access bans against each of the Respondents and the Respondents agreed that those orders are appropriate. In light of our findings in this case, our assessment of the *Homerun* sanctioning factors, the orders made in prior cases, and the parties' agreement, we find that it is in the public interest to issue the market access bans sought by Staff.

D. Disgorgement

[102] Disgorgement may be ordered pursuant to s. 198(1)(i) of the Act, which provides that if a person or company has not complied with Alberta securities laws and it is in the public interest to do so, a panel may order that the person or company pay to the ASC any amounts obtained or payments or losses avoided as a result of the non-compliance. As noted, the deterrent impact of disgorgement is to remove "all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Act" (*Planned Legacies* at para. 71; *Fauth* at para. 77).

[103] To determine whether disgorgement should be ordered, we must first find that a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act, and second, that a disgorgement order is in the public interest (*Fauth* at para. 78; *Ghani* at para. 90). Just as corporate action may be imputed based on the actions of a guiding mind, so too can disgorgement be assessed against companies (*Fauth* at para. 79).

[104] Staff bear the burden of proving the approximate amount obtained by the respondent before the burden shifts to the respondent to demonstrate that the 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 (see *Ghani* at para. 90).

[105] In *Fauth*, the panel set out principles relevant to disgorgement that are applicable to this case (at paras. 82-87; original emphasis):

> [82] It is important to note that s. 198(1)(i) of the Act – like the equivalent sections contained in the B.C. and Ontario securities acts – stipulates that a disgorgement order may be directed at "**any** amounts **obtained** . . . as a result of the non-compliance" (emphasis added). The section is not limited to "the amount **retained**, the profit, or any other amount calculated by considering expenses or other possible deductions" (*Arbour* at para. 37, emphasis added; see also *Limelight* at para. 49, *Pro-Financial* at para. 49, and *Poonian* at para. 85). As discussed in D. Johnston, K. Rockwell and C. Ford, *Canadian Securities Regulation*, 5th ed. (Markham: LexisNexis Canada Inc., 2014 at para. 14.32), ". . . the relevant amount is what a respondent obtained through misconduct, not what the respondent retained or spent inappropriately". The B.C. Court of Appeal explained the rationale for this in *Poonian* (at para. 88):
>
> > One way to deter is to remove the incentive for non-compliance. However, if the disgorgement amount is based on profits, then wrongdoers would not be deterred from contravening, or attempting to contravene. They would only face the risk of having to disgorge amounts *if their schemes succeeded*. However, the public is still harmed. A profit-oriented interpretation would undermine the statute's remedial and protective purpose. The failure to "turn a profit" on the wrongdoing should not prevent the regulator from requiring the wrongdoer to give up money received from the wrongdoing. [Original emphasis.]
>
> [83] In *North American Financial Group Inc. v. Ontario (Securities Commission)*, 2018 ONSC 136, the Ontario court similarly explained (at para. 218):
>
> > If the aim is to preserve confidence in the capital markets by ensuring that fraudulent behaviour does not occur as opposed to punishing those who commit fraud, there is less reason to focus on whether the fraudsters pocketed the money for themselves. What they did with the money does not lessen the seriousness of the effect of the behaviour when looked at through the framework of restoring confidence in the market.
>
> [84] It therefore does not matter that there are no funds remaining in Espoir and that Fauth is impecunious. Disgorgement may still be ordered. The panel in *Magee* stated (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.
>
> [85] We agree. A contrary approach could conceivably encourage wrongdoers to spend funds raised as soon as possible, and would in effect reward them for doing so by removing the consequent possibility that they could be held liable for those funds in the future. Obviously, that is not in the public interest. Moreover, we observe that in *Walton*, the

> ABCA's comments with respect to proportionality and a respondent's ability to pay were focused on the assessment of appropriate administrative penalties (as discussed later in these reasons), rather than on the disgorgement orders made by the ASC panel below. The panel charged with reconsidering sanction following the successful appeal to the ABCA noted that the disgorgement orders were not in issue: *Re Holtby*, 2015 ABASC 891 (at para. 18).
>
> [86] That said, there may be other reasons for a panel to order disgorgement of a sum less than the full amount obtained by a respondent as a result of his non-compliance with Alberta securities laws. Like other sanction orders, disgorgement orders are discretionary, and s. 198(1)(i) provides that an order may be made with respect to "any amounts obtained", rather than all amounts obtained (*Re Sino-Forest Corp.*, 2018 ONSEC 37 at paras. 201-202; see also *Poonian* at paras. 92, 138 and *Pro-Financial* at para. 50).
>
> [87] Some adjudicators, for example, have considered it appropriate to deduct amounts that were repaid to victim investors: see *Planned Legacies* (at paras. 73-75) and *Poonian* (at para. 91). Others have chosen to deduct the amount of funds raised which were actually used for the benefit of the investors, in the manner investors were told their funds would be used: see *Re 509802 BC Ltd. (c.o.b. Michaels Wealth Management Group)*, 2014 BCSECCOM 457 (at para. 46; aff'd. *Michaels v. British Columbia (Securities Commission)*, 2016 BCCA 144), *Poonian* (at para. 139, citing *Re Streamline Properties Inc.*, 2015 BCSECCOM 66 at para. 100), and *Mandyland* (at paras. 31, 59-60).

[106] The parties agreed that the misconduct resulted in the Respondents' unlawfully obtaining money, and that disgorgement is in the public interest. However, the parties disagreed on the amount of disgorgement that should be ordered.

[107] Earlier, we concluded that the Respondents used investor funds as follows:

- $21 million was used for trading;
- $365,000 was used for invoice factoring;
- US$51 million was paid to Trading Scheme investors as repayment of capital;
- US$52.8 million was paid to Trading Scheme investors as fake profit;
- $3.46 million was paid to Factoring Scheme investors as either repayment of principal or fake profit;
- US$5.55 million was paid to Dean Global; and
- $767,494 went to Thompson's personal use.

[108] Staff submitted that the "amount obtained" as a result of the Respondents' misconduct was the total amount they raised from investors – approximately $150 million, because all of that money was used for purposes not authorized by the investors. While Staff suggested a disgorgement order for that entire amount could be ordered, their position was that the circumstances of this case warranted a limited disgorgement order of $8,180,108, representing the Canadian dollar equivalent of investor funds transferred to the Dean Global companies ($7,412,614) and the amount used for Thompson's personal benefit ($767,494).

[109] The Respondents submitted that the "amount obtained" from misconduct cannot equate to the entire amount of the fraud, otherwise the total amount raised from investors could be ordered as disgorgement, and that sum would be "crushing and unfit". Instead, we were urged to limit any

disgorgement order to the sum used personally (the amount retained) by the Respondents. As discussed, while the Respondents took the position that this amount was $115,748, we agreed with Staff's calculation and found that $767,494 of investor funds were used for Thompson's personal benefit.

[110] We reject the Respondents' position on disgorgement. The authorities cited above discuss the very concern with interpreting "amount obtained" as being limited to profit or personal benefit – such a limitation would undermine the intended deterrent effect. Disgorgement cannot, therefore, be limited to the amount *retained* by the Respondents. Further, the caution in *Walton* about proportionality of sanctions was made in the context of assessing the amount of an administrative penalty after disgorgement had been determined (see *Walton* at para. 156 and *Cawaling* at paras. 152-153). At this stage of the analysis, in accordance with the purpose of disgorgement, specific and general deterrence is achieved by removing financial incentive for misconduct.

[111] The Respondents further argued that the Dean Global transfers should not be included in the disgorgement calculation. They submitted that, while the Trading Agreements specified the use of investor funds, there was no such agreement with TF. Their position seemed to be that, in the absence of an agreement with TF, Staff did not prove the Dean Global payments were amounts obtained from the Respondents' misconduct. We reject this argument as it is inconsistent with the admission that "[a]t all times, Thompson represented to TF that TF's funds would be used for trading."

[112] Disgorgement is discretionary and a panel may consider it appropriate to exclude amounts that were spent in a manner consistent with what investors were told or amounts that were repaid to investors (see *Fauth* at paras. 86-87). On the latter point, we note that the Ontario Capital Markets Tribunal recently considered the question of whether disgorgement orders should include amounts paid to investors as fake profit and concluded that "in the case of Ponzi schemes, and subject to the particular facts of each case, it is generally appropriate to reduce the 'amounts obtained' by amounts of principal investments repaid to investors, but to not reduce the disgorgement amount for any payments made to investors as simulated 'profits'" because such payments "exist for no other reason than the continuation of the scheme" (*Mughal* at paras. 91 and 93).

[113] While Staff suggested that the entire amount raised from investors could be the subject of a disgorgement order, the amount sought effectively excludes the funds used for trading and all of the funds paid to investors (both as repaid capital or principal, and as fake profits). In light of Staff's position, we were not asked to consider the principle in *Mughal* here. Whether the approach suggested by the Ontario Capital Markets Tribunal should be adopted in Alberta will be for the consideration of a future ASC panel.

[114] We accept Staff's position that a disgorgement order of $8,180,108, issued jointly and severally against all of the Respondents, is appropriate in the circumstances. It achieves specific and general deterrence by removing the financial benefit received by the Respondents while sending the message that wrongdoers will not benefit from such misconduct. It follows, and we find, that such an order is in the public interest.

E. Administrative Penalty

[115] Under s. 199 of the Act, we may order that the Respondents pay an administrative penalty to a maximum of $1 million per contravention of the Act if it is in the public interest to do so.

[116] Although we have a broad discretion to determine an appropriate administrative penalty in the public interest, we must ensure that the sanctions are "proportionate and reasonable" in light of the overall circumstances, including the personal circumstances of the respondent; "general deterrence does not warrant imposing a crushing or unfit sanction on any individual" (*Walton* at paras. 154 and 156).

[117] As discussed, administrative penalties serve a purpose distinct from disgorgement – they address deterrence by ensuring that monetary sanctions amount to more than a mere cost of doing business (*Re Ward,* 2023 ABASC 62 at para. 35). Recognizing this distinct purpose, in determining an appropriate administrative penalty consideration should be given to any disgorgement and market access bans being ordered. The following excerpt from *Cawaling* is helpful:

> [158] … 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).
>
> [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).

1. Parties' Positions

[118] Staff's position was that an administrative penalty of $2 million is proportionate to the egregious nature of the Respondents' misconduct and serves the objectives of specific and general deterrence, without being excessive. Staff argued that in cases involving Ponzi scheme fraud, the upper range of penalties issued by Canadian securities commissions has exceeded $1 million by a substantial margin (as examples, Staff cited *Re Gold-Quest,* 2010 ABASC 278; *Sino-Forest;* and *Samji*). Staff argued that those cases and *Breitkreutz* provide a basis for administrative penalties in excess of $1 million, including when disgorgement is also ordered. Staff noted that the present case involved "thousands of contraventions of the Act" – considering the Trading Scheme, the Factoring Scheme, and the illegal dealing – and given the extensive investor losses, an administrative penalty of $1 million would fail to reflect the gravity of the Respondents' misconduct, would not adequately deter future violations, and may result in the opposite of

deterrence by communicating "too mild of a rebuke" (see *Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 at para. 21).

[119] Staff proposed that we could consider separately the misconduct related to the Trading Scheme, the Factoring Scheme, and the illegal dealing in determining the appropriate administrative penalty. They referenced *Breitkreutz*, *Kitts*, and *Edwards*, respectively, as helpful comparisons if we were to accept their proposed approach, and suggested that we could arrive at the $2 million administrative penalty sought by attributing $1 million to the Trading Scheme misconduct, $700,000 to the Factoring Scheme misconduct, and $300,000 to the illegal dealing. We decline to take this approach and instead we consider the misconduct globally in determining the appropriate administrative penalty.

[120] The Respondents sought an administrative penalty of $750,000, or at most, $1 million. They argued that the mitigating factors in this case, including Thompson's "extreme cooperation" and the Respondents' financial circumstances, call for moderation. They submitted that it would be both disproportionate and unfair for the panel to issue administrative penalties twice the amount ordered in *Breitkreutz*, highlighting that *Breitkreutz* did not proceed by admissions and the respondent denied culpability until the end. The Respondents also argued that the cooperation in this case warrants significantly more recognition than Staff's $9,000 reduction in the cost-recovery order sought, particularly if there is a desire to encourage others to similarly cooperate in future cases.

2. Cases

[121] Based on our review of the cases Staff cited in support of the administrative penalty sought (including *Breitkreutz*, *Gold-Quest*, *Sino-Forest*, and *Samji*), we agree with Staff's submission that a panel may order an administrative penalty in excess of $1 million for serious Ponzi cases (although there was no Ponzi scheme in *Sino-Forest*). However, while *Sino-Forest* and *Samji* may demonstrate that Staff's recommended administrative penalty ($2 million) falls within a range of administrative penalties previously ordered by other Canadian securities regulators for serious frauds (both of those cases falling at the high end of the range), they are not helpful to us in arriving at an administrative penalty that is both proportionate and reflective of the deterrence called for in the circumstances of *these* Respondents.

[122] The facts of *Sino-Forest* differ markedly from those in this case. The Ontario Securities Commission ordered administrative penalties as high as $5 million (and disgorgement of $60 million) against Sino-Forest (a publicly traded company) and a number of its executive officers for, among other misconduct, engaging in a deliberate fraud by reporting inflated asset holdings and revenue. The respondents' misconduct resulted in the cumulative loss of $6 billion in equity market capitalization (see para. 99). The basis of the fraud in *Sino-Forest* is therefore too dissimilar to serve as a useful comparator for the matter before us.

[123] In *Samji*, the BC Securities Commission imposed an administrative penalty of $33 million for a Ponzi scheme that resulted in Samji receiving approximately $11 million (which was the subject of a disgorgement order). However, in that province the Court of Appeal has upheld decisions as proportionate when an administrative penalty is determined by applying a multiplier of 2-3 times the amount misappropriated – a method that has not been employed by ASC panels

(see *R. v. Samji*, 2017 BCCA 415 at paras. 80-86 citing *Michaels v. British Columbia (Securities Commission)*, 2016 BCCA 144).

(a) Breitkreutz

[124] As noted, both Staff and the Respondents relied on *Breitkreutz* to support their submissions. Following a contested hearing, an ASC panel found that the respondents operated what was likely a decades-long Ponzi scheme. During the 10-year relevant period, Breitkreutz (the guiding mind of the corporate respondent), raised approximately $137 million from at least 261 investors, with $128 million repaid to investors ostensibly as principal or interest. The panel noted that Breitkreutz acquired a number of properties, lived off of investor funds, withdrawing cash from corporate bank accounts and spending that money with no record of corporate purposes. Staff sought and the panel ordered a $1 million administrative penalty, and the panel ordered disgorgement of $2,671,406. The panel recognized the need for heightened deterrence, in part because of the size and nature of the fraud, and in part because the respondents took no responsibility for the misconduct, essentially blaming the investors for their losses. Breitkreutz demonstrated a high risk of future misconduct, and in contrast to the present case, there were no mitigating factors.

[125] The Respondents argued that, to achieve proportionality, *Breitkreutz* should be treated as the upper limit for an administrative penalty and Staff argued to the contrary, each for the reasons mentioned. Both parties raise compelling points. While an administrative penalty greater than that ordered in *Breitkreutz* might lead to the conclusion that we did not give effect to the Respondents' admissions or remorse, there are other factors that could support a higher penalty. For example, in a shorter period of time, the Respondents raised more from investors than was raised in *Breitkreutz*, a greater number of investors were harmed, and the cumulative total of investor losses was higher.

(b) Kitts

[126] Staff suggested that *Kitts* was an appropriate comparison to the Factoring Scheme fraud. While we have declined to assess parts of the Respondents' misconduct separately, *Kitts* provides a further example of an ASC panel's assessment of an administrative penalty in the context of a Ponzi scheme. Kitts, through his company Vesta Capcorp Inc., raised $4.3 million and US$850,000 during a 16-month period from at least 38 investors. Investors were told that the funds would be used for short-term real estate financing, but the funds were instead diverted for personal expenses and to pay prior investors. Of the amount raised, approximately $3.3 million was funneled through Vesta's bank accounts, controlled by Kitts. The panel ordered an administrative penalty of $600,000 and disgorgement of roughly $1.96 million, which was also the amount that Kitts personally benefitted. In that case, all of the sanctioning factors pointed to a need for strong specific and general deterrence – Kitts posed a heightened risk because he carried out the Ponzi scheme while having absconded from sentencing for fraud and theft in Utah. The harm to investors was significant, many of them aging. Kitts did not cooperate, he did not show remorse, and he failed to recognize the seriousness of his misconduct. The entire scheme was a sham from the outset.

[127] The Respondents in this case are not recidivists. While their fraudulent misconduct is of the most serious nature, unlike *Kitts*, it was not clear that the Respondents' intention from the start was to operate a Ponzi scheme and the Respondents did use some investor funds to engage in day trading and invoice factoring, as was represented to investors. Further, of the total funds raised by

Kitts, the amount he used for his own personal benefit (roughly 37% of investor funds) is disproportionate to the personal benefit obtained by Thompson. However, a substantially greater pool of investors was harmed by the Respondents' misconduct and the overall value of the fraud was exponentially higher than in *Kitts*.

(c) Gold-Quest

[128] In *Gold-Quest*, also a contested hearing, an ASC panel made findings of illegal trading, illegal distribution, and misrepresentation, all associated with a Ponzi and pyramid scheme in which US$29 million was raised from just under 3,000 investors. The investors were promised high returns for foreign currency trading, but the funds were used largely to pay returns to prior investors. The panel ordered two of the respondents (Greene and Jenkins) to pay administrative penalties of $2 million each for their involvement in the scheme. Among the factors that informed the panel's decision were: the failure of Greene and Jenkins to respond to the allegations (neither participated in the merits or sanction hearing) suggesting that they had no recognition of the seriousness of their misconduct; and more than US$5 million and US$4.5 million in investors' money was received by Greene and Jenkins, respectively, and uses of those funds included paying for their personal expenses, including retail purchases, hotel and restaurant bills, golf club expenses and payments to an automobile dealership. There were no mitigating circumstances. No disgorgement was sought or ordered.

[129] There are a number of points that distinguish the present case from *Gold-Quest* and favour comparative moderation of the administrative penalty. Cumulatively, Green and Jenkins used 33% of investor funds for their own personal benefit, and Thompson used 0.5%. Thompson did not use the misappropriated money to live a lavish lifestyle, the Respondents recognized the seriousness of their misconduct (as reflected, in part, by Thompson's expressed remorse), and the Respondents cooperated. In addition, there was no disgorgement order in *Gold-Quest*, thus the administrative penalty and market access bans were the means of achieving all necessary specific and general deterrence. While the amount misappropriated by Thompson and Black Box was higher, as was the total amount of investor losses, *Gold-Quest* involved three times the number of harmed investors – as such, Greene and Jenkins arguably caused greater damage to the integrity of the capital market.

(d) Cases with Admissions

[130] In light of the Respondents' admissions in the Joint Statement, it is useful to consider the treatment of admissions in other ASC panel decisions involving fraudulent misconduct:

- In *Re Transcap Corp.*, 2013 ABASC 326, two individuals (St. Jean and Tindall) and two companies (TTC and STC) ran a Ponzi scheme over a four-year period that raised approximately $52 million (at least $25 million of which was raised from 133 Alberta investors), using most of the investor funds to pay returns to other investors. St. Jean, TTC and STC admitted to multiple contraventions of the Act (including fraud and misrepresentation) and made a joint recommendation on sanctions. The fourth respondent, Tindall (found to have been the lesser involved of the two individual respondents) did not participate in the proceedings. In addition to fraud and misrepresentation, Tindall breached s. 93.4(1) of the Act by lying to staff investigators. The panel ordered St. Jean and Tindall to pay an administrative

penalty of $1.2 million and $750,000, respectively, and to disgorge $9.6 million (which included roughly $1 million that each of St. Jean and Tindall misappropriated for their own use) on a joint and several basis. The value of the fraud was smaller than the present case, but the amounts that went directly to St. Jean and Tindall were proportionately larger than Thompson's personal benefit. The admissions were the only factor that the panel considered to have warranted some moderation in sanctions as they "demonstrate to us that TCC, STC and St. Jean do recognize the seriousness of their misconduct and its consequences." Conversely, the panel considered Tindall's non-participation to be aggravating.

- *Re Optam Holdings*, 2015 ABASC 996 involved an individual (Closson) and two corporate respondents admitting to fraud and illegal trading. Of the $10.8 million raised from roughly 125 investors, the panel found that at least $800,000 was converted to Closson's own use and approximately $5.6 million of new investor money was used to pay returns to other investors. Based on a joint proposal, the panel ordered an administrative penalty of $1 million. The respondent represented a heightened risk to the market because of his prior capital market experience, but the panel found that moderation was warranted based on the respondents' admissions, recognition of the severity of the misconduct, and cooperation in the investigation relieving the burden on investors who may have been called to testify at a hearing. As in *Gold-Quest*, no disgorgement order was sought or granted.

- *Narayan* involved admissions (of multiple serious violations including fraud and illegal dealing) and contested sanctions. The respondents – Narayan and three corporate entities – raised $5.8 million, of which $4 million was lost. Narayan admitted to diverting at least $800,000 toward his own lavish lifestyle, trips, and expensive cars and repaying some investors using funds raised from other investors. Staff sought disgorgement of $1.1 million, an administrative penalty of $350,000, and permanent market access bans. The panel found that Narayan's level of dishonesty, his breach of an undertaking to the ASC's Executive Director, and his prior sanctioning history indicated a greater need for specific deterrence. Although the panel noted the respondents' admissions and cooperation with the investigation as mitigating, regarding Narayan's recognition of the seriousness of his misconduct, the panel found that he demonstrated "… little if any contrition, apology, recognition of the harm that he caused to investors or recognition for the damages caused to the capital market" (at para. 45). The panel ordered permanent market-access bans against the Respondents, and ordered Narayan to pay an administrative penalty of $300,000 and disgorgement of $880,951.

[131] In each of *Transcap*, *Optam*, and *Narayan*, the respondents used for their own personal benefit investor funds representing a larger proportion of the total amount raised than Thompson did – roughly, in each case: 4% by St. Jean and Tindall in *Transcap*; 14% by Closson in *Optam*; 15% by Narayan; and 0.5% by Thompson. While the degree to which misconduct is motivated by greed is not determinative in the assessment of appropriate administrative penalties, it provides a useful point of comparison in considering the measures necessary to deter the Respondents from future misconduct.

[132] *Transcap*, *Optam*, and *Narayan* support moderation in the assessment of an administrative penalty when respondents have admitted to their misconduct, cooperated with the investigation (reducing the burden on Staff and investors), and demonstrated that they recognize the seriousness of their misconduct. While the degree of moderation is fact specific, cooperation, admissions, and genuine remorse suggest a lower likelihood that the respondent will repeat the misconduct. This, in turn, has an attenuating effect on the need for specific deterrence.

3. Appropriate Order

[133] We place substantial weight on the Respondents' cooperation – the admissions have saved investors from participating in a lengthy hearing, publicly re-telling their stories, and having their credibility challenged under cross examination. Accordingly, and as discussed, considered together, the Respondents' cooperation, admissions in the Joint Statement, appreciation of their misconduct, and Thompson's expressed remorse are significantly mitigating and indicative of a reduced need for specific deterrence. We agree with the Respondents' argument that if we were to order an administrative penalty of $2 million in the context of highly cooperative respondents, we may jeopardize the degree to which future respondents will be amenable to cooperating with Staff, which, together with taking responsibility and proceeding by joint admissions, assist in the ASC's fulfillment of its important protective mandate.

[134] We also take into account the deterrent effect of disgorgement and market access bans when considering an administrative penalty that is proportionate and reasonable for this case (*Cawaling*). The Respondents are facing a very significant disgorgement order and permanent market-access bans, including a smaller administrative penalty in the sanction package, achieves the necessary levels of specific and general deterrence that we have determined are required here.

[135] Mindful that we must not issue a penalty seen as "too mild a rebuke" (*Maitland*), or one that overemphasizes general deterrence (*Walton*), having applied the *Homerun* factors as they relate to the facts of this case, and considering relevant prior decisions, we conclude that an administrative penalty of $750,000 is warranted in the public interest; it reflects appropriate sanction moderation, while still sending a strong message to others that they will not profit from similar misconduct.

V. COSTS

A. Parties' Positions on Costs

[136] Staff's Bill of Costs reflected total costs of $29,031.55. However, referring to the Respondents' cooperation in making the admissions in the Joint Statement and agreeing to all of Staff's exhibits, Staff sought, against all of the Respondents on a joint and several basis, a cost-recovery order in the amount of $20,000. The Respondents agreed with Staff's position on costs.

B. The Law

[137] Principles guiding ASC panels in determining appropriate cost-recovery orders were recently articulated in *Cawaling* (at paras. 162-170). If satisfied after a hearing that a respondent has contravened Alberta securities laws or acted contrary to the public interest, an ASC panel may order a respondent to pay "costs of or related to the hearing or the investigation that led to the hearing, or both" (s. 202 of the Act). Section 20 of the *Alberta Securities Commission Rules*

(General) (the **Rules**) sets out categories of costs that may be included in a cost-recovery order if the panel is satisfied that such costs are reasonable in all the circumstances. The categories include disbursements and tariffs for certain specified investigation and hearing related activities.

[138] While the tariff allows for a reasonably simple calculation of recoverable costs representing Staff time expended on the investigation and hearing, the amount of any cost-recovery order is subject to the discretion of the panel. In exercising that discretion, we are guided by certain considerations: the withdrawal or dismissal of any allegations against any respondent; the apportionment of costs among multiple respondents; the contribution by any respondent to the efficiency of the proceeding; and the potential effect of a costs order on victims' efforts to recover their funds (see *Cawaling* at para. 167).

C. Determination on Cost Recovery

[139] Staff calculated the total amount reflected in their Bill of Costs with reference to s. 20 of the Rules. Pursuant to the tariff in s. 20(a), this included $18,000 for Staff time, calculated as follows:

- $500 for one hearing management session (June 28, 2024);
- $1,000 for two uncontested applications for the Interim Order and its extension at $500 each (October 27, 2023 and August 9, 2024, respectively);
- $500 for an *ex parte* freeze order application (October 6, 2023); and
- $16,000 for two full hearing days at $8,000 each (October 28 and November 28, 2024).

[140] With the exception of the number of hearing days, discussed below, we agree with Staff's calculation.

[141] The Bill of Costs also included $11,031.55 for disbursements pursuant to s. 20(c) and (d) (court reporter fees, process server fees, witness conduct money, and courier fees). Having reviewed the supporting documents attached to the Bill of Costs we are satisfied that the amount claimed for disbursements is accurate and potentially recoverable pursuant to s. 20 of the Rules.

[142] Staff's submissions were prepared before the time required for the sanction hearing was known, and Staff's reduction to the total amount reflected in their Bill of Costs was based on only the Respondents' cooperation. Other cost-reduction considerations that materialized following the sanction hearing lead us to conclude that a greater reduction is warranted.

[143] We determine the appropriate cost-recovery by first identifying the correct amount potentially recoverable under s. 20 of the Rules, and then applying any reduction we consider warranted. Because only a half-day was required for the sanction hearing, the correct tariff for November 28 is $4,000 and thus the amount potentially recoverable under s. 20 is $25,031.55. We consider the following factors in assessing the reduction we apply to that amount:

- Staff acknowledged that the Respondents contributed to the efficiency of the proceeding by making the admissions in the Joint Statement and agreeing to all of

Staff's exhibits. We agree – a proportionate reduction to that proposed by Staff should be applied in recognition of the Respondents' cooperation.

- Staff withdrew the allegation that the Respondents breached s. 75(1)(c) of the Act subsequent to the conclusion of the sanction hearing. The time used for the Panel's questions and Staff's responding submissions (exclusively about the s. 75(1)(c) allegation) extended the merits hearing beyond noon on October 28. Therefore, had Staff not pursued this allegation, the merits hearing tariff would have been reduced to $4,000 for a half day. The costs should be reduced accordingly.

- We dismissed Staff's allegation that Invader breached s. 75(1)(a). While this allegation (against Invader) occupied minimal hearing time, the tariff allocation for a hearing day cannot be taken as representing a cost-recovery amount solely for Staff's time in the hearing. Rather, the tariff also encompasses other costs, such as Staff time spent on the investigation, on satisfying disclosure requirements, and on preparing written and oral submissions (*Re Lackan*, 2024 ABASC 186 at para. 90). However, Staff costs attributable to Invader would be largely subsumed within the costs attributable to their successful pursuit of the illegal dealing allegations against Thompson and Black Box.

[144] Accordingly, we conclude that the recoverable costs should be decreased by more than the amount proposed by Staff. In our view, it is reasonable to order cost-recovery of $14,000 against the Respondents, on a joint and several basis.

VI. ORDER

[145] For the reasons given, we make the following orders:

(a) under 198(d), Thompson must immediately resign from all positions he holds as a director or officer (or both) of any issuer;

(b) with permanent effect:

(i) under s. 198(1)(b), the Respondents must cease trading in or purchasing any securities or derivatives,

(ii) under s. 198(1)(c), any or all of the exemptions contained in Alberta securities laws do not apply to the Respondents;

(iii) under s. 198(1)(e), Thompson 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;

(iv) under ss. 198(1)(c.1), (e.1), (e.2), and (e.3), the Respondents are prohibited from:

A. engaging in investor relations activities;

B. advising in securities or derivatives;

C. becoming or acting as a registrant, investment fund manager, or promoter;

D. acting in a management or consultative capacity in connection with activities in the securities market;

(c) under s. 198(1), the Respondents, jointly and severally, must pay to the ASC $8,180,108, representing amounts obtained as a result of non-compliance with Alberta securities laws;

(d) under s. 199, the Respondents, jointly and severally, must pay to the ASC an administrative penalty of $750,000; and

(e) under s. 202(1), the Respondents, jointly and severally, must pay to the ASC $14,000 of the costs of the investigation and hearing.

[146] This proceeding is concluded.

August 27, 2025

For the Commission:

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

"original signed by"
Tom Cotter

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