ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Floreani, 2025 ABASC 129 **Date: 20250926**

James Domenic Floreani and Jayconomics Inc.

Panel:	Kari Horn, K.C. Tom Cotter Karen Kim
Representation:	Richard Van Dorp for Commission Staff
	Roger Baker for James Domenic Floreani and Jayconomics Inc.
Submissions Completed:	July 16, 2025
Decision:	September 26, 2025

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I. INTRODUCTION

[1] In a decision cited as *Re Floreani*, 2025 ABASC 41 (the **Merits Decision**), we found that James Domenic Floreani (**Floreani**) and Jayconomics Inc. (**Jayconomics**, and together with Floreani, the **Respondents**) contravened s. 103.1(2) of the *Securities Act* (Alberta) (the **Act**), which provides:

> A person or company engaged in investor relations activities and the issuer or holder of an issuer's security on whose behalf that person or company is so engaged, must ensure that every record disseminated, and every public oral statement made, by that person or company in the course of those activities clearly and conspicuously discloses that the record is issued, or the statement is made, by or on behalf of the issuer or the holder of the issuer's security.

[2] Specifically, we found that while engaged in investor relations activities on behalf of four issuers (the **Issuers**), the Respondents did not ensure that certain of their social media posts clearly and conspicuously disclosed that the posts were made on behalf of the Issuers. "[I]nvestor relations activities" are defined as ". . . any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer . . ." (see s. 1(bb.3) of the Act).

[3] Our findings were based in large part on the Statement of Agreed Facts and Admissions (the **Statement**) the Respondents entered into with staff of the Alberta Securities Commission (**Staff** and **ASC**, respectively) on October 16, 2024. In the Statement, the Respondents admitted to most of Staff's allegations against them. The parties also agreed to the admission into evidence of all proposed exhibits.

[4] A full hearing on the merits was therefore unnecessary. Staff provided written submissions and the parties appeared for oral argument on February 10, 2025 (the **Merits Hearing**). The Respondents had the opportunity to make written and oral submissions as well, but declined despite being represented by legal counsel. They were assisted by legal counsel in negotiating the Statement.

[5] Following issuance of the Merits Decision, this matter moved into a second phase for determination of appropriate sanctions and costs – if any – that should be ordered as a result of our merits findings. Both Staff and the Respondents submitted written argument. The parties appeared for oral argument on July 16, 2025 (the **Sanction Hearing**), at which time Staff tendered into evidence their bill of costs (the **Bill of Costs**).

[6] Although Respondents' counsel did not stipulate that he had ceased to represent both Jayconomics and Floreani (he identified himself as "Counsel for the Respondents" on the cover and the signature page of the Respondents' written submissions (the **Respondents' Submissions**)), the second paragraph of the Respondents' Submissions stated that they were made solely "on behalf of Mr. Floreani in his personal capacity". At the Sanction Hearing, Respondents' counsel said that he was "not really" making any submissions on Jayconomics' behalf because it was defunct.

[7] After considering the parties' written and oral submissions on sanction and costs, the relevant law, and our findings in the Merits Decision, we find that the Respondents must be banned from participating in the Alberta capital market in certain capacities for a period of at least two

years. We also find that on a joint and several basis, they must pay to the ASC an administrative penalty of $30,000, and costs of $10,185.10.

[8] Our reasons for these determinations follow.

II. BACKGROUND AND MERITS DECISION FINDINGS

[9] Below we summarize the findings we made in the Merits Decision. For a full understanding of the background on which our sanction orders are based, however, reference should be made to that decision.

A. The Parties

[10] During the **Relevant Period,** November 2020 to March 2022, Floreani was an Alberta resident who was the sole shareholder, director, and guiding mind of Jayconomics, an Alberta corporation.

[11] In the Merits Decision, we found that Floreani's knowledge and conduct could be ascribed to Jayconomics, and that he authorized, permitted, or acquiesced in Jayconomics' breaches of s. 103.1(2).

B. The Respondents' Investor Relations Activities

[12] In 2020, Floreani, a "finfluencer", began to use various social media accounts under his or Jayconomics' name to post about finance, investment products, and investment advice. He had no investing experience, and he acknowledged that he had no formal education in the area other than online courses and an introduction to finance course he took at Concordia University.

[13] The Respondents built an online following for their posts, and were retained by a number of companies to post content about them and promote purchasing their securities.

[14] The posts that were the subject of our findings (the **Impugned Posts**) were about the Issuers, each a Canadian company whose securities were listed on either the Canadian Securities Exchange or the TSX Venture Exchange: Tenet Fintech Group Inc., formerly Peak Fintech Group Inc. (**Tenet**); Gold Mountain Mining Corp. (**Gold Mountain**); Levitee Labs Inc. (**Levitee**); and Sekur Private Data Ltd., formerly GlobeX Data Ltd. (**Sekur**).

[15] The Impugned Posts were on three social media platforms: **YouTube** (a video-sharing website), **X** (formerly Twitter, a social networking platform), and **Patreon** (an online platform that enables content creators to provide a subscription service for paid members).

[16] The Respondents had two YouTube channels during the Relevant Period, one of which had over 50,000 subscribers. Their videos received thousands of views, as well as hundreds of online comments. Similarly, their X account had thousands of followers, and their Patreon account had over 2,000 paid subscribers. Viewers often posted that they had invested in the relevant Issuer based on what the Respondents said about it.

[17] In the Merits Decision, we described in detail the nature and content of the Impugned Posts and some of the Respondents' other posts about the Issuers. There were a number of commonalities:

- Floreani presented himself as knowledgeable and sophisticated in finance and investing;
- on YouTube, the videos had promotional headlines or titles intended to capture viewers' attention;
- the Respondents forecasted that the Issuers' share prices would increase sharply in the near future;
- they presented positive information about the Issuers' businesses, business models, management, and future prospects;
- their videos included images that suggested financial success and happy investors; and
- there was little or no discussion of the risks associated with the investments, and where risk was mentioned, it was countered with statements minimizing the likelihood of the risk materializing.

[18] The Respondents were paid for the Impugned Posts as follows:

- $787.50 for the YouTube video we described in the Merits Decision as the Second Tenet Video;
- 20,000 Gold Mountain restricted shares, paid in satisfaction of a $21,000 invoice the Respondents issued to Gold Mountain;
- $2,000 for a buy alert post about Gold Mountain on Patreon;
- $84,000 for miscellaneous online marketing services for Levitee; and
- $3,150 for a YouTube video about Sekur.

[19] In their earliest social media videos, the Respondents disclosed within the videos that the posts were sponsored, but Floreani soon found that those videos were viewed far less frequently. It then became their practice only to disclose sponsored content if the subject company directed them to do so and provided the text. In those cases, the Respondents placed the disclosure at the bottom of the video's description box, where it was hidden from view unless a viewer clicked "Show More".

[20] Staff alleged, the Respondents admitted, and we found that the Impugned Posts were made on behalf of the respective Issuers and that they promoted or reasonably could have been expected

to promote the purchase of the Issuers' securities. Further, the posts failed to disclose clearly and conspicuously that they were made or disseminated by the Respondents on behalf of the Issuers, as required by s. 103.1(2) of the Act.

[21] Staff made similar allegations concerning some of the Respondents' other posts about Gold Mountain, but the Respondents denied that those posts contravened s. 103.1(2). They maintained that they were not compensated for those posts and the posts therefore had not been made on Gold Mountain's behalf. Although Staff argued to the contrary, there was insufficient evidence for us to conclude that those posts were made on behalf of Gold Mountain.

[22] Two of the Impugned Posts on YouTube included disclosure that the Respondents had been paid for the posts, but Staff alleged, the Respondents admitted, and we found that the disclosure was not made clearly and conspicuously as required by s. 103.1(2) of the Act. The disclosure was placed, as mentioned, at the bottom of the YouTube description box for the video, hidden unless the viewer clicked "Show More". The videos did not mention payment, or that the Respondents had produced them on behalf of any of the Issuers. Further, one of the disclosure statements was only added to the relevant video description box well over a year after the video was originally posted.

[23] A number of the investments discussed in the Respondents' social media posts failed, and some people commented in the posts that they had lost money. When he was interviewed by investigative Staff in June 2023, Floreani said that the Jayconomics social media accounts he had used for finfluencing ceased being active in early 2022.

III. SANCTION

A. Law

[24] The ASC's mandate is to administer Alberta's securities laws to foster a fair and efficient capital market and to protect investors. Further to that mandate, ss. 198 and 199 of the Act authorize ASC hearing panels to issue certain sanction orders against respondents if it is in the public interest to do so.

[25] Section 198 sets out the orders that may be made to limit or prohibit a respondent's participation in the market (referred to as market-access bans) and to compel the respondent to pay to the ASC the amount obtained or the losses avoided as a result of the respondent's non-compliance with Alberta securities laws (referred to as disgorgement orders).

[26] In addition to any orders under s. 198, s. 199 authorizes hearing panels to order a respondent to pay an administrative penalty of up to $1,000,000 for each contravention of the Act. An administrative penalty is meant to impose a direct financial consequence for capital market misconduct.

[27] ASC sanction orders are not intended to be remedial or punitive. They are protective and preventative, aimed at deterring a respondent and others from future capital market misconduct (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 42-45; *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 154, leave denied

[2014] S.C.C.A. No. 476). The former is referred to as specific deterrence, and the latter as general deterrence.

[28] Panels must determine whether deterrence is required and, if so, the orders that will effect the necessary measure of deterrence and that are reasonable and proportionate to the circumstances of the misconduct and the respondent. In making this determination, ASC hearing panels are guided by the factors articulated in *Re Homerun International Inc.*, 2016 ABASC 95 (at para. 20):

(i) the seriousness of the misconduct,

(ii) the respondent's relevant characteristics and history,

(iii) the benefit sought or obtained by the respondent, and

(iv) any other mitigating or aggravating considerations.

[29] We assess the risk of the misconduct recurring and order sanctions that will mitigate that risk. We also refer to the sanctions imposed in past decisions involving similar circumstances to ensure that the orders are consistent and proportionate. Those decisions are not binding, however, and a panel may deviate from them if it finds that it is in the public interest to do so (*Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 at para. 19).

[30] The foregoing factors were analyzed and explained by the panel in *Homerun* (at paras. 22-46):

- The seriousness of misconduct has three aspects: its nature, the respondent's intention, and the harm it caused to identifiable investors or to the capital market. Misconduct is usually considered more serious if it was intentional – i.e., planned and deliberate rather than reckless or inadvertent. The harm caused by misconduct may include but is not limited to pecuniary loss.

- Generally, the more serious the misconduct, the greater the risk of future misconduct and the greater the need for significant deterrent measures. However, even inadvertent misconduct may call for deterrence, as all capital market participants are required to follow the law and understand that it applies to their activities.

- A respondent's specific characteristics and history – education, work experience, capital market experience, disciplinary history, and financial circumstances – are relevant to the analysis because they may indicate a greater or lesser risk of recurrence and therefore a greater or lesser need for deterrence. They are also relevant to proportionality.

- It is particularly relevant if a respondent has education or experience with securities or capital market activities that pre-date the misconduct under consideration. Misconduct despite such knowledge or experience suggests an enhanced risk of

recidivism. Similarly, a respondent with a disciplinary history may present an enhanced risk. However, "the contrary does not apply; no one, after all, should engage in sanctionable conduct, so an absence of prior sanction does not merit reward" (*ibid.* at para. 85).

- The characteristics and history of an individual respondent may be attributed to closely-held corporate respondents over which the individual exercised control.

- A benefit sought or obtained by a respondent from the misconduct – whether monetary or otherwise – may indicate enhanced risk, because it could motivate the respondent and others to repeat the misconduct. In general, the greater the benefit, the greater the risk and the concomitant need for deterrence.

- Consideration of any other relevant mitigating or aggravating circumstances further assists in determining the risk of the misconduct being repeated.

- Mitigating considerations may include a respondent's efforts to ameliorate the harm done to victims, and indications that the respondent appreciates the seriousness of the misconduct, is remorseful, and accepts responsibility. However, as pointed out by the Alberta Court of Appeal (**ABCA**) in *Walton* (at para. 155), respondents are entitled to defend themselves and deny responsibility, so the absence of such indications is neutral, not aggravating.

- Aggravating considerations may "take the form of a respondent displaying a belligerent contempt for either the victims of the misconduct or the law" (*Homerun* at para. 46).

[31] As discussed in the Merits Decision, there has been only one prior proceeding where a Canadian securities regulator considered a legislative provision similar to s. 103.1(2) of the Act. That British Columbia Securities Commission (**BCSC**) proceeding resulted in the ***Stock Social*** **Merits Decision** (*Re Stock Social Inc.*, 2023 BCSECCOM 52) and the ***Stock Social*** **Sanction Decision** (*Re Stock Social Inc.*, 2023 BCSECCOM 372). The reasoning and outcome of that case are pertinent here.

[32] In the *Stock Social* Merits Decision, Stock Social, its directing mind (Johnston), and an issuer admitted and were found to have breached s. 52(2), the section of the *Securities Act* (British Columbia) (**B.C.** and **B.C. Act**) that is equivalent to Alberta's s. 103.1(2). As in this case, the findings were based on the respondents' admissions. Stock Social had been retained and paid to promote five issuers, and produced numerous promotional "advertorials" and social media posts (which the BCSC hearing panel described as the "Records") for that purpose. The panel found that Stock Social and Johnston failed to disclose clearly and conspicuously that the Records were paid promotions made on behalf of the relevant issuers.

[33] As in this case, though the misconduct was admitted, sanction was contested. In the *Stock Social* Sanction Decision, the BCSC panel referred to the same legal principles and similar sanctioning factors to those discussed above. They found it mitigating that the respondents were

cooperative, made admissions that significantly shortened the proceedings, and demonstrated their understanding of their misconduct, which the panel felt made it unlikely they would engage in similar misconduct in the future.

[34] The panel also found that there was no evidence investors had been harmed or that the respondents had intentionally breached s. 52(2), and noted that it was the first enforcement proceeding involving the subject provision since it was enacted nearly 30 years earlier. The panel therefore concluded that since, "[a]t the time of the misconduct, there had been no policy or guidance from the [BCSC] on how to comply with section 52(2) when using social media in promotional activities", "a lighter touch on sanctions" was called for (at paras. 36 and 41).

[35] That said, the panel went on to state (at para. 41):

> However, it does not justify imposing no sanctions at all. Section 52(2) has been in existence for many years. The requirement to clearly and conspicuously disclose the relationship between a promoter and an issuer is plainly stated and certain. . . . [The respondents' disclaimers, in small font, using legal language, placed at the end of the impugned documents] do not meet any common sense interpretation of what is "clear and conspicuous". A strong signal to the market that those disclosures are inadequate is needed.

[36] It other words, while specific deterrence was not a significant concern in the case, the BCSC panel found that there was a need for meaningful general deterrence.

[37] The panel concluded that "a modest monetary sanction" (administrative penalty) would be sufficient (at paras. 51 and 61). They declined to issue the market-access bans sought by Staff, given their view that specific deterrence was "not a significant factor" – Stock Social was no longer in operation, and Johnston said he now understood what was required (at paras. 33 and 53).

[38] The panel also declined to issue a disgorgement order. They noted that in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207 (appeal allowed on other grounds 2024 SCC 28 (***Poonian SCC***)), the B.C. Court of Appeal held that there is a two-step test to be applied for a disgorgement order: determine first whether a respondent directly or indirectly obtained amounts arising from the misconduct, and second whether it is in the public interest to make the order (at para. 54). The panel was not satisfied that there was sufficient evidence of the amount Stock Social obtained, but decided the issue on the second part of the test. They were of the view that ordering disgorgement would be disproportionate in the circumstances, and therefore not in the public interest.

[39] The BCSC panel ordered Stock Social and Johnston to pay administrative penalties of $50,000 and $25,000 respectively.

B. Arguments of the Parties

1. Staff

[40] Staff sought the following:

- pursuant to ss. 198(1)(c.1), (e.1), and (f) of the Act, orders prohibiting the Respondents from investor relations activities, advising in securities, and disseminating information promoting securities, for a period of two years;

- pursuant to s. 198(1)(i), an order directing the Respondents to pay disgorgement in the amount of $110,937.50 jointly and severally; and

- pursuant to s. 199, an order directing the Respondents to pay an administrative penalty in the amount of $30,000 jointly and severally (or alternatively, in the event that we declined to order disgorgement, an administrative penalty in the amount of $75,000 jointly and severally).

[41] As this is the first case of its kind in Alberta, Staff argued that, "this panel has an opportunity to send a clear message that finfluencers who deprive their audience of the important safeguard of disclosure, thereby potentially turning their followers into investor-victims, will face significant sanctions in Alberta." They submitted that both specific and general deterrence are required, especially general deterrence because finfluencing is "an area of growing concern for Canadian capital markets". In support of that proposition, they cited an Ontario Securities Commission (**OSC**) research report that discussed the impact social media finfluencers have on investor decision-making, titled, "Social Media and Retail Investing: The Rise of Finfluencers" (the **OSC Report**). At the Sanction Hearing, Staff pointed out that finfluencing uses social media, exposing it to a wide audience. Anyone can be a finfluencer, which increases the risk of harm to the public if it is not done appropriately.

[42] Applying the *Homerun* factors, Staff argued that the misconduct at issue in this matter is serious, albeit less serious than matters such as fraud. The Respondents deprived their followers of objective content and candid disclosure, and used overly promotional language and imagery in their posts while downplaying any risks. Floreani admitted that he used promotional language as "clickbait" to attract more views and followers, and that disclosing that posts were sponsored reduced the number of views. If an issuer directed them to include such disclosure, the Respondents placed it inconspicuously at the bottom of the video's description box so the number of views would not be affected. In Staff's submission, these factors show that the Respondents prioritized revenue and social media influence over candour with their followers. This in turn caused harm to those that followed the Respondents' advice, and to public confidence in capital-market integrity.

[43] Concerning characteristics and history, Staff acknowledged that the Respondents were no longer creating promotional content, and that neither Respondent had any prior capital market experience or discipline history. However, Staff maintained that Floreani knew or ought to have known the importance of sponsorship disclosure. They argued that the effect disclosure had on views should have alerted him to the fact that the information was material to the Respondents' followers. Similarly, the fact that some issuers requested that disclosure be included should have prompted Floreani to inquire further and ask why.

[44] Staff also pointed out that on September 1, 2023, they received a letter from a B.C. lawyer advising that on January 3, 2022, the Chief Executive Officer of an issuer for which the

Respondents provided promotional services told the TSX Venture Exchange that Floreani had confirmed that he had read and understood certain information, including s. 52 of the B.C. Act (the **ESE Letter**). However, the Respondents did not rectify their disclosure – instead, they posted a video on YouTube on January 26, 2022, and did not disclose that it was a paid promotion. Over a year later, the Respondents added disclosure to some of their earlier posts, but the disclosure was placed at the bottom of each video's online description box, and therefore was not "clear and conspicuous" as required.

[45] In Staff's view, Floreani's conduct demonstrated disdain for disclosure laws – or at least ambivalence – underlining the need for specific deterrence.

[46] Concerning the benefit sought or obtained by the Respondents, Staff noted that in addition to the amounts that the Issuers paid to the Respondents, they also received YouTube advertising revenue, plus $217,762.32 from Patreon subscribers. Staff therefore asserted that the Respondents' finfluencing business was "very profitable".

[47] Staff acknowledged as mitigating the Respondents' cooperation during Staff's investigation, and that they contributed to a simplified and shorter Merits Hearing by making admissions and agreeing to facts and exhibits.

[48] Staff did not identify any additional aggravating factors.

[49] Staff cited three cases as comparable to this matter: the *Stock Social* Sanction Decision (described above), and two decisions from American (**U.S.**) courts that considered § 17(b) of the *Securities Act* of 1933, 15 U.S.C.S. § 77q(b) (**U.S. Securities Act**): *SEC v. Gorsek*, 222 F. Supp. 2nd 1124 (C.D. Ill. 2002) and *SEC v. Curshen*, 372 Fed. Appx. 872 (10th Cir. 2010). Section 77q(b), titled "Fraudulent interstate transactions", provides:

> **Use of interstate commerce for purpose of offering for sale.** It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

[50] According to the court in another U.S. decision, *SEC v. Wall Street Pub. Institute, Inc.*, 851 F.2d 365 (D.C. Cir. 1988), the section was enacted to address the problem of publications that purport to provide unbiased opinions but are actually "'bought and paid for'". Staff argued that since that is similar to the policy rationale behind s. 103.1(2) of the Act, the cases decided under § 17(b) of the U.S. Securities Act are instructive. In particular, Staff relied on them as authority for the proposition that disgorgement of undisclosed compensation for promotional activities is appropriate for deterrence and removing the profit incentive.

[51] Staff submitted that even though the Respondents are no longer carrying out investor relations activities (as in *Stock Social*), "Floreani is young, entrepreneurial, and has demonstrated his talent and ability" by building Jayconomics' brand and becoming a prominent finfluencer in a

relatively short period of time. Market-access bans are therefore necessary, Staff argued, because otherwise there are few barriers to the Respondents resuming their activities.

[52] Staff acknowledged that in the *Stock Social* Sanction Decision the BCSC panel declined to order market-access bans, but argued that the decision can be distinguished in at least two ways: first, in *Stock Social*, there was no evidence of investor harm, while here there is such evidence; and second, in *Stock Social*, the corporate respondent had provided and was compensated for other services, while here only promotional services were provided.

[53] Staff referred to certain aspects of the Respondents' misconduct that they argued were particularly egregious – worse than the misconduct in *Stock Social*. This included Floreani's choice to "prioritize growth of his channel and profits over being candid with [viewers]" despite his awareness that sponsorship disclosure was material to them, and his "half-hearted" attempts to comply with the law after learning of B.C.'s equivalent legislative provision.

[54] In support of their request for a disgorgement order, Staff submitted that, "[g]iven how much profit can be achieved by finfluencers and the wide reach of social media, a message needs to be communicated that compensation obtained through non-compliance with the important disclosure mandated by s. 103.1(2) of the *Act* can – and *will* – be disgorged" (original emphasis). They acknowledged that disgorgement was denied in the *Stock Social* Sanction Decision, but distinguished that case for the reasons mentioned, maintaining that there is a greater need for both specific and general deterrence in this case.

[55] Further, Staff argued, the Respondents were motivated by profit to engage in their misconduct. They knew from experience that views decreased when disclosure was made. In Staff's submission, that justifies a disgorgement order because the Respondents would not have earned the money they did without breaching the Act. The profit motive not to disclose paid promotions in accordance with s. 103.1(2) of the Act must be removed to deter other finfluencers.

[56] In conjunction with a disgorgement order, Staff sought an administrative penalty against the Respondents. They contended that an administrative penalty alone could be considered a mere licensing fee or a cost of doing business, given how lucrative finfluencing – especially finfluencing in breach of the Act – can be for anyone with internet access. However, if we were not inclined to order disgorgement, Staff argued in the alternative that a much larger administrative penalty of $75,000 would be appropriate and consistent with the combined sum of the administrative penalties ordered against Stock Social and Johnston in the *Stock Social* Sanction Decision.

[57] Finally, Staff submitted that the monetary orders we impose on the Respondents should be joint and several since Floreani was the sole director, shareholder, and guiding mind of Jayconomics. He therefore benefited from and directed what happened with all of the funds they received.

2. Respondents

[58] Floreani pointed out that he was cooperative throughout this matter, and succeeded on all of the issues he did not admit. He acknowledged that he was likely to incur an administrative penalty, but submitted that a penalty in the range of $10,000 to the $25,000 ordered against the

individual respondent (Johnston) in *Stock Social* would be appropriate. Anything higher would be punitive and unnecessary to protect the public interest.

[59] In the Respondents' Submissions, it was argued that a disgorgement order is not authorized because there was no allegation that s. 147 of the Act was breached, and therefore there were no "profits" within the meaning of s. 195. He suggested that, "Staff surely know that the relief they seek is beyond the limited statutory authority of the Panel", and questioned why they would nonetheless convene "three separate hearings" against him.

[60] Floreani noted that despite his cooperation, he was "subjected to the costs and expense of a full hearing", including a Sanction Hearing that he characterized as "an application that is doomed to fail" because "[t]here is no interpretation of the [Act] that accords with Staff's position on disgorgement and Staff tacitly acknowledge this by quoting fragments of [s.] 194 while ignoring [s.] 195 in its entirety". He suggested that Staff's pursuit of disgorgement indicated "bad faith" on their part, and questioned whether there had been adequate procedural fairness. He said he presumed that their motivation for acting "unreasonably in pursuit of relief that is not available" was the Supreme Court of Canada (**SCC**) decision in *Poonian SCC*, in which the SCC confirmed that disgorgement orders survive bankruptcy in certain circumstances, but administrative penalties do not.

[61] At the Sanction Hearing, Respondents' counsel advised us that Staff had informed him that he was "arguing against the wrong section of the Act", which he said was "a bit of [a] mistake". We understood that as an acknowledgement that the argument in the Respondents' Submissions about ss. 147, 194, and 195 was wrong at law, and that those sections are inapplicable here. We therefore treated Respondents' counsel's statements at the Sanction Hearing as a withdrawal of those arguments and the allegation of bad faith against Staff, and do not address them further in these reasons.

[62] As mentioned, initially, the Respondents submitted that an administrative penalty of up to $25,000 would be appropriate. However, Floreani went on to argue that the penalty should be "significantly reduced for Staff's unreasonable refusal to accept his admissions of liability and resolve this matter without the need for multiple days of hearings". At the Sanction Hearing, he maintained that it was not in the public interest for there to have been a hearing at all because of the Respondents' extensive admissions. Respondents' counsel explained that his "main argument" on sanction was that "the vast majority of this could and should have been avoided".

[63] The Respondents did not specifically address the factors in *Homerun*, but suggested that the following were mitigating facts in Floreani's favour:

- he is insolvent, and Jayconomics has ceased operations;
- he was cooperative and made admissions;
- Staff took "unnecessary steps . . . in pursuit of disgorgement";

- he has no interest in working in the financial markets again, and no intention to start another similar YouTube channel;

- he expressed his remorse for his actions and failure to make himself aware of his responsibilities under s. 103.1(2) of the Act;

- there was no evidence of any amounts he gained personally, as opposed to amounts gained by Jayconomics that it may have used to pay expenses or make investments; and

- he attempted to correct his disclosure in 2023.

[64] Concerning the issue of which Respondent the Issuers paid for the promotional services, at the Sanction Hearing, Respondents' counsel argued that Floreani did not admit receiving that money, and contended that in the Merits Decision we found that the funds were deposited into Jayconomics' bank account. That is inaccurate – the Merits Decision did not identify bank accounts or which of the Respondents received payments. However, we understood that Respondents' counsel was trying to distinguish Floreani and Jayconomics as separate legal persons, and argue that since most of the funds were paid to Jayconomics, Floreani should not be subject to a disgorgement order.

[65] Floreani concluded that he should incur an administrative penalty of no more than $10,000. This would account for what the Respondents' Submissions described as the "unnecessary procedural steps", as well as the mitigating factors in this case that were not present in *Stock Social*. At the Sanction Hearing, Respondents' counsel submitted that Floreani "is not the worst offender that needs to be assessed any punitive or otherwise overly onerous repercussions".

C. Analysis

1. Seriousness

[66] In the *Stock Social* Sanction Decision, the BCSC panel commented on the importance of s. 52(2) of the B.C. Act and the seriousness of its contravention (at paras. 19-21):

> As described in the [*Stock Social* Merits Decision], section 52(2) exists to assist investors in assessing the objectivity of information received from a person engaged in investor relations activities. Section 52(2) is an important safeguard to help investors make fully informed investment decisions about issuers.
>
> The integrity of the capital markets relies on those who disseminate promotional information to be candid. Therefore, disseminating paid promotional advertisements in the form of advertorials about issuers without clearly and conspicuously disclosing that they were done on behalf of those issuers not only deprives investors of an important safeguard but also jeopardizes public confidence in the integrity of the capital markets. For those reasons, a breach of section 52(2) is inherently serious.
>
> We have found that the advertorials disseminated by Stock Social were singularly positive and touted certain aspects of the Issuers' businesses but failed to disclose risks or other negative factors that one would expect to find in a true editorial or report. Given that, clear and conspicuous disclosure that those advertorials were disseminated on behalf of the Issuers is even more important in helping investors assess the objectivity of the provided information.

[67] We agree. There is also an element of deceit inherent in a breach of s. 103.1(2) of the Act: the perpetrator withholds or fails to disclose information that is important to those considering an investment and weighing the risks involved. This exposes investors to an increased risk of financial harm and undermines confidence in the capital market.

[68] In this case, Floreani presented himself as a knowledgeable and sophisticated investor and purposely used titles and captions for his posts that attracted viewers and enticed them to purchase the Issuers' securities – what Floreani admitted was "clickbait". As in *Stock Social*, the posts were invariably positive and minimized risk. Moreover, the Respondents knew that including sponsorship disclosure affected the number of views and either deliberately omitted such disclosure, or put it at the end of a video description box where it was less likely to be seen. They had thousands of subscribers and followers.

[69] Finfluencing has few barriers to entry – no relevant proficiency is required, and one only needs an internet-connected device and access to various social media platforms to reach an enormous audience. Investors are increasingly turning to social media for advice, as conventional registered advice becomes more difficult to obtain for those with modest financial assets. The consequent dangers are real, as ordinary investors are made vulnerable to questionable advice from unqualified – in some cases, malevolent – social media influencers holding themselves out as seasoned investment professionals. It is therefore necessary to impose a measure of general deterrence to make it clear that this type of activity must strictly comply with applicable law.

[70] However, we do not find that the Respondents flouted the law. While their actions were deliberate, we accepted Floreani's evidence that he was not familiar with the requirement to include clear and conspicuous disclosure of paid content. We find that he was reckless in failing to inquire, particularly when issuers requested that disclosure be included. We were also concerned about Floreani's failure to appreciate and heed the information he was asked to review and confirm in accordance with the ESE Letter. During his investigative interview, he told Staff he recalled signing and acknowledging something of that nature, but said he "didn't really . . . go through it". Those operating in the regulated Alberta capital market are expected to be more diligent to ensure that they are operating within the law. Floreani's failure to do so along with his willingness to confirm he did something he did not do must be addressed with specific deterrent measures.

[71] As mentioned, Staff contended that the Respondents' misconduct was more serious than the misconduct in *Stock Social*, at least in part on the basis that there is evidence of investor harm in this case that was absent in *Stock Social*. They also pointed to the fact that Stock Social provided other services to issuers that were not promotions contrary to the B.C. Act, while in this case, only promotional services were provided.

[72] We do not consider the latter point relevant to the seriousness of the misconduct. The BCSC discussed it in relation to the issue of disgorgement and whether it was possible to calculate the amounts the respondents obtained in breach of the B.C. Act separate from amounts obtained from other business. In our view, it is more pertinent that in *Stock Social*, within a period of time similar to the Relevant Period here, Stock Social was found to have caused "well over" 100 Records to be issued that did not comply with s. 52(2) (see *Stock Social* Merits Decision at para. 57). In this case, there were nine Impugned Posts.

[73] Further, we were not persuaded that there was sufficient reliable evidence to reach a conclusion on investor harm resulting from the Respondents' misconduct. There were comments from the public on some of the Impugned Posts that indicated there were people who were acting on the Respondents' recommendations and who said they lost money after doing so, but those comments were anonymous and untested. In the Retrospective Videos (described in the Merits Decision), Floreani said that some followers claimed to have suffered losses as a result of the Respondents' advice – but those claims were also unverified and unquantified.

[74] In the result, we conclude that the Respondents' misconduct was serious and calls for measures that will mitigate against its recurrence, by these Respondents or others. However, our analysis of the seriousness of the misconduct suggests that general deterrence is a greater concern than specific deterrence.

2. Characteristics and History

[75] As mentioned, Floreani had limited experience and education in finance and the capital market when the Respondents began finfluencing, and there was no evidence that either Respondent had any disciplinary history. However, these are neutral rather than mitigating factors. As observed in *Homerun*, (i) "no lack of experience or training explains or justifies misleading investors, or gives any comfort that such misconduct might not recur"; and (ii) no one should contravene Alberta securities laws, so an absence of a disciplinary history is not mitigating (at paras. 83 and 85).

[76] Floreani said that he has no interest in returning to finfluencing, and that Jayconomics has ceased operations. We accepted his evidence in that regard, but find that while it mitigates the need for specific deterrence, it does not obviate that need entirely. He is young, intentions can change, and we cannot rely on his present assurances alone.

[77] Respondents' counsel argued that his clients are impecunious and spoke of possible insolvency proceedings. While a respondent's financial circumstances are important in assessing proportionality and the amount of any monetary orders, there was no current evidence before us concerning the Respondents' finances. The evidence Respondents' counsel pointed to in that regard was Floreani's investigative interview with Staff in June 2023, over two years ago, when he spoke of losing money on a number of his investments.

[78] However, Floreani also deposed then that he was still making approximately $1,000 per month from Patreon subscriptions, that he had a number of investments, and that he was working on starting a software company that was raising money from private investors from which he expected to start taking a salary that month. There was no evidence of the present status of this or any of his other endeavours. Accordingly, we ascribed no weight to the assertion of impecuniosity.

[79] Thus we conclude that certain aspects of Floreani's characteristics and history are neutral, while others militate in favour of deterrence.

[80] We attribute Floreani's characteristics and history to Jayconomics (see *Homerun* at para. 33). He was – by his own admission – its sole directing mind and in control of its operations. It

was his responsibility to ensure that his company's capital market activities were "appropriate and legal" (*ibid.* at para. 117).

3. Benefit Sought or Obtained

[81] The Respondents' finfluencing activities were lucrative once they built a following and started to attract the attention of issuers who wanted to retain the Respondents to promote their securities. As outlined earlier, the Respondents received $89,937.50 for the Impugned Posts, and 20,000 Gold Mountain restricted shares. In addition, the Respondents earned money from YouTube advertisers and Patreon subscribers.

[82] Given the ease with which the Respondents were able to start generating revenue – especially once they stopped including the disclosure that negatively affected the number of views their posts received – there is a significant risk that anyone else with an internet-connected device could seek to emulate them.

[83] Deterrent measures are therefore necessary to reduce the risk that the Respondents will repeat their misconduct and to reduce the more significant risk that others will be tempted to engage in similar activity.

[84] As mentioned, Respondents' counsel distinguished Jayconomics and Floreani, and argued that it was Jayconomics that received most of the money paid by the Issuers, not Floreani. He suggested that in the Merits Decision, we found that "Mr. Floreani received $2,000 from Gold Mountain in cash" for a buy alert, and that disgorgement of that $2,000 is the only reason Floreani has been put through "several hearings" before the ASC.

[85] In the Merits Decision, we found that "*the Respondents* were paid $2,000 to post a buy alert on Patreon" (Merits Decision at para. 25; emphasis added). This was consistent with the Respondents' admissions in the Statement about the Gold Mountain buy alert, and their other admissions concerning the payments "the Respondents" – in each instance, collectively – received from the Issuers.

[86] Nothing turns on which of the two Respondents was paid. Floreani admitted in the Statement – which he signed on both his and Jayconomics' behalf, with the benefit of legal advice – that: (i) he was the sole shareholder, director, and guiding mind of Jayconomics; (ii) what he did, knew, or reasonably ought to have known can be ascribed to Jayconomics, and (iii) he authorized, permitted, or acquiesced in Jayconomics' conduct. They are separate legal persons, but in these circumstances, Floreani is responsible for his company, and received the indirect benefit of any funds received by Jayconomics.

4. Additional Mitigating and Aggravating Factors

[87] There were several significant mitigating factors in this case. Chief among them was the Respondents' cooperation with Staff and the comprehensive admissions made in the Statement. The Statement obviated the need for a full hearing and it demonstrated the Respondents' understanding of their misconduct and their remorse. They accepted responsibility and acknowledged their mistakes.

[88] These admissions and acknowledgements suggest a reduced need for specific deterrence.

[89] Respondents' counsel also pointed to the Respondents' efforts to correct some of their YouTube disclosure in 2023, after they had learned of certain regulatory concerns. We consider that somewhat mitigating as an attempt to comply with the law, but it occurred after the Impugned Posts had been on social media for some time. Moreover, the added disclosure was not clear and conspicuous.

[90] Other than what has already been discussed in relation to the other *Homerun* factors, we discern no aggravating factors.

5. Comparable Decisions

[91] As noted, Staff cited three decisions they submitted had comparable circumstances to those in this case: *Stock Social*, and the two U.S. decisions, *Gorsek* and *Curshen*.

[92] In *Stock Social*, BCSC staff referred to certain settlements with the U.S. Securities and Exchange Commission involving contraventions of a provision similar to s. 52(2) of the B.C. Act in support of the sanction orders staff sought (market-access bans, disgorgement, and administrative penalties). However, the BCSC panel found that the U.S. cases were of no value because "they involved settlements by a foreign regulator in a different jurisdiction applying different (albeit analogous) legislation and involved deceit in one instance" (at para. 47).

[93] Although Staff in this case referred us to court decisions rather than settlements, we take a similar view as the BCSC regarding their application. They were decided by courts considering § 17(b) of the U.S. Securities Act. That provision is analogous to s. 103.1(2) of the Act, but it does not include one important element – the requirement that the necessary disclosure be "clear and conspicuous". In addition, in both *Gorsek* and *Curshen*, the defendants were sanctioned for additional breaches of U.S. securities laws.

[94] Section 17(b) of the U.S. Securities Act has been a part of U.S. securities laws for nearly a century, and in the U.S., there is a greater awareness than in Canada of touting and anti-touting laws among capital market participants.

[95] Accordingly, we accept *Stock Social* as a relevant decision, but decline to rely on the U.S. authorities cited by Staff.

[96] The Respondents did not refer us to any comparable cases.

6. Conclusions on Sanctioning Factors

[97] We find that there is a risk that the misconduct in this case will be repeated by the Respondents or others and that deterrent measures are required. However, as in *Stock Social*, we consider the need for general deterrence to be greater than the need for specific deterrence in light of the circumstances discussed and the characteristics of these Respondents – in particular, their clear acknowledgement and acceptance of their misconduct. We also have regard to Floreani's assurance that he does not intend to engage in finfluencing again.

[98] We are mindful of the courts' cautions not to over-emphasize general deterrence (see, e.g., *Walton* at para. 154 and *Cartaway* at para. 64). That said, the SCC has held that general deterrence is "an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative", and has noted that the importance of general deterrence will vary from case to case (*Cartaway* at paras. 60-61).

[99] Canadian securities commissions have not considered many finfluencing cases, but they are likely to increase with the prevalence of social media and investors' willingness to rely on online advice. According to the OSC Report, for example:

- 35 percent of Canadian retail investors surveyed reported making a financial decision based on advice from a finfluencer;
- 24 percent of participants in an online trial who were exposed to financial-related social media posts reported that they purchased the assets promoted;
- the Canadian Securities Administrators (**CSA**) Investor Index shows that the percentage of investors – especially younger investors – using social media for investment information has increased since 2020, to 53 percent;
- investors surveyed reported that they use social media – especially YouTube – for financial advice because it is easy to access, simple, free, and perceived as informative; and
- the influence of finfluencers is expected to keep growing, "partly because they present complex information in an engaging and accessible manner and appear in venues frequented by younger investors".

[100] The OSC Report concluded that "social media influencers have considerable capacity to influence retail investors' decision making", and that this "reaffirm[s] the importance of the continuance of regulatory oversight to ensure that finfluencer content is not harming retail investors". General deterrence is therefore of particular importance in this case.

D. Sanction Orders

1. Market-Access Bans

[101] It is often observed in ASC sanction decisions that participation in and access to the Alberta capital market is a privilege and not a right. Along with other consequences, those who abuse this privilege are subject to losing it (see, e.g., *Re Planned Legacies Inc.*, 2011 ABASC 278 at para. 42).

[102] Staff sought bans under ss. 198(1)(c.1), (e.1), and (f) of the Act, specifically directed at the capacities in which the Respondents breached s. 103.1(2): engaging in investor relations activities, advising in securities, and disseminating information promoting securities. Concerning the latter, Staff noted that the section provides that a panel may order "that a person or company is prohibited from disseminating to the public, or authorizing the dissemination to the public of, *any information, document, record or other material of any kind that is described in the order*"

(emphasis added). The order they sought would prohibit the Respondents from "disseminating any information, opinion, recommendation, document or record of any kind to the public relating to promoting any securities".

[103] At the Sanction Hearing, Respondents' counsel stated, "[Floreani] makes no submissions on what market bans may be important or may be imposed by the panel because he's not in this industry, so whatever is determined to be fair and reasonable on there, he will comply with as it will not affect his life."

[104] In *Re Marcotte*, 2011 ABASC 287, the panel accepted a similar assurance, but added that because "[i]ntentions can change", the respondent's assurance "diminishe[d] only somewhat the extent of specific deterrence required" (at paras. 45-46). Similarly, it is appropriate to issue market-access orders that will protect against the risk of Floreani changing his mind. Such orders are also necessary to send a message to others considering finfluencing that they must do so in strict compliance with Alberta securities laws, or they risk losing access to our capital market.

[105] We note Floreani's acceptance of market-access bans and find Staff's requests reasonable in the circumstances, appropriately narrow, and targeted at the relevant activities. We are therefore ordering that the Respondents are prohibited from acting in the mentioned capacities for two years from the date of this decision or until the administrative penalty assessed against them is paid, whichever is later. If the Respondents find that their circumstances change, they are at liberty to apply to vary the order in accordance with s. 214 of the Act.

2. Disgorgement

[106] A disgorgement order has a different purpose than an administrative penalty: it is intended to remove any financial benefit the respondent may have realized as a result of the misconduct at issue, and thus to deter recurrence by removing the incentive to repeat the behaviour (*Re Fauth*, 2019 ABASC 102 at para. 77).

[107] Prior decisions have held that Staff have the initial onus to prove the amount they allege a respondent obtained (or avoided losing) as a result of the misconduct (*ibid.* at para. 81). The onus then shifts to respondents to disprove the accuracy or reasonableness of that amount, but any uncertainty is resolved against them because it is their misconduct that "'gave rise to the uncertainty'" (*ibid.*).

[108] The panel in *Fauth* explained (at para. 79):

> . . . the "amounts obtained" by individual respondents as a result of the misconduct at issue includes amounts obtained by corporate entities under their direction and control: see, e.g., [*Re*] *Schmidt*[, 2013 ABASC 320] (at paras. 8, 12, 18, 77). As stated by the [OSC], "[i]n our view, individuals should not be protected or sheltered from administrative sanctions by the fact that the illegal actions they orchestrated were carried out through a corporation which they directed and controlled" (*Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 at para. 59).

[109] Our assessment of a disgorgement order does not depend on whether a respondent has retained or dissipated ill-gotten gains, or whether a respondent is impecunious (*Fauth* at paras. 82 and 85). We agree with the panel in *Re Magee*, 2015 ABASC 846, which stated (at para. 191), "it

would seem perverse that disgorgement could be ordered against a respondent who has retained amounts illegally obtained, but not against a respondent who has squandered such amounts".

[110] In *Fauth*, the panel outlined the process for determining whether disgorgement should be ordered (at para. 78). First, Staff must show that a respondent obtained amounts – either directly or indirectly – as a result of the misconduct at issue. Second, a panel must find that disgorgement is in the public interest given the goals of specific and general deterrence.

[111] As discussed above, this approach was applied in the *Stock Social* Sanction Decision, though the panel decided against making a disgorgement order on the basis that it would be disproportionate in the circumstances and therefore not in the public interest. They instead concluded that administrative penalties would suffice to achieve their sanctioning objectives (at para. 60).

[112] The parties here disagreed on how a disgorgement order should be calculated. The Respondents disputed Staff's valuation of the 20,000 Gold Mountain restricted shares the Respondents received in satisfaction of their $21,000 invoice. In addition, Floreani argued that it was Jayconomics that received all or the vast majority of the funds the Issuers paid, so disgorgement should not be ordered against him.

[113] As in the *Stock Social* Sanction Decision, we find that we do not need to determine the amounts obtained by the Respondents – or either of them – because we decline to issue a disgorgement order on the basis of the second part of the test: we do not consider it to be in the public interest.

[114] We arrive at that conclusion in part because of the lack of reliable evidence of investor harm. We also consider the Respondents' misconduct less serious than that in *Stock Social* in light of the number of social media posts at issue there, and the fact that third parties were recruited to disseminate the Stock Social Records more broadly. It is irrelevant that some of the fees paid to the *Stock Social* respondents were for services that did not breach the B.C. Act – the BCSC panel's comments in that regard related to calculation of the amount obtained, not to whether disgorgement was in the public interest.

[115] We are mindful that this is a case of first instance in Alberta. The Respondents' misconduct preceded both *Stock Social* decisions and any guidance from Staff or the CSA. The OSC Report and accompanying press release were not published until just before the Merits Decision. It is true that s. 103.1(2) of the Act has been in force for more than a decade, but guidance as to how to comply with it has not been available until recently.

[116] That said, we do not foreclose the possibility of disgorgement being an appropriate sanction in a future case involving a breach of s. 103.1(2). The publication of this decision will alert the market and serve as a useful first step toward general deterrence.

3. Administrative Penalty

[117] We are of the view that – as in *Stock Social* – "a modest monetary sanction" in the form of an administrative penalty is reasonable and in the public interest.

[118] In *Walton*, the ABCA cautioned that administrative penalties must be "proportionate to the offence, and fit and proper for the individual offender" (at para. 156). This requires us to consider any claim of impecuniosity by the respondent, and to ensure that we are not imposing an administrative penalty that is "crushing or unfit" (*ibid.* at para. 154).

[119] The ABCA has also cautioned that to have a deterrent effect, administrative penalties should not be so low that they amount to nothing more than a "cost of doing business" (*Alberta Securities Commission v. Brost*, 2008 ABCA 326 at para. 54). If they are "so low as to communicate too mild a rebuke to the misconduct, or perhaps a licensing fee for its occurrence", the ABCA has held, "the opposite to deterrence may result" (*Maitland* at para. 21).

[120] Even if we accepted Floreani's unsubstantiated assertion of impecuniosity, we agree with the panel in *Re Ghani*, 2024 ABASC 48, which held that "impecuniosity alone does not justify a nominal administrative penalty" (at para. 104). As observed in *Homerun*, "a monetary sanction almost inevitably involves . . . a burden on a respondent. This does not in itself demonstrate disproportion or unreasonableness in the *Walton* sense; an order with no real effect on the recipient may be no sanction at all" (at para. 18).

[121] Staff sought an administrative penalty against the Respondents on a joint and several basis, in the amount of either $30,000 (with a disgorgement order) or $75,000 (without a disgorgement order). Floreani first submitted that he expected an administrative penalty in the range of $10,000 to $25,000. However, he ultimately submitted that it should be no more than $10,000 against him in his personal capacity because Staff put him through "unnecessary procedural steps" rather than reaching a settlement that would have avoided a hearing.

[122] We had no evidence about settlement discussions between the parties, but it is irrelevant for an assessment of appropriate sanctions. Sanctions are ordered based on the circumstances of the misconduct and the respondent with a view to mitigating the risk of recurrence, not on the manner in which Staff prosecuted their case.

[123] For the reasons already discussed, we agree with the Respondents' counsel that Floreani is not the worst offender, nor is Jayconomics. However, we consider $10,000 too low for meaningful specific deterrence, given: (i) the seriousness of the Respondents' misconduct in contravening an important legislative provision directed at investor protection; (ii) Floreani's recklessness in failing to make inquiries, determine the Respondents' disclosure obligations, and comply with them; and (iii) the financial benefits received by the Respondents.

[124] An administrative penalty of $10,000 is also too low to effect meaningful general deterrence in the circumstances, especially in light of the significant risk of harm by those who are engaging in, or who would engage in, finfluencing without making the required disclosure. A $10,000 administrative penalty would "communicate too mild a rebuke to the misconduct", and could be considered a mere cost of doing business.

[125] We also consider Staff's $75,000 request to be excessive. While it is the combined sum of the administrative penalties imposed against Stock Social and Johnston in the *Stock Social* Sanction Decision, we have given our reasons why the misconduct was worse in that case.

[126] In arriving at an appropriate administrative penalty, we also considered the lack of persuasive evidence of investor harm, and the reduced likelihood that these Respondents will repeat their misconduct in the future – demonstrated by their cooperation, extensive admissions, acceptance of responsibility, and expressions of remorse.

[127] Finally, we agree with Staff that joint and several responsibility for the administrative penalty is appropriate. For our purposes, Jayconomics was effectively the alter ego of Floreani – he was the guiding mind of Jayconomics and the only person responsible for directing and executing its activities. Thus there is no logical basis for distinguishing the two.

[128] We conclude that an administrative penalty of $30,000 on a joint and several basis is appropriate. In combination with the market-access bans, this amount is sufficient to achieve the necessary specific and general deterrence, but is not so high as to be disproportionate, crushing, or unfit. Further, it recognizes the deterrent effect of the market-access bans (*Fauth* at para. 109). Sanctions should be considered together as a whole, and it is the combination of the orders made that are intended to achieve the necessary deterrence.

IV. COSTS

A. Law

[129] Costs orders are not sanctions and are not assessed using the same factors considered in determining sanctions (*Marcotte* at para. 20; *Ghani* at paras. 109-110). The panel's explanation in *Marcotte* of the rationale for ASC costs orders is frequently cited in sanction decisions (*ibid.*):

> A costs order is not a sanction, but rather a means of recovering, from a respondent found to have engaged in capital-market misconduct, certain investigation and hearing costs that would otherwise be borne indirectly by law-abiding market participants whose fees fund the [ASC]'s operations. It is generally appropriate that a respondent pay at least some portion of the relevant costs. Determination of the appropriate portion may involve assessing parties' contributions to the efficient conduct and ultimate resolution of the proceeding.

[130] Section 202 of the Act authorizes us to make cost-recovery orders following a hearing and a finding of a contravention of the Act. The applicable parameters are set out in s. 20 of the *Alberta Securities Commission Rules (General)* (the **Rules**). Categories of recoverable costs include Staff time and witness expenses.

[131] As in this case, Staff will usually submit their Bill of Costs for a panel's consideration, but the amount of the order is within the panel's discretion, based on its estimation of what is reasonable in the circumstances. Typically, a respondent found to have contravened the Act is held responsible for at least some of the costs incurred by the ASC in investigating and prosecuting the case.

[132] However, recoverable costs relate only to the allegations proved against a respondent, so it may be necessary to consider whether there were allegations made but not proved, and estimate what is fairly attributable to each respondent.

[133] The prospect of costs orders encourages parties to conduct an efficient proceeding. A respondent's level of cooperation with Staff during the investigation and prosecution is therefore relevant, including whether the respondent made formal admissions of fact and agreed to the admissibility of documents. Impecuniosity is not a factor that must be considered in assessing costs (*Fauth* at para. 117).

[134] Section 20(a) of the Rules was amended in October 2024, instituting tariff rates for Staff investigative and hearing time in place of the hourly rates that were formerly applied after a hearing to calculate Staff's costs.

[135] Despite the tariff, costs orders remain discretionary (*Re Cawaling*, 2025 ABASC 96 at para. 166). However, as discussed in *Re Lackan*, 2024 ABASC 186 (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.

B. Arguments of the Parties

1. Staff

[136] Staff initially sought a costs order in the amount of $10,635.10, noting that they had reduced the claim by $500 because they did not prove allegations that certain social media posts promoting Gold Mountain were made "on behalf of" the Issuer. They argued that this was a sufficient deduction because they proved their allegation that the Respondents made social media posts on Gold Mountain's behalf in breach of the Act – they simply did not succeed on all particulars.

[137] Staff connected the $500 deduction to time spent in the Merits Hearing on those particulars. They argued that "the time and costs spent on those particulars were otherwise *de minimis* compared to the overall costs associated with the investigation and hearing".

[138] The day before the Sanction Hearing, Staff sent an email through the ASC Registrar recommending that two of the disbursements claimed in their Bill of Costs be removed from the total claim. Those disbursements related to court reporter cancellation fees for two hearing dates in October 2024 that were adjourned by consent of the parties. The two disbursements amounted to $450, reducing Staff's costs order request from $10,635.10 to $10,185.10.

[139] Overall, Staff argued, their Bill of Costs was relatively modest, and reflected the Respondents' cooperation in admitting facts and exhibits, which shortened the Merits Hearing considerably.

2. Respondents

[140] In the Respondents' Submissions, Floreani pointed out that he had been successful on all of the contested portions of this matter. He contended that Staff's arguments for disgorgement – which he assumed would fail – accounted for many of their costs, and increased his costs to respond.

[141] In Floreani's view, the parties should bear their own costs because the matter could have been resolved by agreement if Staff had not pursued disgorgement.

C. Analysis and Costs Order

[142] We conclude that Staff's Bill of Costs (as adjusted to remove the $450 court reporter cancellation fees) is reasonable and should be paid by the Respondents on a joint and several basis. Since Staff successfully proved the majority of their allegations, we find that the $500 deduction from the tariff rate for the half-day Merits Hearing appropriately reflected the Respondents' success in defending some of the particulars of Staff's allegations concerning the Gold Mountain posts.

[143] We also note that the Bill of Costs does not include any claim for fees or disbursements relating to the sanction phase of the proceeding, which amounts to a further reduction of the costs that Staff could seek to recover. In other words, the Respondents have been given ample credit for their concessions and contribution to an efficient proceeding.

[144] Although Respondents' counsel referred to the Respondents being put through "several hearings" unnecessarily, there has only been one hearing in this matter, in two phases: merits, followed by sanction. The two-phase approach is the way ASC enforcement matters are heard in virtually all contested cases, and it is not unusual in other contexts. The parties' other two appearances were procedural, as provided for in ASC Rule 15-501 *Rules of Practice and Procedure for Commission Proceedings*. Pre-hearing conferences are normal in ASC proceedings, and neither of the appearances in this case was unnecessary.

[145] Further, and as previously stated, we had no evidence before us concerning any settlement discussions between Staff and the Respondents or the reasons no settlement was reached. We therefore did not give any weight to the Respondents' comments in this regard when considering the appropriate costs order.

V. CONCLUSION

[146] For the foregoing reasons, we order that:

(a) under ss. 198(1)(c.1), (e.1), and (f) of the Act, for a period of two years from the date of this decision or until the administrative penalty set out below is paid, whichever is later, the Respondents are prohibited from:

(i) engaging in investor relations activities;

(ii) advising in securities or derivatives; and

(iii) disseminating to the public, or authorizing the dissemination to the public of, any information, opinion, recommendation, document, record or other material of any kind promoting any securities or derivatives;

(b) under s. 199, the Respondents, jointly and severally, must pay to the ASC an administrative penalty of $30,000; and

(c) under s. 202, the Respondents, jointly and severally, must pay to the ASC costs in the amount of $10,185.10.

[147] This matter is now concluded.

September 26, 2025

For the Commission:

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

"original signed by"
Tom Cotter

"original signed by"
Karen Kim