ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Ber, 2025 ABASC 166 **Date: 20251217**

Jeffrey Brian Ber

Panel:	Tom Cotter Kari Horn, K.C.
Representation:	Ksena Court Jennifer Galarneau Justin Dunphy for Commission Staff Rebecca Silver Jennifer Ruttan for Jeffrey Brian Ber
Submissions Completed:	August 15, 2025
Decision:	December 17, 2025

TABLE OF CONTENTS

I. INTRODUCTION

[1] Pursuant to their May 12, 2025 notice (the **Notice**), staff of the Alberta Securities Commission (**Staff** and **ASC**) seek orders under ss. 198(1) and 198.1(2)(a)(i) of the *Securities Act* (Alberta) (the **Act**) permanently banning Jeffrey Brian Ber (**Ber**) from participating in the Alberta capital market in certain capacities. If it is in the public interest, those sections authorize ASC hearing panels to make such orders against anyone convicted in Canada or elsewhere of an offence "arising from a transaction, business or course of conduct related to securities or derivatives".

[2] On May 20, 2022, Ber was indicted in Calgary on two counts of fraud over $5,000 contrary to s. 380(1)(a) of the *Criminal Code* (Canada) (the **CCC**) and one count of corruptly accepting a $104,568.75 secret commission from Blackbird Energy Inc. (**Blackbird**) contrary to s. 426(1)(a) (the **Indictment**).

[3] On September 18, 2024, the Honourable Justice Eleanor J. Funk of the Court of King's Bench of Alberta (**Funk J**) found Ber guilty on all counts and issued reasons for her findings (the **Conviction Decision**, cited as *R. v. Ber*, 2024 ABKB 551).

[4] On January 23, 2025, Funk J sentenced Ber to seven years in jail, and imposed a 10-year order under s. 380.2 of the CCC requiring him to disclose his convictions before accepting any employment or volunteer position that involves having authority over the money, personal property, or valuable security of another person (the **Sentencing Decision**, cited as *R. v. Ber*, 2025 ABKB 37).

[5] On May 30, 2025, Ber was served with the Notice, the affidavit of a Staff investigator sworn in support of Staff's application, and Staff's written submissions. The Notice advised Ber to contact the ASC Registrar if he wanted an opportunity to be heard on the application. On June 3, 2025, his legal counsel wrote to request an oral hearing and leave to provide written submissions and affidavit evidence.

[6] At a hearing management session on June 25, 2025, we confirmed the parties' agreement that the hearing would proceed in writing, and set deadlines for Ber's written submissions and any Staff reply submissions. Ber's counsel advised that Ber no longer wished to provide an affidavit.

[7] We find that Ber's criminal offences arose from a transaction, business, or course of conduct related to securities. We find that it is in the public interest to make orders of the type sought by Staff, but with limited duration and scope.

II. BACKGROUND

A. Conviction Decision

[8] The facts that led to Ber's convictions were set out in detail in the Conviction Decision.

[9] In March of 2017, while Ber was employed as a registered investment advisor with TD Waterhouse Canada Inc. (**TD Wealth**), he allocated approximately $6 million worth of Blackbird shares for his clients' investment accounts. TD Wealth paid him a commission of approximately $68,000. At the time, Blackbird was a relatively small, publicly-traded energy company based in Calgary, and was conducting a prospectus offering for proceeds of up to $80 million (the

Blackbird Offering). Ber became aware of Blackbird several years earlier through his friendship with its Vice-President, Business Development, and had assisted the company with marketing presentations to other brokers.

[10] Ber sold clients' existing investments in order for them to participate in the Blackbird Offering. Ber testified that he fully discussed the transactions with those clients and received their authorizations to do so, but the Crown prosecutor alleged that he did not.

[11] Funk J made the following findings, in part based on the evidence of 10 of Ber's clients who testified at his trial:

- Ber did not disclose his pre-existing relationship with Blackbird to his clients, or that he would receive a commission if they purchased Blackbird shares;

- investment in Blackbird shares was considered high-risk, thus putting many of the clients' accounts offside their designated risk tolerances;

- although Ber contended that the accounts had been opened with incorrect risk tolerances, the client witnesses all confirmed that their account opening documents correctly recorded their risk tolerance comprising 20% low-risk investments, 60% medium-risk, and 20% high-risk;

- Ber testified that because he believed in Blackbird's growth potential, he recommended that his clients take an "overweight" position in its shares that would double their stated tolerances for high-risk investments to 40%; however, seven of the 10 client witnesses acquired Blackbird shares in their accounts well over that percentage;

- half of the clients who testified were retired senior citizens ranging from 72 to 94 years old at the time of trial; two others were retired and in their late 50s and 60s; and

- in some instances, Ber created or was involved in creating falsified Know-Your-Client (**KYC**) forms for clients that altered their risk tolerances without their knowledge or permission.

[12] Many of the client witnesses at trial recalled discussing Blackbird with Ber, but their recollections of what was discussed and what they authorized differed from Ber's. In each instance, Funk J accepted the clients' evidence over his. She concluded that while Ber spoke with at least some of the client witnesses about the Blackbird Offering, she was not satisfied that he spoke to all of them. Further, she concluded that even where Ber had some clients' authority to sell other holdings and purchase Blackbird shares, "he exceeded their authority in the quantities of sales and purchases he conducted" (Conviction Decision at para. 320). In some cases, she found, he acted without any authority at all.

[13] Funk J found that as a licensed investment advisor, Ber was bound by the rules and regulations of the Investment Industry Regulatory Organization of Canada (**IIROC**, succeeded by the Canadian Investment Regulatory Organization, or CIRO). He did not comply with provisions that prohibited discretionary trading and required a suitability assessment when making investment recommendations. She explained (Conviction Decision at paras. 330-331):

> Mr. Ber admitted in cross examination that he did not have a checklist of these factors [the client's financial situation, investment knowledge, investment objectives, time horizon, risk tolerance, current portfolio, and current risk level] when he recommended Blackbird to his clients. He specifically stated that he did not consider his clients' risk profiles – preferring instead to use their risk profiles as more of a "guideline" than a strict rule.
>
> Mr. Ber placed Blackbird shares in the accounts of his investor clients in quantities that exceeded their risk profiles – sometimes wildly so. Some of these clients were seniors, with modest or fixed incomes, for whom a downturn in Blackbird's share price would have devastating consequences. Several of these clients had marginal investment knowledge and blindly followed Mr. Ber's advice.

[14] Funk J noted that as a condition of his employment with TD Wealth, Ber was required to comply with TD Wealth's Code of Conduct. That code prohibited forgery, the falsification of client records, and the creation of inaccurate records. Funk J found that Ber breached the code when he created or participated in the creation of falsified KYC documents for five of the investors who testified at trial.

[15] Applying the test for fraud set out by the Supreme Court of Canada in *R. v. Théroux*, [1993] 2 S.C.R. 5 (as discussed in *R. v. Breitkreutz*, 2022 ABQB 449 (aff'd. 2025 ABCA 165) at paras. 16-24), Funk J concluded that the Crown had proved the *actus reus* and the *mens rea* of the offence alleged in the first count in the Indictment. Ber deliberately engaged in "dishonest and unscrupulous" conduct with his clients as previously described (Conviction Decision at para. 346), put their financial interests at risk, and knew he was doing so. Therefore, she found him guilty of committing fraud against TD Wealth's clients contrary to s. 380 of the CCC.

[16] Funk J then considered the second count in the Indictment, which alleged that Ber committed fraud against TD Wealth. She concluded that he did so by misrepresenting his clients' interest and suitability to participate in the Blackbird Offering, failing to disclose his relationship with Blackbird to TD Wealth, and creating and uploading falsified KYC documents that purported to increase his clients' risk tolerances. She further found that Ber knew that he was engaging in dishonest conduct in respect of TD Wealth, putting its economic interests at risk in several ways. She found that the Crown had proved the *actus reus* and the *mens rea* of the offence, and found Ber guilty of committing fraud against TD Wealth contrary to s. 380 of the CCC.

[17] As to the third count in the Indictment, Funk J found that within two weeks of making the Blackbird share purchases in his clients' accounts, Ber received a cheque from Blackbird for $104,568.75. The Crown argued that this was a secret commission payment to Ber for making the Blackbird share purchases, but Ber testified that it was payment for the consulting work he had done for Blackbird several years earlier and was unrelated to the Blackbird Offering. He also testified that he did not know Blackbird was going to pay him anything until after the offering.

[18] Funk J rejected Ber's evidence in this regard for several reasons. She cited the contrary evidence given by the Blackbird executives and employees who testified at trial, including Blackbird's Chief Financial Officer. Given this evidence, Ber's aggressive placement of so many Blackbird shares in his clients' accounts, and his spending before receiving the payment (described further in the next section of these reasons), Funk J was satisfied that the Crown had proved that Ber knowingly accepted the $104,568.75 payment as compensation for his assistance with the Blackbird Offering. She therefore found him guilty of accepting a secret commission contrary to s. 426(1)(a) of the CCC.

[19] After the Blackbird shares were placed in the client accounts, TD Wealth's internal compliance was alerted to the fact that many of Ber's clients' accounts were offside their stated risk tolerances. This caused an internal investigation, after which TD Wealth suspended Ber, reversed all of the Blackbird transactions, and reimbursed the clients in full so that there were no investor losses.

[20] In late April 2017, Ber resigned from his employment with TD Wealth and has not been registered in any capacity since April 28, 2017.

[21] In his written submissions, Ber advised that he is appealing his conviction to the Alberta Court of Appeal, and that the appeal is scheduled to be heard on February 12, 2026. In the meantime, with the Crown prosecutor's consent, he is on bail pending appeal.

B. Sentencing Decision

[22] Arguments on sentencing were heard on December 18, 2024, and Funk J issued her Sentencing Decision on January 23, 2025.

[23] Funk J found that the following aggravating factors from s. 380.1(1) of the CCC were applicable in Ber's case:

- the significant magnitude, complexity, duration, and degree of planning involved;
- the large number of victims;
- the significant impact of Ber's conduct on the victims given their personal circumstances, including their ages, health, and financial situations (in this regard, Funk J observed that a number of Ber's victims were elderly, living on fixed incomes or pensions, and others were unsophisticated investors who trusted Ber); and
- Ber's failure to comply with the professional standards applicable to his conduct (i.e., IIROC's rules and TD Wealth's Code of Conduct).

[24] Funk J mentioned additional facts that she also considered aggravating:

- Ber failed to disclose his relationship with Blackbird to TD Wealth;

- Ber made lavish personal expenditures on his credit card just prior to receiving the $104,568.75 payment from Blackbird, and after he received the payment, he used most of it to pay the credit card debt; Funk J found this indicative of the degree of planning involved in Ber's conduct;

- Ber falsified some of his clients' KYC documentation to change their risk profiles to conform to their risk exposure once the Blackbird shares were in their accounts;

- Ber abused a position of trust, which is aggravating under s. 718.2(iii) of the CCC; and

- Ber committed the offences out of greed and a desire for personal gain.

[25] In terms of mitigating factors, Funk J observed that Ber had no criminal record, complied with his bail conditions since being charged in June 2021, had a history of community service and charitable works, and had good standing in the community. She also observed that Ber had made no efforts toward restitution, did not accept responsibility, and did not express any remorse. She did not consider the latter facts aggravating, but found that they represented an absence of additional mitigating factors.

[26] At the sentencing hearing, Ber's defence counsel argued that Ber's failure to comply with IIROC rules should not be considered aggravating because he was already disciplined by IIROC for accepting an "off-book" payment (see the next section of these reasons). Funk J rejected that argument, explaining that she had found that Ber breached IIROC rules by engaging in discretionary trading and failing to conduct the required suitability due diligence, which she considered "completely different" from the breach for which IIROC sanctioned him (Sentencing Decision at para. 28). While the latter was analogous to the third count of the Indictment (accepting a secret commission), the violations she found were related to the counts of fraud.

[27] Defence counsel argued that Ber's IIROC sanction and the negative impacts on his ability to earn a living should also be taken into account as collateral consequences. Funk J reviewed the law concerning collateral consequences and concluded (Sentencing Decision at paras. 38-39):

> Offenders convicted of fraud may suffer loss of reputation, loss of employment, shame, financial ruin, and other negative repercussions. These are ordinary consequences of a fraud conviction and should not be considered exceptional for sentencing purposes [citations omitted].
>
> Mr. Ber's IIROC sanction and subsequent struggles to find employment are so directly linked to the nature of his offences as to be almost inevitable. Where his violation of IIROC rules and professional standards are aggravating for the purposes of sentencing, I am not persuaded the consequences of these actions can also be used to attenuate his moral blameworthiness or otherwise operate to mitigate the sentence imposed.

[28] Funk J reviewed the principles of sentencing, including the "fundamental principle" (Sentencing Decision at para. 43) of proportionality: the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender, and in line with sentences imposed in other cases for similar offences committed by similar offenders. The gravity or seriousness of the offence includes the degree of harm or likely harm to its victims, as well as the

degree of harm or likely harm to society and its values. The degree of responsibility of the offender requires consideration of the offence, its nature and quality, the method used to commit it, the degree of planning and deliberation involved, the degree of risk posed, and the offender's personal circumstances.

[29] Funk J identified the primary objectives of sentencing as denunciation and deterrence. Since investment advisors are in a unique position to take advantage of their clients, she determined that a strong message of denunciation and deterrence was required.

[30] Concerning the circumstances of the offender, Funk J noted that Ber was 42 years old at the time of sentencing. A number of letters of support and other documents had been filed, which generally spoke to Ber's activity and good reputation in the community and among his family and friends.

[31] With this background, Funk J began her sentencing analysis by considering whether the quantum of the fraud against TD Wealth or its clients could be calculated more precisely than the parties' agreement that each fraud exceeded $1 million. She concluded that the fraud against TD Wealth's clients was approximately $2.2 million, being the value of the Blackbird shares placed in the accounts of the 10 investor witnesses. However, because TD Wealth reversed the transactions and reimbursed all of the clients, she found that the investor witnesses suffered no actual financial loss.

[32] Funk J was unable to calculate TD Wealth's loss. Instead, she found that since it reversed the Blackbird transactions and reimbursed the clients, it had been exposed to a financial risk equal to the value of all of the shares Ber placed in 55 client accounts ($6.751 million). TD Wealth ultimately disposed of the Blackbird shares at a loss, but there were complexities and gaps in the evidence that made it impossible to quantify the exact amount of the loss.

[33] Funk J found that the gravity of Ber's offences was high, as he recklessly put his clients' and TD Wealth's economic interests at risk, and exposed TD Wealth to the additional risks of civil liability and regulatory sanction. The impact on Ber's victims and on others who rely on professionals and institutions to safeguard their financial interests was significant, and he abused a position of trust. His conduct was planned, deliberate, executed over several weeks, deceitful, and motivated by personal gain. Therefore, Funk J also found his moral blameworthiness high.

[34] Based on the foregoing facts and findings, and after considering the sentences imposed in a number of past secret commission and fraud cases (the latter involving legitimate investments and companies, not sham investments and Ponzi schemes that attract longer sentences), Funk J concluded that the appropriate sentencing range was between four and 10 years' incarceration for the two fraud convictions. After weighing the aggravating and mitigating circumstances discussed, she imposed a sentence of six years' incarceration for defrauding TD Wealth, five years concurrent for defrauding TD Wealth's clients, and one year for the offence of accepting a secret commission, for a total of seven years' incarceration.

[35] Although the Crown sought restitution in favour of TD Wealth, Funk J declined to make that order because of the difficulty quantifying its exact loss. However, she noted that because she was satisfied that TD Wealth suffered some loss, she imposed a longer period of incarceration.

[36] Concerning the Crown's request for an order that would prohibit Ber from accepting any paid or volunteer position in which he would have authority over money, real property, or valuable security of any person without first disclosing his convictions, Funk J emphasized the need for public protection and determined that such an order was appropriate. However, she also took into account the fact that Ber was a first-time offender and that he must be able to pursue a livelihood and rehabilitate himself after his release from custody. Accordingly, she granted the order but limited it to 10 years' duration.

C. The IIROC Settlement

[37] On March 30, 2022, an IIROC hearing panel accepted a settlement agreement between IIROC staff and Ber (the **IIROC Settlement**) concerning Ber's admitted contravention of IIROC rules:

> In March 2017, [Ber] received an off-book payment from an issuer without the approval of his Dealer Member, contrary to Consolidated Rule 1400.

[38] The IIROC Settlement required Ber to pay a $70,000 fine and $5,000 in costs, and ordered a three-year suspension from registration with IIROC in any capacity.

[39] The IIROC panel issued written reasons for its decision to accept the settlement (the **IIROC Reasons**, cited as 2022 IIROC 08). It reviewed the agreed facts, which included some of the facts reviewed in the Conviction Decision. In 2014, Ber assisted a junior issuer listed on the TSX Venture Exchange (i.e., Blackbird) with marketing and presentation materials. Ber's employer (i.e., TD Wealth) was one of the underwriters of an equity offering by Blackbird that closed in March 2017, and Ber purchased over 12 million Blackbird shares worth $6,751,250 in 55 client accounts.

[40] Later that month, Ber deposited a cheque for $104,568.75 from Blackbird, but did not seek approval or disclose it to his employer. During TD Wealth's internal investigation in April 2017, Ber stated, and Blackbird publicly reported, that the payment was for the consulting work Ber had performed earlier.

[41] The panel noted that Ber had no prior disciplinary history with IIROC and had provided IIROC staff with evidence of his inability to pay, which resulted in a lower fine than staff would otherwise have sought.

[42] The panel reviewed the law applicable to joint submissions on sanction and noted that there is a high threshold for an adjudicator to reject such submissions. It also noted that under IIROC rules, panels can only accept or reject a settlement agreement, and have no power to modify them.

[43] The panel then reviewed several past IIROC decisions and its Sanction Guidelines. The latter indicated that the purpose of regulatory sanctions is to protect the public interest by imposing measures that will deter the respondent and others from repeating the misconduct at issue in the

future (i.e., specific and general deterrence). IIROC's Sanction Guidelines also set out a number of factors for panels to consider when assessing sanction, and the panel noted that counsel had emphasized the following (IIROC Reasons at para. 18):

> - the single contravention was serious, intentional, and the Respondent [i.e., Ber] obtained a financial benefit;
> - the Respondent has no disciplinary history, has admitted the contravention, and is here today;
> - the Respondent has been unemployed since 2017 and provided [s]taff with evidence of his inability to pay, which is why the proposed fine is less than the amount of the financial benefit received.

[44] The panel further observed that the core of the contravention was deceit, which is why "undisclosed off-book activities are considered a threat to market integrity or the reputation of the marketplace" (*ibid.* at para. 19). It agreed with counsel's submission that the contravention was especially serious in Ber's case because his firm was participating in the Blackbird Offering.

[45] The panel therefore agreed that the proposed sanctions were "fair, reasonable, and sufficient to provide both specific and general deterrence" (*ibid.* at para. 20).

III. POSITIONS OF THE PARTIES

A. Staff

[46] Staff seek orders under ss. 198(b.1) and (d) of the Act that would suspend or terminate Ber's registration, and that would require Ber to resign from all positions he holds as a director or officer of certain types of entities. Staff also seek orders under ss. 198(b), (c), (c.1), (e), (e.1), (e.2), and (e.3) that would permanently prohibit Ber from:

- trading in or purchasing any securities or derivatives;
- relying on any exemptions in Alberta securities laws;
- engaging in any investor relations activities;
- becoming or acting as a director or officer of certain types of entities;
- advising in securities or derivatives;
- becoming or acting as a registrant, investment fund manager, or promoter; and
- acting in a management or consultative capacity in connection with activities in the securities market.

[47] In Staff's submission, these orders are in the public interest, as a reasonable and proportionate response to the ongoing threat that Ber poses to Alberta investors and the Alberta capital market.

B. Respondent

[48] Ber conceded that Funk J's findings support orders under ss. 198 and 198.1 of the Act, and that such orders are in the public interest. However, he argued that the scope of the orders Staff seek is overbroad and punitive in view of his criminal sentence and the absence of past or subsequent misconduct. Instead of being a proportionate and reasonable response, they would be crushing and unfit in the circumstances (citing *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (leave to appeal denied [2014] S.C.C.A. No. 476) at paras. 154, 156).

[49] Accordingly, he argued that any orders against him should be limited to 10 years' duration, and that he should be granted certain exceptions or "carve-outs" from any order banning him from trading or purchasing securities. He also argued that either he should not be banned from acting as a director or officer, or that he should be granted a carve-out that would allow him to act in those capacities for certain family-owned companies.

IV. ANALYSIS

[50] Section 198.1(2)(a)(i) of the Act authorizes orders under ss. 198(1)(a) to (h) against any person convicted of an offence "arising from a transaction, business or course of conduct related to securities or derivatives". Section 198(1) orders may be issued if a panel finds that "it is in the public interest to do so".

[51] We agree with the panel in *Re O'Connor*, 2005 ABASC 987, which observed that while our authority under s. 198.1 should be exercised when appropriate, it should be "used judiciously" (at para. 23). The panel continued (at paras. 25-26):

> It follows, in our view, that not every decision arising from a securities matter will warrant the application of subsection 198(1.1) [now s. 198.1]. Each case will have to be determined on its facts. We agree with Staff that it is not necessary to demonstrate a nexus, in the sense of evidence of actual conduct or actual harm in Alberta, as a prerequisite to the application of subsection 198(1.1). We do, however, believe that there must be a compelling reason to invoke this provision.
>
> While we recognize that subsection 198(1.1) does not use the words, we believe that it is appropriate to rely on the provision only when doing so would provide protection to Alberta investors and the Alberta capital market.

[52] If an order is not necessary to provide that protection, it follows that the order is not in the public interest.

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

[53] The parties agreed that Ber was convicted in Alberta of criminal offences arising from transactions, business, or a course of conduct related to securities.

[54] The convictions arose from Ber's position as an investment advisor, purchasing Blackbird shares on behalf of his clients and receiving undisclosed compensation for those sales. A share is a "security", as defined at s. 1(ggg)(v) of the Act.

[55] We are satisfied that this condition has been established.

B. Public Interest

[56] The parties also agreed that based on Funk J's findings, orders banning Ber from accessing the Alberta capital market in certain capacities would be in the public interest. As mentioned, they differed on the scope and duration of the appropriate orders.

[57] In deciding whether orders pursuant to s. 198.1 are in the public interest, ASC hearing panels have adopted the sanctioning principles applied in enforcement cases.

1. Sanction – General Principles

[58] ASC sanction orders are prospective, directed at protecting investors and the capital market, and preventing capital-market misconduct in the future. The goal is to deter respondents from repeating their actions (specific deterrence) and to deter others from engaging in similar activities (general deterrence) (*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 para. 52).

[59] Orders under s. 198(1) of the Act must also be proportionate and reasonable in the circumstances of the case and the respondent (*Walton* at para. 154).

[60] In assessing whether orders are in the public interest, ASC hearing panels consider several factors intended to focus the analysis on the relevant circumstances. The decision in *Re Homerun International Inc.*, 2016 ABASC 95, articulated and explained the pertinent factors (at para. 20 *et seq.)*:

(i) the seriousness of the misconduct;

(ii) the respondent's characteristics and history;

(iii) the benefit sought or obtained by the respondent as a result of the misconduct; and

(iv) any additional mitigating or aggravating considerations.

[61] We also refer to past decisions involving similar circumstances to assist us in determining whether the orders under consideration are proportionate (*ibid.*).

[62] As pointed out by Staff, this approach is similar to that taken by Funk J in the Sentencing Decision. She weighed similar factors for sentencing.

2. Seriousness of the Misconduct

[63] In *Homerun* (at para. 22), the panel found that the seriousness of securities-related misconduct should be assessed by considering: (i) its nature; (ii) whether it was deliberate, reckless, or inadvertent; and (iii) the harm it caused to its victims and the integrity and reputation of the Alberta capital market.

[64] In their submissions, Staff argued that the ASC has consistently recognized that securities fraud is serious misconduct that harms both the affected investors and public confidence in our

capital market. Therefore, orders reciprocating criminal convictions for securities-related fraud are generally found to be in the public interest. The panel in *Re Carruthers*, 2020 ABASC 177, for example, stated that where there has been a criminal conviction for securities-related fraud, "it is difficult to conceive of a circumstance when orders under section 198(1) would not be considered to be in the public interest" (at para. 32). The panel in *Re Reeves*, 2011 ABASC 107, held that, "findings of fraud will attract the most severe sanctions" (at para. 20).

[65] In his submissions, Ber acknowledged that Funk J found that he was guilty of serious misconduct.

[66] While this case does not involve a scam such as a Ponzi scheme, there is an element that adds to its seriousness: the fact that Ber was a registrant when the events at issue occurred. *Re Rustulka*, 2021 ABASC 15, similarly involved registrant misconduct – specifically, a registrant's failure to comply with his obligation to ensure that his recommendations to his clients were suitable for their personal and financial circumstances and their risk tolerances. The panel in *Rustulka* (at para. 59) cited Canadian Securities Administrators Staff Notice 31-336 *Guidance for Portfolio Managers, Exempt Market Dealers and Other Registrants on the Know-Your-Client, Know-Your-Product and Suitability Obligations* dated January 9, 2014 for the principle that a registrant's KYC and suitability obligations "are among the most fundamental obligations owed by registrants to their clients and are cornerstones of our investor protection regime" (at p. 1). Notice 31-336 concludes that a registrant's failure to comply with those obligations "is an extremely serious matter" (at p. 2).

[67] We agree with Staff's submission – and Ber's acknowledgement based on Funk J's findings – that Ber's misconduct was serious. He abused his position of trust by taking advantage of his clients for his own personal gain, including clients who were elderly, on fixed incomes or pensions. As the panel stated in *Rustulka*, his clients' vulnerability "heightened his responsibility to ensure the investments were suitable" (at para. 64). Instead, he put them at financial risk and directly affected his employer's economic interests.

[68] Staff argued that it was not mitigating for Ber that TD Wealth returned his clients to the position they would have been in if he had not made the impugned transactions, citing the Ontario Securities Commission decision in *Re MFDA (Rojas Diaz)*, 2021 ONSEC 24. We agree that this does not diminish Ber's culpability, but we consider it pertinent to our assessment of the resulting harm. We also take into account that TD Wealth incurred an indeterminate loss.

[69] Securities-related fraud diminishes public confidence in our capital market, especially when the fraud is perpetrated by registrants. In an ASC sanction decision involving a registrant, *Re Lamoureux* (2002), ABSECCOM REA-901950.1, the hearing panel remarked that, "[i]nvestors must be able to rely on and have trust in the integrity and capability of registrants" (at para. 24). The proficiency requirements of registration are "intended to ensure that the investing public receives appropriate advice from competent and ethical people", and investors are entitled to expect full regulatory compliance from the registrants with whom they entrust their money (at para. 17).

[70] We find that Ber's misconduct was serious, deliberate, and resulted in harm. This suggests a need for specific and general deterrent measures that will offer protection and prevent future harm.

3. The Respondent's Characteristics and History

[71] *Homerun* articulates four aspects of a respondent's personal characteristics and history that may be pertinent when deciding appropriate sanction orders: the respondent's education, work history, capital-market experience, and disciplinary history (at para. 28).

[72] The evidence shows that Ber was a registrant employed by a number of dealer member firms almost continuously from July 2007 to late April 2017. He therefore had enough education and experience in the investment industry to understand his obligations to his clients and his firm, and to know that consequences would follow if he did not meet those obligations. That he acted as he did despite his knowledge and experience suggests a need for deterrent sanctions.

[73] We agree with Staff that Ber's position as a registrant is aggravating: clients trusted him with their capital and to act in their interests. As a British Columbia Securities Commission hearing panel observed in *Re Lim*, 2017 BCSECCOM 319, "[i]nstead of fulfilling his role as a gatekeeper, [the respondent] abused the privilege of his registration to assist in his misconduct" (at para. 20).

[74] Other than his criminal conviction and the IIROC Settlement – both of which dealt with the same events at issue here – there was no evidence that Ber had a disciplinary history. Funk J noted in the Sentencing Decision that he had no previous convictions, had complied with his bail conditions, had a history of community service and charitable works, and had good standing in his community. This moderates our view of the need for specific deterrence in this case.

4. Benefit Sought and Obtained by the Respondent

[75] In *Homerun*, the panel stated that the benefit from the misconduct sought and obtained by a respondent "can be a compelling indicator of risk" (at para. 35). The prospect of pecuniary gain may motivate the respondent to repeat or engage in other capital-market misconduct, and may inspire others to do so.

[76] Funk J found that Ber acted out of a desire for personal gain. That gain consisted of an approximate $68,000 commission from TD Wealth and the $104,568.75 secret commission from Blackbird.

[77] While these sums are much less than the benefits realized by some respondents who perpetrate fraud, they are enough to motivate future wrongdoing. Deterrent sanctions are necessary to prevent Ber and others from seeking to benefit from securities-related misconduct.

5. Additional Mitigating and Aggravating Circumstances

[78] According to *Homerun*, additional mitigating circumstances not addressed under the three factors already discussed may include "efforts by a respondent to undo the harm done to victims" (e.g., by paying financial restitution), "[p]ersuasive indications that a respondent appreciates the wrong done, and its seriousness", "acceptance of responsibility", and other expressions of remorse (at paras. 40-42).

[79] Additional aggravating circumstances may include "a respondent displaying a belligerent contempt for either the victims of the misconduct or the law" (*ibid.* at para. 46).

[80] As mentioned, Funk J found that Ber had made no efforts toward restitution, did not accept responsibility, and did not express any remorse. However, in *Walton*, the Alberta Court of Appeal cautioned that respondents have the right to defend themselves and deny responsibility (at para. 155). Therefore, a failure to accept responsibility or express remorse is not aggravating, it is neutral. Here, we have taken into account Ber's admissions for the purpose of the IIROC Settlement, and his cooperation and consent to the merits of Staff's application.

[81] In his written submissions, Ber urged us to take into account the deterrent effect of his criminal sentence and the IIROC sanctions, arguing that these measures protect investors and the capital market. Further, the ordeal and costs of all of the legal proceedings he has faced and continues to face have already had a significant deterrent effect on him and on others who might be inclined to engage in similar misconduct.

[82] We agree with Staff that the IIROC Settlement did not directly address Ber's fraud against TD Wealth and its clients, but we accept that the ordeal and the expense of the proceedings brought against Ber have had a deterrent effect (see *Re Ward*, 2023 ABASC 62 at para. 69). We also find that the consequences he has already incurred justify moderation of the sanctions we otherwise would have ordered.

6. Comparable Decisions

[83] Staff cited three recent ASC decisions in which permanent market-access bans were ordered against respondents who had been convicted of fraud (and sometimes additional offences): *Re Del Bianco*, 2024 ABASC 193; *Re McBean*, 2024 ABASC 158; and *Re DeBono*, 2025 ABASC 14. In Staff's submission, Ber's fraud was more egregious than the frauds in these cases because he was in a position of trust with his clients, and therefore the permanent bans they seek are appropriate.

[84] Ber distinguished these cases as involving persons with an enforcement history, non-viable companies or non-existent assets, and conduct that caused greater damage to the capital market. Given these significant distinctions, Ber argued that ordering permanent market-access bans would be unnecessary and disproportionate.

[85] We acknowledge that Ber abused a position of trust with his clients. However, in our view the cases Staff cited involved much worse misconduct. In each of *Del Bianco*, *McBean*, and *DeBono*, the respondents perpetrated sham investment schemes over extended periods of time, misappropriated investment funds, and caused significant investor losses. Del Bianco had an extensive securities disciplinary history of over a decade, McBean perpetrated two entirely different frauds, and DeBono's victims – over 500 – lost between $24 million and $42 million. In addition, DeBono impersonated another person to perpetrate his fraud, destroyed evidence, and fled the country to avoid prosecution.

[86] Ber cited two decisions to support his position that time-limited market-access bans are appropriate: *Re Nyadongo*, 2022 ABASC 19, and *Re Currey*, 2018 ABASC 34. Although neither case was based on a criminal conviction, both involved fraud, other misconduct, and misappropriation of funds. The respondents were not banned permanently, but were instead banned for the later of 20 years and the date their respective administrative penalties were paid. However, in each case, the respondents admitted their misconduct and agreed with Staff to make joint submissions on sanction, which also included significant monetary orders.

[87] In addition, Ber cited two cases in which carve-outs for personal trading and purchasing of securities were allowed, although in his submission, the scope of the misconduct – including fraud – was more significant and involved other aggravating facts: *Ward*, *supra*, and *Re Bradbury*, 2016 ABASC 272. Again, neither was based on a criminal conviction.

[88] In *Ward*, the respondent perpetrated a fraud and breached other sections of the Act over an extended period of time, causing his investors substantial financial and other harm. He ignored legal advice and misappropriated funds. Although he was made subject to permanent market-access bans (in addition to other sanctions), he was granted a carve-out for certain personal trading and purchasing.

[89] In *Bradbury*, the respondent was a former registrant with a disciplinary history. He admitted to fraud and other misconduct, misappropriated investment funds for his own use, and used other funds to pay returns to investors in the manner of a Ponzi scheme. He and Staff agreed to a joint submission on sanction that included permanent market-access bans (in addition to other sanctions), but allowed him a carve-out for certain personal trading and purchasing like that ordered in *Ward*.

[90] Though the cases cited by Ber are distinguishable in certain important respects – including that none were based on criminal fraud – we found these decisions helpful in concluding that time-limited orders are proportionate in appropriate circumstances, and still serve to protect the public interest.

7. Conclusion on Public Interest

[91] Based on the foregoing analysis, the findings in the Conviction Decision, and the findings in the Sentencing Decision, we are satisfied that the second statutory condition for orders under s. 198.1(2)(a)(i) of the Act has been established. It is in the public interest to order comprehensive market-access bans against Ber, as he conceded in his submissions.

V. ORDERS

A. Party Submissions

[92] Ber argued that any market-access orders we make against him should be limited to a period of 10 years. He noted that his misconduct occurred nearly eight years ago, and that he has not contravened the law before or since these events. Accordingly, this was an isolated incident and he does not present a "significant or continuing risk to the capital market".

[93] Since he was not acting as a director or officer in perpetrating this misconduct, Ber argued that we should not ban him from acting as a director or officer, or, in the alternative, we should

include a carve-out permitting him to act as a director or officer of a private company that does not issue securities to the public. Ber's written submissions stated that he is the sole shareholder, officer, and director of two small e-commerce businesses, neither of which issues securities or intends to issue securities in the future. He said he has managed both companies through the criminal proceedings and while on bail, without legal contraventions.

[94] Staff argued that Ber did not establish that any carve-outs are appropriate or necessary. Concerning Ber's request for a carve-out from any director and officer ban, Staff acknowledged that he was not acting in those capacities when he committed the offences. However, they maintained that the offences were such that he is not fit to participate in the capital market in any capacity. Staff further emphasized that Ber provided no evidence of the businesses of which he wishes to remain a director and officer, or the impact on the businesses if he were not permitted to retain those positions. Insofar as he is requesting carve-outs for opportunities that are only a future possibility, Staff submitted that they should be denied.

[95] In Staff's view, Ber's requested carve-out for director and officer roles is too broad, and would not protect the public interest adequately. However, if we were inclined to grant a carve-out, Staff argued that it should be limited to the two e-commerce businesses Ber referenced in his submissions. They pointed out that if Ber can provide more evidence or if his circumstances change in the future, he can apply to vary the orders under s. 214 of the Act.

[96] Ber's other request for a carve-out concerned the trading and purchasing bans Staff seek under s. 198(1)(b) of the Act. He argued that his offences did not involve his personal accounts or funds, and that he needs those accounts to provide for his and his family's future. Therefore, we should allow a carve-out permitting him to trade and purchase securities and derivatives in his personal accounts, and if deemed necessary for public protection, we could stipulate that he only do so through a registrant who has been given a copy of this decision.

[97] Staff submitted that they would be open to reasonable carve-outs for Ber's personal trading, but argued that he did not provide sufficient evidence to support the request. They cited *Re Lavallee*, 2023 ABASC 41, for the proposition that where there is no evidence of a respondent's trading accounts and personal circumstances, carve-outs will not be considered. If we were inclined to grant a carve-out, Staff suggested that in order to protect the capital market and the public interest, it should limit Ber to trading in certain types of accounts, through a registrant, solely for his benefit or the benefit of his immediate family.

B. Conclusion on Orders

[98] Contrary to his obligations as a registrant, Ber engaged in deliberate acts of deceit that perpetrated a fraud against TD Wealth and its clients, placed their financial interests at risk, caused his employer pecuniary loss, and undermined the integrity of the Alberta capital market. He acted out of self-interest and took advantage of his clients' trust. In addition, he engaged in further deliberate acts of deceit by not disclosing his relationship with Blackbird and the $104,568.75 secret commission.

[99] This was serious misconduct warranting deterrent sanctions. It is often observed in ASC decisions that participation in the capital market is a privilege and not a right, and where that

privilege is abused, it may be lost (see, e.g., *Re Planned Legacies Inc.*, 2011 ABASC 278 at para. 42).

[100] That said, there are other unique facts in this matter that call for moderation of the market-access bans that might otherwise be appropriate in cases of criminal fraud.

[101] Blackbird was a reporting issuer undertaking a legitimate prospectus offering. While that does not excuse Ber's misconduct, it was less serious than the sham-based frauds and Ponzi schemes in *Del Bianco*, *McBean*, and *DeBono* that resulted in extensive, permanent market-access bans.

[102] Likewise, the resulting monetary harm was significantly less than many other frauds, including those perpetrated by McBean and De Bono. Ber's clients were made whole and the harm they could have suffered was avoided, even if it was not attributable to any effort on Ber's part. The amount of TD Wealth's loss was unclear, but the evidence suggested that it was less than $700,000.

[103] Ber was a registrant for approximately 10 years, and there was no evidence of any other misconduct during that time. He is apparently well-regarded in his community. He partially admitted his misconduct as part of the IIROC Settlement, and conceded the merits of the present application.

[104] We are mindful that Ber has already incurred severe penalties for his misconduct, which militates in favour of moderation. Seven years' incarceration is more than the sentence given to Del Bianco, a recidivist, and is the same as for McBean and DeBono, each of whom ran multi-million-dollar Ponzi schemes. This sentence undoubtedly has had and will have a significant deterrent effect on Ber and others.

[105] Even though the ambit of the IIROC Settlement was limited, we take into account that a securities regulator has addressed at least a portion of Ber's misconduct. The sanctions he accepted from IIROC were significant: a large fine and a three-year suspension from registration. These sanctions have also had a deterrent effect.

[106] We find that it is in the public interest for us to order the broad range of market-access bans proposed by Staff, which address the capacities in which Ber acted in perpetrating his misconduct, and "the other ways in which we perceive the investing public could be at risk if his participation in the capital market were not curtailed" (*Rustulka* at para. 99). This includes acting as a director or officer for any entities that are not wholly family-owned.

[107] We have also determined that it is appropriate to limit the duration of the orders to 10 years, and to grant the limited carve-outs Ber requested. We are satisfied that these carve-outs are restrictive enough not to undermine the protective and preventative purpose of the bans, since they confine Ber to personal trading and business, and in the case of trading or purchasing securities or derivatives, require the involvement of a registrant who is given a copy of this decision.

[108] Thus, our orders are as follows:

- under s. 198(1)(d) of the Act, with the exception of his positions with Stride Charge Inc. and 2365390 Alberta Ltd., Ber must immediately resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization, designated information processor, recognized quotation and trade reporting system, or designated benchmark administrator;

- for a period of 10 years from the date of this decision:

    - under s. 198(1)(b), Ber must cease trading in or purchasing any securities or derivatives, except that this order does not preclude him from trading in or purchasing securities or derivatives through a registrant (who has first been given a copy of this decision) in registered retirement savings plans, registered retirement income funds, registered education savings plans, and tax-free savings accounts (each as defined in the *Income Tax Act* (Canada)) and locked-in retirement accounts maintained with that registrant for the benefit of one or more of Ber, his spouse, and his dependent children;

    - under s. 198(1)(b.1), Ber is prohibited from registration in any capacity under Alberta securities laws;

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

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

    - under s. 198(1)(e), Ber 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, except that this order does not preclude Ber from becoming or acting as a director or officer (or both) of an issuer that is wholly owned by himself, his spouse, his parents, his siblings, or his children, and which does not issue or propose to issue securities to the public; and

    - under ss. 198(1)(e.1), (e.2) and (e.3), Ber is prohibited from:

        - advising in securities or derivatives;
        - becoming or acting as a registrant, investment fund manager, or promoter; and

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

[109] This proceeding is now concluded.

December 17, 2025

For the Commission:

"original signed by"
Tom Cotter

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