ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Bradbury, 2016 ABASC 272 **Date: 20161108**

Nelson Peter Bradbury

Panel:	Stephen Murison Ian Beddis Webster Macdonald, QC
Representation:	Garner Groome for Commission Staff Michael Loberg for the Respondent
Hearing:	20 October 2016
Decision:	8 November 2016

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I. INTRODUCTION

[1] Alberta Securities Commission (**ASC**) staff (**Staff**) alleged that Nelson Peter Bradbury (**Bradbury**) contravened the *Securities Act* (Alberta) (the **Act**) and acted contrary to the public interest in connection with investment agreements that he sold from approximately 29 January 2010 to 21 March 2013 (the **Relevant Period**).

[2] Bradbury and Staff entered into a Statement of Admissions and Joint Submission on Sanction dated 8 September 2016 (the **Statement**). The Statement set out admissions by Bradbury, including multiple contraventions of the Act (most of those alleged by Staff) and associated conduct contrary to the public interest. In consequence of this misconduct and certain "additional circumstances relevant to sanction" also set out in the Statement, Bradbury and Staff jointly proposed that we make a series of orders described in the Statement.

[3] In the hearing on 20 October 2016 the Statement was entered into evidence and we heard from the parties through their respective counsel, who made submissions and responded to panel questions. The parties agreed that we would proceed to consider and decide on both the merits of the allegations and their submissions on appropriate orders.

[4] Our decision and reasons follow. Stated briefly, we find that Bradbury contravened the Act and acted contrary to the public interest, as he admitted in the Statement. In the public interest we therefore order sanctions against Bradbury corresponding to those jointly proposed in the Statement: an array of permanent market-access bans, an administrative penalty of $150,000 and a $370,000 disgorgement order. We also make a $13,000 cost-recovery order, as jointly proposed.

II. FACTUAL BACKGROUND

[5] Pertinent background facts were set out in the Statement. We accept them as accurate and summarize them here.

[6] Bradbury, a Calgary resident at all material times, was not registered with the ASC in any capacity in the Relevant Period.

[7] He had been "a registered investment broker from 1998 to 2000". In 2001 he admitted to having illegally raised money from investors. For that misconduct he (in effect) agreed to temporary market-access bans and paid an amount toward ASC investigation costs.

[8] In the Relevant Period, Bradbury raised over $1.5 million under investment agreements "with at least 16 investors". There was no prospectus or offering memorandum. Bradbury made no effort to comply with pertinent Alberta securities laws governing exemptions from the registration and prospectus requirements under the Act. The Statement indicated that, with only a few exceptions, such exemptions were unavailable for these transactions.

[9] Investors provided their money to Bradbury "in trust . . . for the purpose of investing in units" of various supposed "investment funds", ten of which were named in the Statement. Some of the investment agreements called for profits to be shared in specified proportions between Bradbury and the relevant investor; others promised the investors returns of between 19% and 21%.

[10] To "induce investment Bradbury made statements to the investors" (the **Inducements**) to the effect (among other things) that the "invested money would be used solely for investing in funds that traded in securities based on his investment model", that this "investment model . . . was generating profits", that Bradbury's "fees and expenses would be paid from his share of the profits or interest earned", and (in some instances) that "investor money would be used to beneficially acquire pre-IPO shares in Facebook, Inc."

[11] The supposed "investment funds" in reality "were nothing more than bookkeeping or tracking mechanisms for Bradbury, and promotional measures utilized by Bradbury to offer a semblance of legitimacy to the investors". There was no "pre-IPO" investment or interest in Facebook, Inc. Although Bradbury used "approximately half" of his investors' money "to trade in his brokerage accounts", this generated "massive actual losses"; his "purported investment model did not make any profit overall". That dismal performance was not reflected in periodic updates given to some investors, which instead presented "monthly performance figures" that "were fictitious".

[12] Bradbury diverted "at least $370,000" of his investors' money for personal use, including "[h]ousehold, grocery, clothing, restaurant, entertainment, vacation, and recreational expenses" and "mortgage, tax, and utility payments". Approximately the same amount was used for "payments made to the investors under the guise of returns", a practice that we observe to be indicative of a Ponzi scheme.

[13] Bradbury's investors included his spouse and his parents. They were paid (or repaid) most of what they had invested. Other investors did not fare as well, being informed indirectly by Bradbury in or about April 2013 "that all their money was lost", supposedly due to "market turmoil".

III. ALLEGATIONS AND ANALYSIS

[14] Staff alleged in the notice of hearing that in acting as described above, Bradbury contravened the Act by illegally dealing in and distributing securities (contrary to sections 75(1) and 110(1) of the Act), making the equivalent of misrepresentations to investors and to Staff (contrary to sections 92(4.1) and 221.1(2)) and perpetrating a fraud (contrary to section 93(b)), and that, in each respect, he also acted contrary to the public interest. We analyze these allegations in turn.

A. Illegal Dealing

[15] Section 75(1) of the Act prohibits dealing in securities without registration.

[16] The Act (at section 1(ggg)) defines a "security" to include a "profit-sharing agreement" and an "investment contract", the latter term understood to mean "an investment of money in a common enterprise with expected profits derived significantly from the efforts of others" (*Re Mandyland*, 2012 ABASC 436, at para. 167, citing *Pacific Coast Coin Exchange of Canada Limited v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112, affirming (1975), 8 O.R. (2d) 257 (C.A.), affirming (1975), 7 O.R. (2d) 395 (Div. Ct.)).

[17] Bradbury's investment agreements clearly were either (or both) profit-sharing agreements or investment contracts. It follows that they were securities, as Bradbury admitted in the Statement.

[18] Dealing involves "engaging in or holding [one]self out as engaging in the business of . . . trading in securities" (section 1(m) of the Act). Trading includes the sale of a security for valuable consideration, and any act in furtherance of such a sale (section 1(jjj)).

[19] Bradbury was clearly both trading (as he admitted) and dealing in the Relevant Period. As noted, he was not registered, and in most cases no registration exemption was available for his activity.

[20] It follows (as he admitted in the Statement) that Bradbury contravened section 75(1) of the Act; we so find.

[21] The registration requirement is a fundamental element of our regime of securities regulation. It is designed to protect an investor through the involvement of an intermediary knowledgeable about securities and the capital market, the particular investment offered, and the circumstances, investment objectives and risk tolerances of the investor. A breach of the registration requirement obviously exposes investors to unanticipated risks and potential financial harm, in turn undermining the fairness and efficiency of the capital market and jeopardizing confidence in that market.

[22] Bradbury admitted that "his conduct that breached the registration requirement was also contrary to the public interest". In light of what we have just stated, we agree, and we so find.

B. Illegal Distribution

[23] Section 110(1) of the Act prohibits the distribution of securities without a prospectus.

[24] The term "distribution" is defined (at section 1(p) of the Act) to include a trade in securities not previously issued. This described Bradbury's investment agreements in the Relevant Period. Accordingly, he was distributing securities. As noted, he did so without a prospectus, and in "some or all" cases without an available prospectus exemption.

[25] It follows (as he admitted in the Statement) that Bradbury contravened section 110(1) of the Act; we so find.

[26] The prospectus requirement is another fundamental element of our securities regulatory regime. It is meant to protect investors by assisting them in making informed investment decisions based on reliable disclosure about an offered investment, the issuer and its promoters, and associated risks. A breach of the prospectus requirement deprives investors of this fundamental protection, exposing them to the risks of ill-informed investment decisions, again undermining the fairness and efficiency of the capital market and jeopardizing confidence in that market.

[27] Bradbury admitted that his conduct that breached the prospectus requirement was also contrary to the public interest. Given what we have just said on the topic, we agree, and we so find.

C. Misrepresentations to Investors

[28] Section 92(4.1) of the Act prohibits the equivalent of misrepresentation (as that term is defined in section 1(ii) of the Act). Specifically:

> No person or company shall make a statement that the person or company knows or reasonably ought to know
>
> (a) in any material respect and at the time and in the light of the circumstances in which it is made,
>
> (i) is misleading or untrue, or
>
> (ii) does not state a fact that is required to be stated or that is necessary to make the statement not misleading,
>
> and
>
> (b) would reasonably be expected to have a significant effect on the market price or value of a security, a derivative or an underlying interest of a derivative.

[29] Staff alleged in the notice of hearing that Bradbury made several statements that breached section 92(4.1), notably the mentioned Inducements. Bradbury admitted having made the Inducements "when he knew, or ought reasonably to have known, that they were misleading or untrue".

[30] However, the Statement included no explicit admission that section 92(4.1) was contravened. Rather, it stated that Staff would withdraw this allegation, conditional on our finding the other contraventions of the Act as admitted in the Statement. Counsel for both parties suggested in their submissions that they considered this misrepresentation allegation essentially to have been addressed, or subsumed, in the allegation of fraud (to which we will shortly turn). We therefore deferred further analysis of this allegation until reaching conclusions on all other alleged contraventions, particularly the fraud allegation.

D. Misrepresentations to Staff

[31] Section 221.1(2) of the Act can be understood as prohibiting misrepresentations to Staff:

> No person or company shall make a statement, whether oral or written, in any document, material, information or evidence provided to the Commission, that, in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

[32] For this purpose, section 221.1(1) of the Act explains that "the Commission" includes any employee or agent of the ASC.

[33] Staff alleged that Bradbury contravened this prohibition and acted contrary to the public interest when, in September 2011, he responded to an inquiry letter from Staff. Bradbury admitted in the Statement that he told Staff he was not soliciting investors, and that (among other things) he "provided unsolicited investment guidance" only to certain relatives and "close family friends" but "invariably" referred anyone else "to licen[s]ed financial advisors". By that time (this was within the Relevant Period) he had already "solicited at least four investors . . . none of

whom were family or close friends of Bradbury's". Bradbury also assured Staff that he "would in all things conduct himself in accordance with Alberta securities laws".

[34] Bradbury acknowledged in the Statement that he "made these untrue and misleading statements to Staff with a view to concealing the true nature of his illegal activities", and that he was "[f]or a time . . . successful in this regard".

[35] We are satisfied that Bradbury's September 2011 responses to Staff were misleading and untrue at the time, and materially so. It follows (as he admitted) that Bradbury thereby contravened section 221.1(2) of the Act; we so find.

[36] Staff cautioned this panel "to avoid" the "cynical approach to regulatory investigations or assessments", of "expect[ing] respondents not to be forthright when they're contacted". As we understood this admonition, we ought not to regard Bradbury's misleading and untrue September 2011 responses to Staff as somehow normal or natural, nor to undervalue the importance of the section 221.1(2) prohibition. The admonition was unnecessary.

[37] It appears that in this case Bradbury's deceptive responses to Staff enabled him, for a time, to carry on with his scheme and thereby draw in additional investors whose money he would misuse and lose. His breach of section 221.1(2) thus had identifiable negative consequences.

[38] There are also broader implications for the ASC and the capital market. Oversight of capital-market activity, and inquiry into matters or complaints possibly indicative of capital-market impropriety, are important aspects of fostering fairness and efficiency, and public confidence, in the capital market. Staff must be able to rely on good-faith, truthful, non-misleading responses from market participants in determining which matters to pursue and which not. Dishonesty is neither expected nor accepted. Were it otherwise, Staff might be compelled to turn every inquiry into an investigation. As well as unnecessarily complicating lawful capital-market activity, this would inevitably overwhelm regulatory resources and impede effective regulatory oversight.

[39] In the circumstances here, it is clear (as he admitted in the Statement) that Bradbury's conduct in breach of section 221.1(2) was also contrary to the public interest; we so find.

E. Fraud

[40] Section 93(b) of the Act prohibits any securities-related act, practice or course of conduct by a person "that the person … knows or reasonably ought to know will perpetrate a fraud". The concept and elements of fraud were explained as follows in *Re Platinum Equities Inc.*, 2014 ABASC 71 (at paras. 40-42):

> The applicable law was set out in [*Re Capital Alternatives Inc.* 2007 ABASC 79 (affirmed *sub nom. Alberta Securities Commission v. Brost*, 2008 ABCA 326)] at para. 309 and has been followed in several subsequent ASC decisions:
>
>> The term "fraud" is not defined in the Act. The gist of the meaning is not, however, difficult to discern. Johnston and Rockwell [in *Canadian Securities Regulation*, 4th ed. (Markham: LexisNexis, 2006) at 421] point to the elements of fraud as enunciated at common law by the Supreme Court of Canada in *R. v.*

> *Théroux*, [1993] 2 S.C.R. 5 at 27, which has been adopted in the context of securities regulation (for example, in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 [leave to appeal refused [2004] S.C.C.A. No. 81] at para. 27):
>
> > . . . the actus reus of the offence of fraud will be established by proof of:
> >
> > 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> >
> > 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
> >
> > Correspondingly, the *mens rea* of fraud is established by proof of:
> >
> > 1. subjective knowledge of the prohibited act; and
> >
> > 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).
>
> It is no defence to a fraud allegation that the alleged perpetrator did not profit from the alleged fraud (*Théroux* at 17).
>
> The *mens rea* element may reasonably be inferred from the totality of the evidence (*Brost* at para. 48). A respondent's subjective belief that no one will ultimately be hurt is no defence to a fraud allegation; it is sufficient to have knowingly engaged in a prohibited act and to have known that the prohibited act could place investors' pecuniary interests at risk (*Re DeLaet*, 2013 ABASC 42 at para. 90). As noted in *Théroux* (at 24): "Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons."

[41] The fraud allegation here related to five elements particularized in the notice of hearing: (i) "Converting investor monies for [Bradbury's] personal use in excess of his agreed shares of any profit"; (ii) "Using investor monies to pay fictional returns to other investors"; (iii) "Misrepresenting or deceiving investors as to the performance of their investments"; (iv) "Procuring investment in a supposed interest in Facebook, Inc. under false pretences"; and (v) misinforming investors that their money was lost due to "market turmoil", "not through [Bradbury's] own carelessness".

[42] In respect of the fraud allegation, the Statement juxtaposed the Inducements – promises by Bradbury – with the reality of (i) investors' money being applied to his personal expenses and to pay supposed returns to other investors, (ii) the absence of any pre-IPO Facebook, Inc. interest or investment, (iii) the overall unprofitability of Bradbury's "purported investment model", (iv) the "fictitious" periodic updates he gave some investors "masking massive actual losses" – and (v) his admission that he "knew, or ought reasonably to have known" that the Inducements "were misleading or untrue". The Statement also made reference in this context to Bradbury's admitted "misleading or untrue" attribution of investors' losses to "market turmoil".

[43] Bradbury admitted in the Statement that "[i]n knowingly making the [cited] deceitful statements to investors and knowingly using investor funds in the [cited] manner, [he] knew his conduct put the investors' pecuniary interests at risk". With perhaps one exception, we think this self-evidently true. The only exception relates to his attribution of investor losses to market turmoil. Undoubtedly this, too, was "deceitful", but it occurred after the Relevant Period, after the losses were incurred, and after the misconduct that generated the losses. It was therefore unclear how this instance of deceit (unlike the others) exposed investors to pecuniary loss.

[44] This exception apart, we are satisfied that (as Bradbury in effect admitted) all the elements of fraud are established here. It follows that Bradbury engaged or participated in acts, practices or a course of conduct relating to securities that he knew would perpetrate a fraud on investors. It follows (as he also admitted) that Bradbury thereby contravened section 93(b) of the Act; we so find.

[45] Staff noted that "fraud has been described as probably the most serious" form of capital-market misconduct mentioned in the Act. Bradbury admitted what we consider self-evident: that his fraudulent conduct was contrary to the public interest. We so find.

[46] Given these findings on fraud and our earlier findings of other alleged misconduct , we regard Staff's allegation pertaining to section 94(2.1) of the Act to have been definitively withdrawn, and we therefore make no finding on it.

F. Merits of the Allegations, Generally

[47] To summarize, the allegations of misconduct pursued by Staff have all been admitted by Bradbury. We have found each to be proved.

[48] We therefore turn to the issue of what (if any) orders should result.

IV. APPROPRIATE ORDERS

A. Sanctions and Cost-Recovery: General

[49] The Act authorizes the imposition of sanctions – market-access restrictions and monetary orders (under sections 198 and 199) – and orders for the recovery of investigation and hearing costs (under section 202).

1. Sanctioning Purposes, Principles and Factors

[50] Sanctions are to be ordered only in the public interest. Their purposes are protection and prevention, not punishment or remediation (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). Deterrence of future misconduct, whether by a particular respondent (specific deterrence) or by others (general deterrence), is a "legitimate" sanctioning consideration (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 154; *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62). That said, sanctions "must be proportionate and reasonable" (*Walton* at para. 154).

[51] These issues were discussed in *Re Homerun International Inc.*, 2016 ABASC 95 (at paras. 14-18):

> The determination in a particular case of whether deterrence is required and, if so, the type and extent of sanctions appropriate for that purpose, will turn on the circumstances of the misconduct and of the particular respondent, and on an assessment of the risk posed to investors and the capital market by a particular respondent or by others who might be minded to emulate the respondent's misconduct.
>
> Pertinent to assessing the proportionality and reasonableness of a contemplated sanction is the Alberta Court of Appeal statement in *Walton* (at para. 154) that "general deterrence does not warrant imposing a crushing or unfit sanction on" a respondent. Specifically in the context of an administrative penalty, the Court of Appeal stated (at para. 156) that it must "be proportionate to the offence, and fit and proper for the individual offender".
>
> Ensuring that sanctions are proportionate involves appropriate consideration of other decisions and settlement outcomes, while recognizing that decisions or outcomes seldom involve identical factual circumstances or wrongdoing.
>
> Panels may be faced with assessing the proportionality of contemplated sanctions against a respondent claiming impecuniosity, or at least a constrained ability to satisfy any monetary order. In this regard, we note the statements in *Walton* that an administrative penalty "beyond the capacity of the individual offender cannot be justified on the basis that it will deter others who are in a better financial condition" (at para. 165) and that the amount of an administrative penalty should not be "determined after overemphasizing the requirement of general deterrence, without having sufficient regard to the individual circumstances" (at para. 166).
>
> We do not understand these statements to preclude consideration of general deterrence in assessing either the need for, or the appropriate extent of, an administrative penalty against an individual respondent. Rather, this was an admonition not to focus exclusively, or excessively, on general deterrence. The Court of Appeal explained this, and the danger to be avoided, as follows (*Walton* at para. 156): "An administrative penalty [focused] purely on general deterrence of an unidentified and amorphous sector of the public could easily become disproportionate to the circumstances of the individual involved". We are mindful, however, that a monetary sanction almost inevitably involves (and indeed that a sanction of any type might impose) 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.

[52] Several factors enumerated in *Homerun* (at para. 20) may be relevant to the foregoing principles:

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

2. Cost-Recovery Orders

[53] A cost-recovery order under section 202 of the Act serves a purpose different from a sanctioning order. As explained in *Re Marcotte*, 2011 ABASC 287 (at para. 20):

> A costs order is . . . 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.

3. Jointly-Recommended Orders

(a) Orders Proposed

[54] The parties jointly proposed that we sanction Bradbury through orders to pay $370,000 (matching the amount of investor money he admitted having diverted to personal use) in what is commonly termed "disgorgement" (under section 198(1)(i) of the Act) and $150,000 as an administrative penalty (under section 199), together with a comprehensive array of market-access bans under section 198(1). Such bans would permanently bar Bradbury from (among other things) trading or purchasing any securities or derivatives, using any exemptions under the Act, and acting in any of multiple capacities (among them, director, officer, promoter, securities advisor or other registrant, or investment fund manager) through which he might otherwise participate in the capital market.

[55] The only narrowing (often termed a "carve-out") proposed for these restrictions would enable Bradbury to trade or purchase securities for himself or his immediate family, but only through a registrant who had been made aware of this decision. (The Statement also contemplated an adjustment to the quantum of disgorgement, to the extent of any settlement agreement or consent judgment entered into between Bradbury and investors before the hearing. None having been entered into, no adjustment was proposed.)

[56] The parties also jointly proposed that we order Bradbury to pay $13,000 of Staff's investigation and hearing costs, which we were told totalled "just under $30,000".

(b) Significance of a Joint Proposal

[57] As mentioned – and as specified in sections 198 and 199 of the Act – any sanctions we order must reflect what we consider to be in the public interest. We also conclude that any cost-recovery order made under section 202 should reflect a determination of what is appropriate in the circumstances of a particular case.

[58] This means that a joint recommendation by parties is not binding on a hearing panel. It will, however, generally carry considerable weight. Among other things, it can be understood to reflect competing parties' assessments of what might reasonably be achieved from a full contested hearing, and offer the prospect of a resolution at reduced time and expense. As stated in *Re Allan*, 2015 ABASC 919 (at para. 21):

> A hearing panel is not obliged to order jointly-recommended sanctions but will do so if satisfied they fall within a range of sanctions that are reasonable in all the circumstances and in keeping with the ASC's public-interest mandate.

[59] A seemingly more stringent test was recently enunciated in the context of the criminal sentencing power (*R. v. Anthony-Cook*, 2016 SCC 43 at paras. 3 and 5):

> . . . joint submissions on sentence are not sacrosanct. Trial judges may depart from them.
>
> . . .

> . . . The test [to be] applied is whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest.

[60] It might be inferred from either approach that the ultimate determination of an appropriate outcome will – consistent with the wording of sections 198 and 199 of the Act – demand an assessment of the public interest in the circumstances of the particular case. In any event, the present proceeding not involving criminal sentencing, the *Allan* approach is not supplanted here by that of *Anthony-Cook.*

B. Sanctioning Principles and Factors Applied

[61] We consider all the *Homerun* factors relevant to our determination of the public interest in this case. We discuss these in turn, and then consider outcomes of other proceedings.

1. Seriousness of Misconduct

[62] There is no doubt that Bradbury's misconduct was serious. Indeed, his behaviour was egregiously bad. He deprived investors of fundamental protections to which they were legally entitled. We recounted above a litany of his deceits; he misled and lied to investors and Staff. He perpetrated a fraud.

[63] His misconduct harmed his investors, most of whom – those outside a favoured inner circle – lost their invested money. That sort of direct financial harm can foreseeably have other, less tangible but still important, ramifications: diminished confidence (on the part of the affected investors and others who learn of their plight) in the fairness of our capital market, and ensuing impairment of the ability of law-abiding businesses to raise capital in that market.

[64] This factor argues for protective sanctions delivering strong messages of specific and general deterrence.

2. Bradbury's Characteristics and History

[65] Bradbury's history as a registrant would have exposed him to an understanding of the capital market, the laws that govern it, and the behaviour expected of its participants. His past illegal capital-market activity and the ensuing consequences would have informed him that the laws are enforced and that misconduct, when detected, has consequences.

[66] Bradbury's misconduct in the Relevant Period in the face of his earlier registration and (in effect) sanctioned misconduct exposes him as a recurrent and, in our view, a continuing danger to the investing public. This factor argues for strong – and enduring – protective sanctions.

[67] We were told that Bradbury is impecunious, indeed "insolvent". That would likely impede his ability to pay, and the ASC's ability to collect, any monetary orders against him – at least in the short term. However, counsel (responding to a question about the proposed monetary orders and Bradbury's current insolvency) noted that Bradbury "is not that elderly" but rather "in the middle of his life", and so "might conceivably . . . be able to satisfy" such monetary orders. Bearing in mind the *Walton* principle that any administrative penalty must be proportionate and reasonable, the circumstances here do not indicate that Bradbury's current financial state would rule out a significant administrative penalty, specifically of the magnitude here jointly proposed.

3. Benefit to Bradbury

[68] Bradbury's current impecuniosity perhaps indicates that he enjoyed no enduring benefit from his misconduct. However, we are in no doubt that he meant to benefit from his illegal and deceitful scheme. Moreover, he did benefit at the time, to the extent at least of the $370,000 of investor money that he diverted to his personal use.

[69] This in our view reinforces the need for specific deterrence, but even more for general deterrence of any who might otherwise be tempted, by the prospect of personal financial benefit, to emulate Bradbury's misconduct. This factor thus argues for strong sanctions that include direct monetary consequences.

4. Mitigating Considerations

[70] We did not identify aggravating considerations beyond what we have already discussed as elements of Bradbury's serious misconduct and egregiously bad behaviour.

[71] There are mitigating considerations.

[72] First, the Statement noted that Bradbury and his spouse borrowed approximately $40,000 against the security of their home, and used that money "in the trading account in an attempt to recover investors losses". While the effort seems to have been unsuccessful, the incident indicates two things we consider relevant to sanction. First, Bradbury made some effort, at some personal financial risk, to salvage something for his investors. Second, he seemed to have held a genuine (if thoroughly misguided) belief that his trading strategy could work, to the benefit of his investors as well as himself. While this may provide little solace to his victims, we discern in this grounds for some moderation in at least the extent of direct monetary sanctions.

[73] The second mitigating consideration is the Statement itself, and the circumstances that led to its execution. Staff counsel described Bradbury's counsel as having "indicated right from the outset of the service of the notice of hearing" a willingness to make "significant efforts" toward the submissions now before us. Staff counsel fairly characterized the Statement as containing "timely and . . . comprehensive admissions of guilt", observing that these had spared the ASC and others (notably investors who might otherwise have been summoned to testify at the hearing) substantial cost or inconvenience. Staff counsel also pointed to what he termed "the robust bans" that Bradbury agreed with Staff jointly to propose.

[74] While they do not excuse his misconduct, Bradbury's admissions undoubtedly shortened the hearing, obviated the need to summon witnesses, and enabled the redeployment of some Staff resources to other matters. More specifically relevant to the sanctioning principles, we discern in the jointly-proposed sanctions – particularly the permanent market-access bans – a recognition on Bradbury's part both that his misconduct was serious, and that his permanent exclusion from participation in the capital market is among the appropriate consequences. This also argues for some moderation in the extent of monetary sanctions that might otherwise be warranted against Bradbury.

5. Outcomes in Other Cases

[75] Staff counsel drew our attention to elements of ASC decisions in four other matters, principally (as we understood the submissions) for the purpose of illustrating the handling of administrative penalties. The pertinent aspects of each can be succinctly summarized:

- *Re Calmusky*, 2016 ABASC 9, involved the raising of approximately $1.1 million from investors, a finding of fraud, a cooperative respondent with no history of prior sanction, and an arrangement for some repayment to investors. Sanctions included a $100,000 administrative penalty.

- *Re Magee*, 2015 ABASC 846, involved the raising of over $2 million, with a finding of fraud against one respondent. Admissions were made. Sanctions included a disgorgement order and a $200,000 administrative penalty against that respondent.

- *Re Schmidt*, 2013 ABASC 320, involved the raising of approximately $5 million, and a finding of fraud against a respondent with a history of prior sanction. Sanctions included a disgorgement order and a $200,000 administrative penalty against that respondent.

- *Re Shimoon*, 2015 ABASC 702, involved a respondent with no history of prior sanction, who made an untrue statement to Staff. He received a $25,000 administrative penalty.

[76] *Shimoon* is readily distinguishable from the present case because of the narrowness of the finding there. The other three cases we accept as offering an illustrative range of administrative penalties found appropriate in circumstances more akin (although not identical) to those of the present case.

6. Conclusion on Sanctions

[77] The seriousness of Bradbury's misconduct, the personal benefit he sought and derived from it, and his prior regulatory history all argue for strong measures of specific and general deterrence. Indeed, the nature of his misconduct, and his history, convince us that he is, and will remain, a serious risk to the investing public unless removed from the capital market forever.

[78] Thus, we consider permanent market-access bans imperative. However, they would in our view alone be insufficient to deliver the requisite deterrence and protection.

[79] We consider that the public interest requires such bans to be accompanied by significant monetary orders against Bradbury. These must be large enough to deliver to him, and to any who might otherwise be tempted to emulate him, a clear message that a recurrence of his misconduct case will come at a direct, and memorable, financial cost. Given Bradbury's diversion of some investor money to personal use, his disgorgement of that amount is clearly appropriate. However, it must be supplemented by a noticeable administrative penalty.

[80] The Act contemplates administrative penalties of up to $1 million per contravention – of which there were many here. However, determining an appropriate administrative penalty is not a matter of simple arithmetic. We have regard on the one hand to the need in this case for effective specific and general deterrence, and on the other hand to the identified grounds for moderation in the amount of monetary sanctions, as well as the mentioned administrative penalties in *Calmusky*, *Magee* and *Schmidt*. In the result, we conclude that the $150,000 amount

jointly proposed by the parties for an administrative penalty, when combined with the other sanctions discussed, would fall within (albeit toward the lower end of) a range that is reasonable and proportionate to the circumstances.

[81] We are satisfied that the public interest would not be impaired by the mentioned carve-out (for personal and family securities trades and purchases, through a properly informed registrant) from the jointly-proposed trading ban.

[82] In sum, we consider that it would be in the public interest to order a package of sanctions against Bradbury corresponding, in nature and extent, to what the parties jointly proposed.

7. Appropriate Cost Recovery

[83] This is a case in which Bradbury must bear responsibility for investigation and hearing costs.

[84] However, there is an important mitigating consideration: his "timely and . . . comprehensive" admissions, his cooperation during the investigation and hearing, and the resulting undoubted contribution to the efficient resolution of this matter.

[85] The $13,000 in cost recovery jointly urged by the parties would amount to a reduction, by more than half, from the amount of costs notionally recoverable. This would represent a significant concession, but one we think warranted by the mitigating consideration just stated.

V. CONCLUSION

[86] For the reasons given, we make the following orders against Bradbury.

Market-Access Bans

- under section 198(1)(d) of the Act he must resign all positions he holds as a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;

- under section 198(1)(b) he must permanently cease trading in or purchasing securities or derivatives, except that this order dos not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in accounts maintained with that registrant for the benefit of one or more of himself and members of his immediate family;

- under section 198(1)(c) all of the exemptions contained in Alberta securities laws do not apply to him, permanently;

- under section 198(1)(e) he is prohibited, permanently, 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 or recognized quotation and trade reporting system;

- under section 198(1)(e.1) he is prohibited, permanently, from advising in securities or derivatives;

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

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

Disgorgement

- under section 198(1)(i), he must pay to the ASC $370,000 obtained as a result of his non-compliance with Alberta securities laws;

Administrative Penalty

- under section 199, he must pay an administrative penalty of $150,000; and

Cost Recovery

- under section 202 of the Act, he must pay $13,000 of the costs of the investigation and hearing.

[87] This proceeding is concluded.

8 November 2016

For the Commission:

"original signed by"
Stephen Murison

"original signed by"
Ian Beddis

"original signed by"
Webster Macdonald, QC