DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMERS AFFAIRS AUTHORITY OF SASKATCHEWAN ACT*

In the Matter of

The Securities Act, 1988

and

In the Matter of

Ronald James Aitkens, also known as Ron Aitkens,

1252064 Alberta Ltd.,

1330075 Alberta Ltd.,

Harvest Capital Management Inc., and

Harvest Group GP Corporation

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing held:	**March 12, 2019**
Panel:	**Peter Carton (Chairperson)** **The Honorable Eugene Scheibel (Panel Member)**
Appearances:	**Dallas Smith (Counsel for Staff of the Financial and Consumer Affairs Authority of Saskatchewan)** **No one appeared on behalf of the Respondents, Ronald James Aitkens, also known as Ron Aitkens, 1252064 Alberta Ltd., 1330075 Alberta Ltd., Harvest Capital Management Inc., and Harvest Group GP Corporation**
Date of Decision:	**June 19, 2019**

I. INTRODUCTION

[1] This was a hearing (**“the Sanctions and Costs Hearing”**) before a Hearing Panel appointed in accordance with section 17 of *The Financial and Consumer Affairs Authority of Saskatchewan Act* (the “**Panel**”) to consider whether pursuant to sections 134, 135.1 and section 161 of *The Securities Act, 1988,* S.S.1988-89, c. S-42.2 (the “Act”) it is in the public interest to make an order with respect to sanctions and costs against Ronald James Aitkens, also known as Ron Aitkens, (“**Aitkens**”), 1252064 Alberta Ltd. (**“1252064**”), 1330075 Alberta Ltd. (**“1330075”**), Harvest Capital Management Inc. (**“Harvest Capital”**), and Harvest Group GP Corporation (**“Harvest Group”**), (collectively, the “**Respondents**”).

[2] The hearing on the merits in this matter took place on May 22, 23, 24, 28 and 29, 2018 (the **“Merits Hearing”**). None of the Respondents appeared at, or participated in, the Merits Hearing in person or by counsel. The decision on the merits was rendered on December 5, 2018 (the **“Merits Decision”**). In the Merits Decision, the Panel ordered that a hearing to determine sanctions and costs would be held on March 12, 2019 and set a schedule regarding the written submissions of the parties.

[3] Following the release of the Merits Decision, the Sanctions and Costs Hearing was held on March 12, 2019. Staff of the Financial and Consumer Affairs Authority of Saskatchewan (**“Staff”**) appeared at the Sanctions and Costs Hearing and made oral submissions supported by Staff’s written submissions dated December 31, 2018, a Final Bill of Costs dated December 31, 2018, and an Affidavit of Service dated January 8, 2019.

II. FAILURE TO ATTEND THE SANCTIONS AND COSTS HEARING

[4] None of the Respondents appeared at, or participated in, the Sanctions and Costs Hearing in person or by counsel or provided written submissions.

[5] Subsection 9(15) of the Act and section 8.1 of Saskatchewan Policy Statement 12-602 *Procedures on Hearings and Reviews*, provide that a Panel may proceed in the absence of a party where that party has been given notice of the hearing. Subsection 9(15) of the Act provides:

> **9**(15) Notwithstanding that a person who or company that is directly affected by a hearing or review is neither present nor represented at the hearing or review, where notice of the hearing or review has been sent to that person or company in accordance with subsection (2), the Commission, Chairperson or the Director, as the case may be, may proceed with the hearing or review and make or give any decision as though that person or company were present.

[6] Subsection 9(2) of the Act provides:

> **9**(2) Except where otherwise provided in this Act, notice in writing of the time, place and purpose of the hearing or review shall be sent to:
>
> (a) the person who or company that is the subject of the hearing or review; and

(b) any person who or company that, in the opinion of the Commission, the Chairperson or the Director, as the case may be, is substantially affected by the hearing or review.

[7] Section 8.1 of Saskatchewan Policy Statement 12-602 *Procedures on Hearings and Reviews* provides:

Failure to Participate
8.1 If a Notice of Hearing has been sent to a party and the party does not attend the hearing, the Panel may proceed in the party's absence and that party is not entitled to any further notice in the proceeding.

[8] We note that the Respondents were provided with a copy of the Merits Decision dated December 5, 2018 which set the date and time for the Sanctions and Costs Hearing. Staff sent its Brief of Law and Argument on Sanctions and Costs to the Respondents on January 8, 2019 and did not receive a response from any of the Respondents. We are satisfied that the Respondents received proper notice of the Sanctions and Costs Hearing. Accordingly, we found that we are entitled to proceed in the absence of the Respondents in accordance with subsection 9(15) of the Act and section 8.1 of Saskatchewan Policy Statement 12-602 *Procedures on Hearings and Reviews*.

III. MERITS DECISION

[9] On January 5, 2017, a Notice of First Appearance in this matter was issued in connection with an amended Statement of Allegations dated February 10, 2016 against the Respondents, Aitkens, 1252064, 1330075, Harvest Capital, and Harvest Group.

[10] The Merits Decision addressed the following issues:

1. Did the Respondents trade in securities without registration in breach of clause 27(1)(a) of the Act (for the time period from July 2005 to September 27, 2009) and subsection 27(2) of the Act (for the time period from September 28, 2009 to December 2012)?

2. Did the Respondents engage in a distribution of securities without a prospectus in breach of subsection 58(1) of the Act?

3. Did the Respondents engage in fraud in breach of section 55.1 of the Act?

4. Did the Respondents contravene the misrepresentation provisions in subsection 44(3.1) (for the time period July 2005 to June 30, 2007) and section 55.11 of the Act (for the time period July 1, 2007 to December 2012)?

5. Did the Respondents contravene subsection 44(2) of the Act?

6. Did the Respondents contravene subsection 80.1(2) of the Act?

[11] Upon reviewing all the evidence, the applicable law and the submissions, we concluded in the Merits Decision, at para. 334, that:

1. Aitkens breached clause 27(1)(a) of the Act by trading the securities of Legacy, Spruce Ridge Capital, Spruce Ridge Estates, Railside Capital and Railside Industrial without registration or exemptions;

2. Aitkens breached subsection 58(1) of the Act by distributing securities of Legacy, Spruce Ridge Capital, Spruce Ridge Estates, Railside Capital and Railside Industrial without a prospectus or exemptions;

3. Aitkens, 1252064, 1330075, Harvest Capital and Harvest Group breached section 55.1 of the Act by engaging in a course of conduct related to securities that they knew perpetrated a fraud on Saskatchewan investors;

4. Aitkens breached subsection 44(3.1) (for the time period July 2005 to June 30, 2007) and section 55.11 of the Act (for the time period July 1, 2007 to December 2012) by making misrepresentations that he knew or ought to have known were untrue or misleading;

5. Aitkens breached subsection 44(2) of the Act by giving a written undertaking relating to the future value of securities with the intention of effecting a trade in securities;

6. Aitkens breached subsection 80.1(2) of the Act by failing to amend the Offering Memoranda as a result of a material change in the affairs of the issuer contrary to subsection 80.1(2) of the Act.

[12] In determining the appropriate sanctions and costs to impose in this matter, we have relied upon our findings and conclusions in the Merits Decision. The contraventions of the Act were serious and the Respondents' behavior was egregious. In the Merits Decision, we specifically found that:

a) in total, approximately $4,168,600 was raised from Saskatchewan investors pursuant to offering memoranda issued by Legacy Communities Inc. (**"Legacy"**) [para. 135];

b) in total, approximately $4,177,588.77 was raised from Saskatchewan investors pursuant to offering memoranda issued by Spruce Ridge Capital Inc. (**"SRC"**) and Spruce Ridge Estates Inc. (**"SRE"**) [para. 139];

c) in total, approximately $2,059,957.90 was raised from Saskatchewan investors pursuant to offering memoranda issued by Railside Capital Inc. (**"RSC"**) and Railside Industrial Park Inc. (**"RSIP"**) [para. 143];

d) Aitkens engaged in activities or a course of conduct that constituted "trading" or "acts in furtherance" of a trade from July 2005 to March 2009, and as such, contravened clause 27(1)(a) of the Act, as it was in force at that time [para. 147];

e) Aitkens engaged in distributions of securities without receipted prospectuses, and without an available exemption from the requirement to have a receipted prospectus, thereby breaching subsection 58(1) of the Act [para. 173];

f) Aitkens, as an individual and the guiding mind of Legacy, 1252064, 1330075, Harvest Capital and Harvest Group, failed to disclose important facts, made unauthorized diversions of money or property, or took money or property and put investors' money to unauthorized use [para. 234];

g) over $10,000,000 was transferred from Legacy to Aitkens' personal company, 1252064 [paras. 207, 208 and 209];

h) $2,000,000 was transferred from Legacy to Aitkens' personal company, 1330075 [paras. 210 and 211];

i) $825,000 of Legacy's money was used in a scheme regarding a useless water licence, but which actually resulted in Harvest Group benefitting from this sum [paras. 215-227 and 233];

j) each of the Respondents engaged in a course of conduct relating to securities that they knew perpetrated a fraud on Legacy investors, thereby breaching section 55.1 of the Act [para. 239];

k) $1,340,000 was transferred from SRE to Aitkens' personal company, 1252064 [paras. 96 and 97];

l) $2,000,000 was transferred from SRC to Aitkens' personal company, 1330075 [para. 95];

m) through a scheme involving the transfer of a piece of land, $43,755,000 was transferred out of SRC and SRE into Aitkens' personal company, 1330075, for a parcel of land that 1330075 had obtained for $18,932,775 [paras. 247-256];

n) Aitkens, 1252064 and 1330075 engaged in a course of conduct related to securities that they knew perpetrated a fraud on SRC and SRE investors, thereby breaching section 55.1 of the Act [para. 260];

o) Aitkens made misrepresentations to Legacy investors in contravention of subsection 44(3.1) and section 55.11 (as was in effect at the relevant time) [para. 291];

p) Aitkens made misrepresentations to SRC investors and SRE investors in contravention of subsection 44(3.I) and section 55.11 (as was in effect at the relevant time) [para. 306];

q) Aitkens made misrepresentations to RSC investors and RSIP investors in contravention of subsection 44(3.1) and section 55.11 (as was in effect at the relevant time) [para. 318];

r) Aitkens gave written undertakings relating to the future value of securities of Legacy, SRC, SRE, RSC and RSIP with the intention of effecting trades in these securities, in contravention of subsection 44(2) [para. 329]; and

s) Aitkens contravened subsection 80.1(2) of the Act by failing to make required amendments to the offering memoranda of Legacy, SRC, SRE, RSC and RSIP when material changes in the business, operations or capital of these entities occurred after the filing of these offering memoranda and before the distributions thereunder had been completed [para. 332].

IV. SANCTIONS AND COSTS REQUESTED

[13] Staff requested that the following sanctions and costs orders be made against the Respondents:

a) the Respondents be permanently banned from utilizing any and all exemptions in Saskatchewan securities laws, pursuant to clause 134(1)(a) of the Act;

b) the Respondents be permanently banned from trading in securities or derivatives in Saskatchewan, pursuant to clause 134(1)(d) of the Act;

c) the Respondents be permanently banned from acquiring securities or derivatives for and on behalf of residents of Saskatchewan, pursuant to clause 134(1)(d.l) of the Act;

d) Aitkens resign any position that he holds as a director or officer of any issuer, registrant or investment fund manager, pursuant to clause 134(1)(h)(i) of the Act;

e) Aitkens be permanently banned from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, pursuant to clause 134(1)(h)(ii) of the Act;

f) Aitkens be permanently banned from being employed by any issuer, registrant or investment fund manager in any capacity that would allow him to trade in or advise in securities or derivatives, pursuant to clause 134(1)(h)(iii) of the Act;

g) Aitkens be permanently banned from becoming or acting as a registrant, an investment fund manager or a promoter, pursuant to clause 134(1)(h.l) of the Act;

h) each of the named Respondents shall pay an administrative penalty of $100,000, pursuant to section 135.1 of the Act; and

i) the Respondents shall pay the costs of or relating to the hearing in this matter in the sum of $30,319.51, pursuant to section 161 of the Act.

[14] Staff submit that the sanctions and costs requested are proportionate to the Respondents' misconduct and egregious actions in this matter. It is Staff's position that the serious nature of the Respondents' misconduct justifies significant sanctions for the purposes of both specific and general deterrence.

[15] Staff submit that any continued participation by the Respondents in raising capital would put the public at significant risk and that only permanent bans would have the required general deterrent effect. With respect to the sum of administrative penalty being sought, Staff submit that the Respondents should be sanctioned the maximum amount available under the Act as the principles of both specific and general deterrence demand that a serious stance be taken in this matter.

V. ISSUES

[16] The substantive issues raised by Staff's submissions regarding the appropriate sanctions and costs are:

1. Should the Panel impose securities and derivatives trading, acquisition and exemption prohibitions on the Respondents and, if so, for how long, and what exceptions, if any, should be allowed?

2. Should the Panel impose director, officer, employee and registrant prohibitions on the Respondent Aitkens and, if so, for how long, and what exceptions, if any, should be allowed?

3. Should the Panel order that the Respondents pay an administrative penalty and, if so, what amount should each of the Respondents be ordered to pay?

4. Should the Panel order the Respondents pay costs and, if so, what amount should each of the Respondents be ordered to pay?

VI. LEGAL FRAMEWORK FOR SANCTIONS

[17] Sections 134 and 135.1 of the Act list the sanctions that the Panel may impose where it finds that it is in the public interest to do so. The Panel must exercise this jurisdiction in a manner consistent with the purposes set out in section 3.1 of the Act.

[18] Section 3.1 of the Act provides that "the purposes of this Act are to provide protection to investors and to foster fair, efficient capital and derivatives markets and confidence in capital and derivatives markets".

[19] As noted in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 (at paras 41-43, 45), all sanction orders are aimed toward the objectives of protecting investors, protecting the capital markets and preventing future harm; they are not meant to be punitive or remedial. Their primary goal is deterrence, both specific and general – specific deterrence from future misconduct by the respondents being sanctioned, and general deterrence from similar future misconduct which may be contemplated by others: *Re Cartaway Resources Corp.,* 2004 SCC 26 (at paras, 52-53, 55-56, 60-61).

[20] In *Euston Capital Corp. v. Saskatchewan Financial Services Commission*, (2008) SKCA 22, the Saskatchewan Court of Appeal referred to the *Asbestos* decision and stated at paras 48 and 49:

> **48** On the "public interest" issue, the appellants' submissions are grounded on the Supreme Court of Canada's decision in *Committee for Equal Treatment of Asbestos Minority Shareholders*, *supra*. In that case, the Court considered the nature and scope of the Ontario Securities Commission's jurisdiction to intervene in the public interest pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c. S. 5. Section 127 is the Ontario equivalent of s. 134 of the Saskatchewan *Act*, the provision under which the Commission purported to act here in imposing the cease trading orders on the appellants and making exemptions from securities laws unavailable to them.
>
> **49** The Supreme Court held that sanctions imposed under s. 127(1) must be preventive and prospective in character. It said s. 127 could not be used merely to remedy misconduct alleged to have caused harm or damages.

[21] *In the Matter of The Securities Act, R.S.O. 1990, c. S.5 as amended and In the Matter of Lehman Cohort Global Group Inc.,et. al.*1, the Ontario Securities Commission commented on the imposition of sanctions under securities laws as follows:

> [23] The Commission's dual mandate is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).
>
> [24] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. This objective was described in *Re Mithras Management Ltd.* as follows:
>
> > … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
> >
> > (*Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at pp. 1610-1611)

[22] In *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (at paras, 154, 156), the Alberta Court of Appeal cautioned that the sanctions must be "proportionate and reasonable" in the circumstances and that money sanctions in particular must be "proportionate to the offence, and fit and proper for the individual offender".

[23] We are also mindful that "If sanctions under this legislation are so low as to communicate too mild a rebuke to the misconduct, or perhaps a licensing fee for its occurrence, the opposite to deterrence may result": *Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 (at para. 21).

[24] *In the Matter of Darcy Lee Bergen* (October 31, 2000), a hearing panel of the Financial and Consumer Affairs Authority of Saskatchewan (the **"FCAA")** adopted the following list of factors as some of the factors that should be considered when imposing sanctions:

a) the seriousness of the respondents' conduct;

b) the harm suffered by investors as a result of the respondents' conduct;

c) the damage done to the integrity of the capital markets in the province by the respondents' conduct;

d) the extent to which the respondent was enriched;

e) the factors that mitigate the respondents' conduct;

f) the respondents' past conduct;

g) the risk to investors and the capital markets posed by the respondents' continued participation in the capital markets of the province;

h) the respondents' fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to the issuers;

i) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to capital markets;

j) the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and

k) orders made by the Commission in similar circumstances in the past.

[25] Although these factors are relevant in determining the appropriate sanctions, the applicability and importance of each factor will vary according to the facts and circumstances of the case. The Panel must ensure that the sanctions imposed in each case are proportionate to the circumstances and the conduct of each Respondent. Sanctions should also be proportionate to past decisions of the FCAA Hearing Panels.

[26] To assist us in assessing the proportionality and appropriateness of the sanctions to impose upon the Respondents, we have also reviewed and considered previous decisions of the FCAA Hearing Panels, including:

- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Tri-Link Consultants Inc.* (April 21, 2009) (Saskatchewan Financial Services Commission) [*Tri-Link*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c.S-42.2 and In the Matter of Darcy Lee Bergen* (October 31, 2000) (Saskatchewan Financial Services Commission) [*Bergen*]
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Platinum Equities Corporation et. al.* (February 2000) (Saskatchewan Securities Commission) [*Owens*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Landbankers International MX, SA. DeC.V.* (February 2014) (Hearing Panel of the FCAA) [*Landbankers*]
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Fred Louis Sebastian* (July 23, 2015) (Hearing Panel of the FCAA) [*Sebastian*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Alena Marie Pastuch et. al.* (December 18, 2014) (Hearing Panel of the FCAA) [*Pastuch*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Adele Kaminsky, carrying on business as AK Financial Planning Services* (July 20, 2017) (Hearing Panel of the FCAA) [*Kaminsky*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of Coperstone Limited, Coperstone Partners Limited, Chad Neuburger and Randall Silverman* (May 15, 2019) (Hearing Panel of the FCAA) [*Coperstone*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of RTG Direct Trading* (February 19, 2016) (Hearing Panel of the FCAA) [*RTG Direct Trading*];
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of RTG Direct Trading* (February 19, 2016) (Hearing Panel of the FCAA) [*RTG Direct Trading*]; and
- *In the Matter of The Securities Act, 1988, S.S. 1988, c. S-42.2 and In the Matter of AAOption and Galaxy International Solutions, Ltd. and David Eshel* (June 8, 2016) (Hearing Panel of the FCAA) [*AAOption*].

[27] We have also considered the oral submissions made by Staff at the Sanctions and Costs Hearing and the written Brief of Law and Argument on Sanctions and Costs on Behalf of Staff of the FCAA dated December 31, 2018.

VII. APPROPRIATE SANCTIONS IN THIS CASE

A. Relevant Factors

[28] Considering the findings in the Merits Decision and the sanctioning factors set out above, we find the following factors and circumstances to be relevant in this proceeding.

(a) The Seriousness of the Conduct

[29] We view the Respondents' behavior in this case to be a very serious breach of securities law. In the Merits Decision, we found that the Respondents committed fraud, which is one of the most egregious contraventions of the Act. We concluded that the Respondents breached section 55.1 of the Act by engaging in a course of conduct related to securities that they knew perpetrated a fraud on Saskatchewan investors and that they were fully aware that their prohibited acts would not only put investor money at risk but would also deprive investors of their money [para. 259].

[30] We also found that the Respondent, Aitkens, breached the Act by making misrepresentations that he knew or ought to have known were untrue or misleading [paras 317 and 318].

(b) The Harm suffered by Investors as a result of the Respondents' Conduct

[31] As noted in the Merits Decision, over $10 million dollars was raised from investors in Saskatchewan over the course of the three projects and investors experienced significant losses of capital. As a result of the Respondents' fraudulent actions, funds were misappropriated from investors and hundreds of Saskatchewan residents lost their investments.

(c) The Damage done to the Integrity of the Capital Markets in the Province by the Respondents' Conduct

[32] The Respondents' misconduct negatively impacted the integrity and reputation of Saskatchewan's capital markets. Capital markets always suffer a loss of confidence when instances like this arise and as such, major sanctions are required as a deterrent to quell bad behavior by market participants.

(d) Mitigating Factors

[33] There were no mitigating factors regarding the Respondents' conduct in the evidence before the Panel.

(e) Past Conduct

[34] In *Re: Aitkens* 2018 ABASC 27, the Alberta Securities Commission made findings against Aitkens and Harvest Capital with respect to securities transactions conducted in Alberta. The Alberta Securities Commission held that Aitkens perpetrated a fraud on investors in Alberta and Aitkens and Harvest Capital made misrepresentations by omitting certain information from the offering memoranda used to raise capital.

B. Analysis

Trading and Other Prohibitions

1. Should the Panel impose securities and derivatives trading, acquisition and exemption prohibitions on the Respondents and, if so, for how long, and what exceptions, if any, should be allowed?

[35] Staff submit that the Respondents should be subject to permanent trading, acquisition and exemption prohibitions in order to remove them permanently from participation in Saskatchewan's capital markets. Staff submit that the risk that the Respondents pose to the investing public is too great to consider anything less than a permanent ban. Staff take the position that only permanent bans will have the required general deterrent effect and that others who may consider engaging in similar acts ought to know that the consequence for doing so is serious.

[36] The authority for the Panel to impose trading and other prohibitions is set out in clauses 134(1)(a),(d) and (d.1) of the Act as follows:

> **Order to cease trading**
> **134**(1) Where, in the opinion of the Commission, it is in the public interest, the Commission may order, subject to any terms and conditions that it may impose, one or more of the following:
>
> > (a) that any or all of the exemptions in Saskatchewan securities laws do not apply to the person or company named in the order, either generally or concerning those trades, securities, derivatives or bids specified in the order;
> >
> > . . .
> >
> > (d) that a person or company cease trading in securities, specified securities, derivatives or specified derivatives for a period that is specified in the order;
> >
> > (d.1) that a person or company cease acquiring securities, specified securities, derivatives or specified derivatives for a period that is specified in the order;
> >
> > . . .

[37] In the Merits Decision, the Panel found that Aitkens traded securities in Saskatchewan without being registered to do so and that there were many instances of disclosure related offences committed by the Respondents. Some of these included making statements that were misleading or untrue, making countless distributions of securities without filing a prospectus and failing to accurately disclose how investor funds were intended to be used. The Panel also found that the Respondents perpetrated a fraud on Saskatchewan investors which included the failure to disclose important facts, the unauthorized diversion of taking money or property and the unauthorized use of investors' money.

[38] We note that participation in the capital markets is a privilege, not a right. As stated in *Manning v. O.S.C,* [1996] O.J. No. 3414 at para. 47:

> 47. There is no right of any individual to participate in the capital markets in Ontario. […] the Act provides certain exemptions which allows individuals to make certain trades without being registered, however, the OSC has explicit jurisdiction to remove the exemptions if an individual engages in conduct contrary to the letter or spirit of the Act, whether such conduct causes damage to investors or is detrimental to the integrity of the capital markets.

[39] Given the nature of the misconduct in this case and the seriousness of the breaches, we believe that it is necessary to impose the market prohibitions as requested by Staff. The Respondents committed serious contraventions of the Act, including fraud and misrepresentation. There is every reason to believe that if the Respondents continue to participate in Saskatchewan's capital markets, they will cause further harm to the integrity of the markets and further harm to investors.

[40] We note that in past decisions involving fraud, permanent trading, acquisition and exemption bans have been imposed by hearing panels of the FCAA (*Sebastian and Pastuch*). In order to protect the public and to promote confidence in the capital markets, we find it appropriate and in the public interest that the Respondents be permanently banned from relying on any and all of the exemptions in Saskatchewan's securities laws, trading in securities or derivatives in Saskatchewan and acquiring securities or derivatives for and on behalf of residents of Saskatchewan.

Director, Officer and other Bans

2. Should the Panel impose director, officer, employee and registrant prohibitions on the Respondent Aitkens and, if so, for how long, and what exceptions, if any, should be allowed?

[41] Staff also request that Aitkens be ordered to resign any position that he holds as a director or officer of any issuer, registrant or investment fund manager, that Aitkens be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, that Aitkens not be employed by any issuer, registrant or investment fund manager in any capacity that would allow him to trade or advise in securities or derivatives, and that Aitkens be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter.

[42] Staff submit that Aitkens is not fit to be a registrant or to bear the responsibilities associated with being a director or officer or an issuer. It is Staff's position that any continued participation in raising capital by the Respondents would put the public at significant risk and that the Respondents conducted themselves inappropriately while spending the capital raised, on anything but the purpose for which investors were advised it would be used. Staff submit that upon finding a failure to comply with securities law, the public interest is best served by the issuance of an Order which restricts the offending party's activities pursuant to section 134 of the Act.

[43] The authority for the Panel to impose director, officer and other prohibitions is set out in clauses 134(1)(h) and (h.1) of the Act as follows:

> **Order to cease trading**
> **134**(1) Where, in the opinion of the Commission, it is in the public interest, the Commission may order, subject to any terms and conditions that it may impose, one or more of the following:
>
> (h) that a person or company:
>
> (i) resign any position that the person or company holds as a director or officer of an issuer, a registrant or an investment fund manager;
>
> (ii) be prohibited from becoming or acting as director or officer of any issuer, registrant or investment fund manager; or
>
> (iii) not be employed by any issuer, registrant or investment fund manager;
>
> (h.1) that a person or company be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter.

[44] In the Merits Decision, the Panel found that Aitkens engaged in activities or a course of conduct that constituted “trading” or “acts in furtherance of a trade and engaged or held himself out as engaging in the business of trading securities without being registered. The Panel also found that Aitkens engaged in distributions of securities without receipted prospectuses. The Panel found that Aitkens and the corporate Respondents, of which Aitkens was the directing mind, perpetrated a fraud on Saskatchewan investors which included the failure to disclose important facts, the unauthorized diversion of taking money or property and the unauthorized use of investors’ money. The Panel also found that Aitkens breached the Act by making misrepresentations that he knew or ought to have unknown were untrue or misleading.

[45] In past decisions, FCAA Hearing Panels have issued permanent director and officer bans for fraudulent actions where a smaller number of investors were harmed and less money was raised. For example, in *Sebastian,* permanent bans were granted by the FCAA Hearing Panel.

[46] Based on Aitkens’ conduct, we agree with Staff’s submission that Aitkens is not fit to be a registrant or bear the responsibilities associated with being a director or officer of an issuer. There is a need to protect the public from Aitkens serving as a director or officer of any issuer, registrant or investment fund manager. In our view, the imposition of the prohibitions requested by Staff will ensure that Aitkens is not placed in a position of control or trust with respect to any issuer, registrant or investment fund manager in the future.

[47] Having considered the facts and circumstances of this case and applying the sanctioning principles outlined above, we are of the view that the permanent bans as requested by Staff are appropriate, proportionate and in the public interest in the circumstances of this case.
We are satisfied that the nature of the bans sought is rationally connected to the specific conduct at issue.

[48] We find that it is appropriate and in the public interest in these circumstances to order that the Respondent, Aitkens, resign any position that he holds as a director or officer of an issuer, a registrant as registrant or an investment fund manager, that he be prohibited from becoming or acting as director or officer of any issuer, registrant or investment fund manager, that he not be employed by any issuer, registrant or investment fund manager and that he be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter.

Administrative Penalties

3. Should the Panel order that the Respondents pay an administrative penalty and, if so, what amount should each of the Respondents be ordered to pay?

[49] Staff also requested that the Panel make an order that each of the Respondents pay an administrative penalty in the amount of $100,000.00 pursuant to section 135.1 of the Act. Staff take the position that there has never been a more serious matter presented to a hearing panel of the FCAA. Staff submit that the damage done to Saskatchewan's capital markets was significant, that the Respondents' conduct caused significant financial loss for many people and that the principles of both specific and general deterrence demand that a serious stance be taken by the Panel.

[50] Section 135.1 provides that the Panel may, after a hearing, order that a person or company pay an administrative penalty if the Authority is satisfied that the person or company has contravened or failed to comply with the Act or a decision or order of the Authority and the Authority considers it to be in the public interest to make the order.

[51] Staff referred to the following decisions of FCAA Hearing Panels in their submissions regarding the appropriate administrative penalty: *Tri-Link, Owens, Sabastian and Pastuch*. They are briefly summarized as follows:

- ***Tri- Link*:** Based on admissions made by the Respondents in their Agreed Statement of Facts and Allegations, the panel found the Respondents contravened the registration and prospectus requirements of the Act. The panel found that 67 investors lost approximately $4,400,000. The panel ordered Mr. Link to pay an administrative penalty of $100,000. The panel's decision was appealed to the Saskatchewan Court of Appeal on the grounds that the Panel denied the Respondents procedural fairness and acted contrary to the rules of natural justice. The appeal was dismissed by the Saskatchewan Court of Appeal on April 4, 2012.

- **Owens:** Owens entered into an Agreement and Undertaking and the panel ordered Mr. Owens to pay an administrative penalty of $100,000. Mr. Owens raised more than $7 million in Saskatchewan by trading in securities with investors, mainly Saskatchewan residents. The investors had not received a return of their investments.

- **Sebastian:** The decision involved a finding of fraud. The panel found that Mr. Sebastian had defrauded an elderly investor of $47,000. The panel ordered Mr. Sebastian to pay an administrative penalty of $75,000. The panel noted that the administrative penalty imposed was well in excess of the funds obtained from the Respondent's wrongful actions but determined that it was appropriate to prevent the Respondent from engaging in such behavior again and to serve notice that there would be serious consequences for those committing similar offences in the future.

- **Pastuch**: The panel ordered Ms. Pastuch to pay an administrative penalty of $100.000. The panel found that Ms. Pastuch breached a number of provisions of the Act including trading securities without being registered to do so, distributing securities without any of her companies having filed a prospectus, and committing fraud when she "lied to investors and potential investors about material facts so as to influence their perception of the value and security of an investment" [para.72]. The panel found that Ms. Pastuch sought and accepted people's investment funds under fraudulent and false pretenses, and at numerous times used these investment funds for personal instead of business purposes [para 84]. The Panel's decision was appealed to the Saskatchewan Court of Appeal and the appeal was dismissed.

[52] The foregoing decisions are sufficiently comparable to provide guidance on the nature and extent of the administrative penalty considered appropriate in the circumstances similar to those in this case. The Respondents have acted egregiously and with blatant disregard for the securities laws of Saskatchewan. They raised over $10 million from Saskatchewan investors and as a result of their fraudulent actions, hundreds of Saskatchewan residents have lost their investments. In considering the above factors in relation to the circumstances of this case, we believe that the Respondents' misconduct calls for significant protective orders to deter them and others from engaging in similar misconduct. We are of the view that there must be administrative penalties of a substantial amount in order to remove the economic incentive for misconduct and to deter others.

[53] Taking into account the considerations discussed in these reasons, the Panel finds that the $100,000 administrative penalty proposed by Staff is appropriate, proportionate and in the public interest in the circumstances of this case. In the Merits Decision, we found that each of the Respondents engaged in or participated in a course of conduct related to securities that they knew perpetrated a fraud on Saskatchewan investors and that the Respondents were fully aware that their prohibited acts would not only put investor money at risk but would also deprive investors of their money. We find that in these circumstances it is in the public interest to impose an administrative penalty of $100,000 on each of the Respondents.

Costs

4. Should the Panel order the Respondents pay costs and, if so, what amount should each of the Respondents be ordered to pay?

[54] Clause 161(1)(a) of the Act allows the Panel, after conducting a hearing, to order a person or company to pay costs of or related to the hearing if it is satisfied that the person or company whose affairs were the subject of the hearing has not complied with any provision of the Act.

[55] Subsection 161(2) of the Act outlines what costs the Panel may impose. These include:

> (a) costs incurred with respect to services provided by a person appointed or engaged pursuant to section 8, 12 or 14;
>
> (b) costs of matters preliminary to the hearing;
>
> (c) costs for time spent by the Commission;
>
> (d) fees paid to a witness.

[56] Subsection 176(1) of *The Securities Regulations* (c. S-42.2 Reg l) requires a person or company to pay to the Authority any amount set out in Table 1 of Appendix A thereto. Part 6 of Table 1 to Appendix A states:

> The costs of or related to a hearing or an investigation that the Commission may order pursuant to section 161 of the Act include the following:
>
> (a) costs for time spent by the Commission [. ..] to a maximum of $1,500.00 for each day or partial day;
>
> (b) disbursements properly incurred by the Commission or the staff of the Commission, including travel costs;
>
> (c) fees to an expert or witness, in the amount of the actual fees paid, to a maximum of $200.00 per hour for each person involved; and
>
> (d) travel costs paid to a witness.

[57] The Panel received a Final Bill of Costs dated December 31, 2018 at the Sanctions and Costs Hearing outlining costs which have been incurred as follows:

> These costs total $30,319.51 and include $7,042.70 for disbursements properly incurred by Staff of the Authority, $2,889.88 for disbursements properly incurred by the Authority, $4,211.93 for payments made to witnesses for the hearing and $16,175.00 for time spent by the Panel on this matter.

[58] Section 20.2 of Saskatchewan Policy Statement 12-602 *Procedures on Hearings and Reviews*, sets out factors that a panel may consider in exercising its discretion under section 161 of the Act. Subsection 20.2 provides:

> **20.2 Factors Considered When Awarding Costs**
>
> **20.2** In exercising its discretion under section 161 of the Act to award costs against a person, a Panel may consider the following factors:
>
> (a) whether the respondent failed to comply with a procedural order or direction of the Panel;
>
> (b) the complexity of the proceeding;
>
> (c) the importance of the issues;
>
> (d) the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;
>
> (e) whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;
>
> (f) whether any step in the proceeding was taken in an improper, vexatious, unreasonable, or negligent fashion or in error;
>
> (g) whether the respondent participated in the proceeding in a way that helped the Authority understand the issues before it;
>
> (h) whether the respondent participated in a responsible, informed and well-prepared manner;
>
> (i) whether the respondent co-operated with Staff and disclosed all relevant information;
>
> (j) whether the respondent denied or refused to admit anything that will have been admitted; or
>
> (k) any other factors the Panel considers relevant.

[59] In the Merits Decision, the Panel determined that the Respondents had not complied with the Act. We note that the allegations and finding of the Panel involved fraud, as well as a number of other significant breaches of the Act. The facts of this matter were complex and a significant amount of time was required for the hearing in order for the Panel to reach an informed conclusion. The complex structure of the entities and the transactions contributed to greater costs being incurred in this matter. The Respondents did not attend the Merits Hearing or the Sanctions and Costs Hearing and did not participate in a manner that assisted the Panel is understanding the issues before it.

[60] Having reviewed the Final Bill of Costs submitted by Staff and Staff's submissions regarding costs, and considering the above factors in relation to the circumstances of this case, we find the costs requested by Staff are reasonable and appropriate in the circumstances. Accordingly, the Respondents shall be required to pay costs of $30,319.51, for which they shall be jointly and severally liable.

Financial Compensation

[61] In the amended Statement of Allegations, Staff also requested that the Panel make an order that the Respondents pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or part, of the Respondents' contraventions of the Act, in an amount to be determined.

[62] A separate hearing will be required to deal with the issue of financial compensation, if the Director makes a request pursuant to section 135.6 for the Panel to make an order that the Respondents pay a claimant compensation for financial loss.

VIII. FINDINGS AND CONCLUSION AS TO SANCTIONS AND COSTS

[63] For the reasons stated above, we find that it is the public interest to impose the following sanctions and costs and will issue an order that provides as follows:

a) pursuant to clause 134(1)(a) of the Act, the Respondents shall be permanently banned from utilizing any and all exemptions in Saskatchewan securities laws;

b) pursuant to clause 134(1)(d) of the Act, the Respondents shall be permanently banned from trading in securities or derivatives in Saskatchewan;

c) pursuant to clause 134(1)(d.l) of the Act, the Respondents shall be permanently banned from acquiring securities or derivatives for and on behalf of residents of Saskatchewan;

d) pursuant to clause 134(1)(h)(i) of the Act, Aitkens shall resign any position that he holds as a director or officer of any issuer, registrant or investment fund manager;

e) pursuant to clause 134(1)(h)(ii) of the Act, Aitkens shall be permanently banned from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

f) pursuant to clause 134(1)(h)(iii) of the Act, Aitkens shall be permanently banned from being employed by any issuer, registrant or investment fund manager;

g) pursuant to clause 134(1)(h.l) of the Act, Aitkens shall be permanently banned

from becoming or acting as a registrant, an investment fund manager or a promoter;

h) pursuant to section 135.1 of the Act, each of the named Respondents shall pay an administrative penalty of $100,000; and

i) pursuant to section 161 of the Act, the Respondents shall pay the costs of or relating to the hearing in this matter in the sum of $30,319.51, for which they shall be jointly and severally liable.

[64] This is the unanimous decision of the Panel.

Dated at Regina, Saskatchewan on this 19th day of June, 2019.

Peter Carton (Chairperson)

The Honorable Eugene Scheibel (Panel Member)