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

In the Matter of
The Securities Act, 1988

and

In the Matter of
Francois Paul Blouin
(the Respondent)

RE: SANCTIONS AND COSTS

Hearing on:	June 18, 2021
Before:	Howard Crofts, Panel Chairperson Honourable Eugene Scheibel Norman Halldorson (referred to as the "Panel")
Appearances:	Sonne Udembga on behalf of Staff ("Staff") of the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA") No appearance on behalf of Francois Paul Blouin, as the Respondent
Date of Decision:	July 26, 2021

I. INTRODUCTION

a. Procedural Background

1. This is the Panel's decision in respect to sanctions and costs for Mr. Francois Paul Blouin ("F Blouin"). A virtual hearing in respect to sanctions and costs was held on June 18, 2021 that was consistent with the *Guidelines for Managing Hearings during a Pandemic* [*Guidelines*]. These *Guidelines* supplement and amend, to the extent necessary, Part 11 and Rule 11.1 of *Saskatchewan Policy Statement 12-602*, *Procedure for Hearings and Reviews* [*Local Policy*].

2. All parties were in attendance for the hearing on sanctions and costs except for F Blouin. F Blouin only participated at the beginning of the hearing on the merits. That said, prior to the hearing on sanctions and costs, F Blouin filed with the Registrar a submission that reiterated his position taken at the beginning of the hearing on the merits that this Panel has no jurisdiction over him as he is a "Freeman on the Land". That position was already rejected by this Panel in our decision on the merits in this matter dated April 1, 2021 [*Merits Decision*].

3. The short forms used in the *Merits Decision* are carried over and used in this decision. The background in the *Merits Decision* will not be reproduced in full in this decision, but it has been considered by the Panel in making our decisions on sanctions and costs. Facts of particular importance to the issues in this decision will be analyzed to help ensure that the sanctions and costs ordered are fair, reasonable, and proportionate.

b. Background from *Merits Decision*

4. During the merits hearing, this Panel heard evidence demonstrating that:

a. Between October 2013 to sometime in 2019, F Blouin was employed with and acted as a dealer for Tri View. In addition, F Blouin had worked in the industry for over 25 years.

b. Investors were sold shares in Olive Equity, but their investment funds were ultimately destined to be investments in various other businesses, one being a business named System Built.

c. The Olive Equity shares F Blouin sold to Tri View Clients were not a Tri View product offering, thus F Blouin sold off-book from Tri View's product offerings.

d. F Blouin did not fully understand the corporate structure or inter-corporate relationship between Olive Equity and System Built and did not explain the inter-corporate relationship to the Tri View Clients.

e. F Blouin relied on one Ricki Arshi, an executive with Olive Equity, for all regulatory matters and an explanation of the inter-corporate relationship between Olive Equity and its investment in System Built. F Blouin did no due diligence of his own in respect to these matters prior to selling the shares of Olive Equity to his clients.

5. After closing submissions at the merits hearing, this Panel issued the *Merits Decision* which held that Staff proved the allegations set out in the Amended Statement of Allegations dated October 5, 2020. The allegations are similar to, and share some key background with, the allegations advanced by Staff in a

separate matter in respect to Gaetan Blouin, a brother of F Blouin, as discussed in *In the Matter of Gaetan Daniel Blouin – Merits* (January 13, 2021), FCAA (unreported) and *In the Matter of Gaetan Daniel Blouin – Sanctions and Costs* (April 20, 2021), FCAA (unreported) [*Gaetan Sanctions*]. In particular for the present matter, Staff advanced and proved through evidence submitted in the merits hearing the following allegations:

a. F Blouin acted as a dealer and adviser for the purpose of assisting Saskatchewan residents to purchase shares of Olive Equity while not being registered as a dealer in Saskatchewan or registered as a representative of a registered dealer and acting on behalf of that dealer, thereby being in breach of subsection 27(2) of the *Act* for the time period from November 2013 to November 2014 (the "Relevant Time").

b. F Blouin sold shares to Tri View Clients during the Relevant Time and Tri View was not aware of such sales.

c. Tri View did not approve the shares of Olive Equity for sale by its representatives, which included F Blouin.

d. F Blouin was required, pursuant to section 13.3 of *National Instrument 33-109 Registration Information* [*NI 31-103*], to take reasonable steps to ensure, before he accepted an instruction from a client to buy a security, that the purchase was suitable for the client and he failed to fulfil this requirement.

e. F Blouin failed to deal fairly, honestly, and in good faith with his clients contrary to subsection 33.1(1) of the *Act* when he got his clients to sign a document that included the phrase "The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell me whether this investment is suitable for me".

f. F Blouin failed to disclose to the FCAA through the National Registration Database ("NRD") all of his current business and employment activities during the Relevant Time, in particular with regard to the sale of Olive Equity shares, when he filed his form 33-109F4 in accordance with *NI 33-109*. This was a contravention of section 4.1 of *NI 33-109*.

6. The evidence discussed, and findings made, in the *Merits Decision* help inform this decision on sanctions and costs. As noted above, the evidence discussion will not be reproduced fully in this decision but has been taken into consideration and weighed to ensure that a fair, reasonable, and proportionate decision is made.

c. Staff's Requests in respect to Sanctions and Costs in the Statement of Allegations

7. In the Amended Statement of Allegations, Staff originally asked this Panel to impose upon F Blouin the following market access prohibitions for a period of seven years:

a. cease trading in securities or derivatives (*Act*, s 134(1)(d));

b. cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan (*Act*, s 134(1)(d.l));

c. cease giving advice respecting securities, trades, or derivatives (*Act*, s 134(1)(e));

d. not be employed by any issuer, registrant, or investment fund manager in any capacity that would allow him to trade in securities or derivatives (*Act*, s 134(1)(h)(iii)); and

e. be prohibited from becoming or acting as a registrant and investment fund manager or a promoter (*Act*, s 134(1)(h.1)).

8. As a result of an additional aggravating factor that arose after the Amended Statement of Allegations was filed (as discussed below), Staff amended their submissions to request that the market access prohibitions be increased from 7 years to a permanent ban.

9. Staff has also requested an administrative penalty pursuant to section 135.1 of the *Act* in the amount of $70,000, and costs of or relating to the hearing pursuant to section 161 of the *Act* in the amount of $9,467.70.

II. SUBMISSIONS BY THE PARTIES AS TO SANCTIONS AND COSTS

a. Staff's Submissions

10. In support of the above noted requests, numerous aggravating factors were put forth by Staff, including:

a. F Blouin's conduct was serious, with an element of deception and dishonesty.

b. F Blouin mislead his clients by selling them off-book products without informing them of this fact.

c. F Blouin failed to conduct his own due diligence into the products he sold off-book to his clients.

d. F Blouin's off-book selling was intentional and he purposely did not inform his employer of the off-book nature of his sales. F Blouin knew he needed to update his business activities on the NRD in order to keep both his regulator and employer aware of his off off-book activities, but failed to do so.

e. Over approximately one year, there was a high volume of off-book sales totaling $2,120,000. Of those sales, $635,000 was to himself and his corporation, while $1,485,000 was to clients. F Blouin also received 7% commissions on the $1,485,000 sold to clients, totaling $103,950. Staff's position is that the commissions were substantial.

f. F Blouin failed to abide by his fiduciary obligations by not informing his clients that he received commissions on the products he sold off-book to them.

g. F Blouin advanced frivolous and abusive positions at the beginning of the hearing on the merits, arguing he is a "Freeman on the Land" and that, consequently, this Panel had no jurisdiction over him. As we noted in the *Merits Decision*, these pseudo-legal arguments and tactics have been referred to as "Organized Pseudolegal Commercial Arguments" ("OPCAs"). F Blouin continued to take these positions on the morning of the sanctions and costs hearing when he sent an email to the Registrar and Staff stating "I am sending this email to re-iterate my position that your agency has no authority over me, a living man, and that the rules of civil procedure do not apply to a living man or woman." Staff submits these frivolous and abusive positions are a serious aggravating factor because they demonstrate a lack of remorse and increase the risk for future harm.

11. Staff also discussed one potential mitigating factor. This is F Blouin's first regulatory proceeding, and he has not had prior warnings or rulings for violations of any securities laws by any securities regulator.

12. Staff also suggested that if F Blouin attempted to advance as a mitigating factor the fact that he and his company lost $635,000 in Olive Equity, this would not be an appropriate mitigating factor. Staff suggests that a respondent losing money in the same investments as a client is not mitigating in law and does not warrant a reduction in sanctions.

13. In support of their position that a $70,000 administrative penalty was appropriate, Staff submitted that:

a. In applying the concept of general deterrence, the Panel ought to ensure that the penalty is sufficient to serve as a preventative warning because it is within the public interest jurisdiction of securities regulators to maintain investor confidence in capital markets.

b. F Blouin's deceptive practices with his clients should result in an administrative penalty that is "more than just a simple figure for disgorgement… [that will operate as a] warning to others under the principle of general deterrence".

c. The penalty amount should not be so low that it is viewed by industry participants as simply "another cost of doing business".

d. F Blouin received commissions amounting to $103,950 and violated his fiduciary obligations in obtaining these commissions.

e. F Blouin was aware of his obligation to update his activities on the NRD yet chose not to do so.

14. Staff also filed case law to support their position on sanctions. This case law included some of the case law that Staff filed in *Gaetan Sanctions* and that the panel there analyzed and applied.

15. Regarding costs, Staff filed a bill of costs comprised of Panel member per diems and court reporter/transcription services in the amount of $9,467.70. Staff requested that F Blouin be ordered to pay these costs, but did not provide any other submissions in respect to costs.

b. F Blouin's Submissions

16. F Blouin made no appearance or representations beyond his initial presence at the commencement of the merits hearing on January 11, 2021 where he made his OPCAs, and in his June 18, 2021 email that reiterated his OPCAs and position that the FCAA has no authority over him. When his objection was raised and rejected at the commencement of the merits hearing, F Blouin continued his disruptive behavior before eventually leaving the virtual hearing altogether. After he left, F Blouin did not return for the balance of the proceedings.

III. ANALYSIS REGARDING SANCTIONS

a. Legal Framework for Sanctions

17. There are numerous decisions from this jurisdiction that set out and discuss the principles to be considered in sanctions hearings. Most recently, a panel of the FCAA reviewed these principles in *Gaetan Sanctions*:

> 19. …the primary goal of securities legislation is the protection of the investing public and maintaining the integrity of capital markets and therefore, penalties imposed by regulators for contravention of securities legislation should be focused on preventing future harm to the capital markets and investors.
>
> 20. In addition, the Panel recognizes it must ensure that the sanctions that end up being imposed are proportionate in respect to the circumstances of the matter including the responsibility of the respondent.
>
> 21. These general principles, and other more specific factors, that securities decision makers should consider when crafting sanctions have been articulated in numerous cases. For example, in *Rezwealth Financial Services (Re)* (2014), 37 OSCB 6731, the Ontario Securities Commission ("ON Commission") spoke to the law on sanctions as follows:
>
> > [46] The Commission's mandate is to: (i) provide protection to investors from unfair, improper, or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the *Act*).
> >
> > [47] The Commission has a public interest jurisdiction to order sanctions restricting respondents from participating in the Ontario capital markets in the future (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43). The Commission's role when imposing sanctions is not to punish past conduct, but to restrain "future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient" (*Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at p. 1611).
> >
> > [48] The Commission must ensure that the sanctions imposed are proportionate to the circumstances of the case and the conduct of each respondent. Factors that the Commission has considered in determining appropriate sanctions include:
> >
> > > (a) the seriousness of the allegations;
> > >
> > > (b) the respondent's experience in the marketplace;
> > >
> > > (c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

(g) the size of any profit made, or loss avoided from the illegal conduct;

(h) the size of any financial sanctions or voluntary payment when considering other factors;

(i) the effect any sanction might have on the livelihood of a respondent;

(j) the restraint any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(k) the reputation and prestige of the respondent;

(l) the shame or financial pain that any sanction would reasonably cause to the respondent; and

(m) the remorse of the respondent.

22. In this jurisdiction, in a case known as *In the Matter of Ronald James Aitkens – Sanctions Decision*, (June 19, 2019) FCAA [unreported] [*Re Aitkens*], a panel of the FCAA recently analyzed and set out similar principles as it articulated a legal framework for sanctions. The panel's review of the law is both thorough and instructive, and therefore it is helpful to quote that review in full:

> [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.*, 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.

i. Decision in respect to Market Access Prohibition Sanctions

18. Staff urges this Panel to impose various permanent market access prohibitions in light of the fact that F Blouin adopted OPCAs in these proceedings and in response to the allegations brought against him. Staff argues that because F Blouin has chosen these tactics, which are abusive and a deliberate attempt to eschew responsibility for his conduct, a permanent ban is necessary to prevent and deter future harm.

19. In *Gaetan Sanctions*, the panel analyzed some of the cases cited by Staff in the present case (at paras 26-27). At a general level, the panel noted in respect to these cases that even when there had been a finding of deception in off-book trading situations, securities decision makers rarely imposed market access prohibitions in excess of 2 years. Setting the OPCAs issue to the side for a moment, cases where market access prohibitions exceeded 2 years occurred in very serious situations (see e.g. *Re Pandelidis*, [2005] IDACD No 16 (QL) [*Re Pandelidis*] (5 year suspension with no ability to be reinstated until all monetary penalties and costs were paid, 12 months strict supervision, and 12 months close supervision) and *In the Matter of Darcy Lee Bergen – Sanctions Decision*, (October 13, 2000) FCAA [unreported] [*Re Bergen*] (10 year ban)).

20. As for permanent market access bans, this is one of the harshest non-monetary sanctions that a panel may impose. It is no surprise then that cases where permanent market bans have been imposed contain facts that are particularly egregious and where there are little to no mitigating factors. To the Panel's knowledge, while permanent bans have been requested by Staff in cases where off-book trading occurred (such as in *Re Bergen*), there has yet to be a permanent ban imposed in such cases. As will be shown

below, a permanent ban has been imposed in a different jurisdiction from Saskatchewan in a situation of off-book trading, but again the conduct in question was particularly egregious.

21. It is worthwhile to analyze some cases where permanent bans have been imposed. This will help contextualize when permanent bans are appropriate and help us decide whether a permanent ban would be fair, reasonable, and proportionate in the present case. In general, the cases tend to involve fraud, multi-million dollar trading volume, or both.

22. In this jurisdiction, we can start with *Re Pastuch et al – Decision on Sanctions,* (December 18, 2014) FCAA [unreported] aff'd 2019 SKCA 31, 51 Admin LR (6th) 226 [*Re Pastuch*]. In this case, Ms. Pastuch sought out investors under false pretenses to invest in a fraudulent scheme that she designed and operated. She made many false and misleading statements to investors over the course of the scheme. She unreasonably pressured investors and ended up defrauding them of over $5 million. When some investors became concerned, she took steps to further conceal her fraudulent actions, including by making threats. She refused to take any responsibility for her conduct and instead blamed others, including the investors, financial advisors, FCAA investigators, and even the panel in the case. She showed no remorse whatsoever and the panel found that there were no mitigating factors weighing in her favour. During the hearing, she also consistently and deliberately engaged in abuses of process that greatly extended the length and complexity of the proceedings and that were intended to derail the proceedings. A permanent ban was imposed along with the maximum administrative penalty available of $100,000.

23. Another case from this jurisdiction is *In the Matter of Ronald James Aitkens – Sanctions Decision*, (June 19, 2019) [unreported] [*Re Aitkens*]. Mr. Aitkens intentionally perpetrated fraud through three different projects on hundreds of Saskatchewan investors, depriving them of over $10 million. He traded in securities without being registered to do so and made material misrepresentations to the investors. The panel found numerous breaches of the *Act*, including fraud contrary to section 55.1. Mr. Aitkens conduct was described as very serious and egregious. The conduct harmed the integrity and reputation of capital markets in Saskatchewan, resulting in a loss of confidence in those markets. The panel also noted that there were no mitigating factors. Mr. Aitkens failed to appear at the hearing, took no responsibility for his actions, and demonstrated no remorse. In addition, Mr. Aitkens had prior regulatory proceedings brought against him in Alberta, where he was also found to have committed a fraud. Considering all these factors, the panel in *Re Aitkens* imposed a permanent ban and the maximum administrative penalty of $100,000.

24. Yet another case from this jurisdiction is *In the Matter of Tri-Link Consultants Inc.*, (April 21, 2009) (Saskatchewan Financial Services Commission) [unreported] aff'd 2012 SKCA 41, 393 Sask R 90. The respondents in the case entered into an agreed statement of facts establishing that 67 Saskatchewan investors lost approximately $4.4 million as a result of the respondents' conduct. The respondents admitted

that they did not deal fairly, honestly, or in good faith with the investors, including by investing their clients' funds in high risk investments that were not suitable for them. Moreover, the respondents made misleading statements to the investors and used some of the funds to pay for their own personal matters. The situation was described by the Panel as "very serious" and a permanent ban was imposed along with a $100,000 administrative penalty. The respondents appealed, arguing they were denied procedural fairness and natural justice. The appeal was dismissed with the Court of Appeal stating that even if there was merit to the procedural complaints (which the Court held there was not), the result would have been the same as the respondents admitted their wrongdoings in the agreed statement of facts.

25. A final case we will review from this jurisdiction is *In the Matter of Fred Louis Sebastian* (July 23, 2015) FCAA [unreported] [*Sebastian*]. This case did not involve the high dollar amounts found in the other cases just discussed, but did involve fraud with reprehensible predatory conduct inflicted on a vulnerable elderly investor. Mr. Sebastian solicited $47,000 from the investor to invest in a certain company, but in reality he had no intention of investing the money at all. The $47,000 represented a significant portion of the investor's assets, such that the loss of it all resulted in significant financial hardship for the investor. The panel stated that Mr. Sebastian's actions "[w]ere a deliberate attempt to gain the confidence of a trusting, elderly individual with limited investment experience for the purpose of personal enrichment. … He acted without conscience, not appearing to care that his actions would cause significant economic loss and emotion distress." (at 8). Mr. Sebastian also did not appear at the hearing and the panel found no mitigating factors were present. A permanent ban was imposed along with a $75,000 administrative penalty.

26. One other case worthy of note where a permanent ban was imposed is *Re Noronha*, 2017 IIROC 16. This was the only case filed by Staff in *Gaetan Sanctions* where a permanent ban was imposed for off-book trading by a registrant, and it is a case from outside this jurisdiction. For over two and half years, the respondent in the case sold off-book and concealed his activities from his employer. The volume of off-book sales was approximately $5.4 million, with the respondent receiving $669,500 worth of commissions. Conflicts of interest were involved in the sales and the respondent intentionally profited off, and concealed, these conflicts of interest. When his employer inquired into his off-book trading, he denied it, lied about the compensation he was receiving, and then actively took steps to subvert his employer's investigation. He also had prior regulatory issues where sanctions had been ordered against him. He did not appear at either the merits or the sanctions hearing and did not show any remorse. A permanent ban was imposed along with other sanctions (some of which are not available in this jurisdiction).

27. After F Blouin adopted OPCAs during the hearing on the merits, Staff sought out and was able to locate two decisions where pseudo-legal positions and OPCAs were a part of regulatory proceedings. Both cases involved disciplinary proceedings brought against lawyers due to the fact that they repeatedly

advanced shocking and radical pseudo-legal positions in their practices. To better understand the seriousness of these cases, we will summarize the details of both in turn.

28. The first case is *Law Society of Upper Canada v Hosein*, 2015 ONLSTH 218. The lawyer involved in this case sent disrespectful correspondence riddled with OPCAs to three different judges of the Ontario Superior Court. In one letter, the lawyer purported to make the judge liable to her for damages. In correspondence to a different judge, the lawyer claimed to be one of her clients and then advanced pseudo-legal arguments and OPCAs in the correspondence. Eventually, the Law Society of Upper Canada was made aware of the lawyer's conduct and launched an investigation. The lawyer used pseudo-legal tactics in the face of the investigation and failed to cooperate. The lawyer's seriously disrespectful conduct was found to be conduct unbecoming. The lawyer offered no explanation for her radical behaviour and did not show remorse. At the time of the disciplinary hearing however, the lawyer changed course somewhat by cooperating with the tribunal and agreeing to a joint submission wherein she was granted permission to resign rather than have her license terminated.

29. The second case is *Law Society of Ontario v Bogue*, 2019 ONLSTH 53. This was an application by the Law Society of Ontario for an interlocutory suspension of a lawyer's licence due to incompetence or incapacity. In his litigation practice, the lawyer repeatedly engaged in bizarre behaviour of the pseudo-legal and OPCA variety. A sample of this behaviour was set out in the introduction of the decision as follows:

> 5 The [Law Society of Ontario] submits that, in several litigation files, the Lawyer has repeatedly advanced far-reaching yet unsupported theories and arguments, many of them centring on elaborate conspiracies involving the Vatican. The Lawyer's legal positions frequently misunderstand substantive law and the nature of the Canadian legal system. The Lawyer has sought to appeal a decision of the Supreme Court of Canada to a fictional tribunal, he has argued that the United States Constitution applies to Canada, and he has claimed that the Canadian government has no jurisdiction because it is just a corporation traded on the New York Stock Exchange. The Federal Court found that his arguments fit the definition of an [OPCA] within the meaning of *Meads v. Meads*, 2012 ABQB 571. In reliance on these theories, the Lawyer has proceeded to sue several judges, opposing counsel and their firms, and numerous other parties.

There were numerous other examples that taken together led the panel to hold that there were reasonable grounds to believe the lawyer posed such a significant risk of harm to the public that an interlocutory suspension prior to a hearing was necessary (at paras 68-71).

30. Having carefully reviewed and considered all the above cases, this Panel does not believe the present matter is comparable to them. This case is not one of fraud and while the volume of off-book sales is serious and significant, it does not reach the amounts in the majority of the cases reviewed above. This

matter is also not akin to the two cases cited by Staff involving lawyers, where those lawyers, who took an oath as officers of the court to never advance frivolous or vexatious proceedings, repeatedly advanced vexatious and abusive pseudo-legal positions such that their conduct became the very basis for regulatory proceedings and suspensions. In addition, and unlike the above cases, there are mitigating factors present in this case that must weigh in our analysis.

31. With that said, and the lawyer cases notwithstanding, the present case does have a key aggravating factor that the securities based cases do not. F Blouin chose to adopt OPCAs during the hearing on the merits in response to the allegations, which is concerning and also needs to be weighed in the sanctions analysis as it increases the potential for future harm. Any sanctions imposed need to be significant enough to help prevent and deter that future harm. However, it is also important to consider the OPCA issue in context so that we do not overemphasize this factor such that it renders meaningless all the other relevant factors that the Panel must consider and weigh, including any mitigating factors.

32. Perhaps the best comparable case we have, and therefore the best starting point for this sanctions decision, is *Gaetan Sanctions*. As previously noted, *Gaetan Sanctions* shares many of the same background facts as the present case. The same off-book trading occurred in respect to the same securities. Differences between *Gaetan Sanctions* and this case include a higher volume of trading in this case which resulted in higher commissions for F Blouin, and F Blouin employed OPCAs while Gaetan Blouin approached his hearing in a commendable manner, ultimately admitting his wrongdoings and conceding the allegations brought against him. Another difference is that there were more mitigating factors present in *Gaetan Sanctions*, including acknowledgment of wrongdoing and demonstrations of remorse. On the other hand, an important difference between the two cases in F Blouin's favour is that Gaetan Blouin was found to have made false statements under oath to an FCAA Investigator during an interview. No such allegation was made or proven in respect to F Blouin.

33. Staff relied in part on the false statement in *Gaetan Blouin* to argue for 7 year market access prohibitions, a length of time that well exceeded the length of prohibitions in the cases cited by Staff. After consideration of the various relevant factors, including aggravating and mitigating factors, the panel in *Gaetan Sanctions* imposed a 36 month market access prohibition. In the present case, prior to F Blouin advancing OPCAs, Staff asked for the same length of time for market access prohibitions as they did in *Gaetan Sanctions*, namely 7 years. Staff, therefore, after they did their own assessment of the various sanctions factors, seems to have formed the view that both cases warranted the same length of time for market access prohibitions. While we would have disagreed with Staff on the length of the prohibitions that would have been appropriate had F Blouin not adopted OPCAs, we would have agreed with Staff that it

would have been appropriate to impose largely equivalent market access sanctions as those imposed in *Gaetan Sanctions*.

34. With an eye to the sanctions in *Gaetan Blouin* then, 36 months is an appropriate starting point for this case. But this length of time should be adjusted for the fact that F Blouin has recently adopted, and appears to have continued to adopt, OPCAs (which again creates a concern of future harm that needs to be prevented and deterred since F Blouin is refusing to recognize the FCAA's authority and the rule of law), and for the fact that the present case involves less mitigating factors.

35. As for mitigating factors, we agree with Staff that the fact this matter is the first regulatory issue F Blouin has faced is mitigating. In fact, it is our view that this is an important and significant mitigating factor considering that F Blouin had worked in the industry for over 25 years. Therefore, prior to the within matter, F Blouin built up a long history of conduct demonstrating an ability to comply with regulatory frameworks that governed him.

36. This brings us back to the OPCA issue for F Blouin. It is important to understand *when* F Blouin began adopting OPCAs as this will help contextualize the issue. At a preliminary conference call to schedule the hearing on the merits, F Blouin attended and showed no signs of having adopted any OPCAs. As the hearing date approached, F Blouin sought an adjournment for personal reasons and that adjournment was granted. Again, during this adjournment proceeding, F Blouin showed no signs of having adopted any OPCAs. He was respectful of the process and engaged with the Panel and the issues in an appropriate manner. It was only on the morning of the hearing of the merits that F Blouin's approach changed through the advancement of OPCAs. One can only speculate as to why F Blouin went down the OPCA path, but in context it appears to have been more of a last minute strategy. This strategy was misguided and an abuse of process to be sure, but considered in context, including against the backdrop of over 25 years of compliance within a regulatory framework without issue (as compared to the two lawyer cases decided above where the OPCAs formed the very basis of the disciplinary proceedings), we are not willing to conclude that F Blouin's recent adoption of OPCAs means he is inevitably unable to comply with regulatory requirements in the future. The OPCAs raise concerns that must and will be properly addressed but, taken in context they should not result in a permanent ban or an administrative penalty that is excessive compared to other relevant cases.

37. Taking all of this into account, including the various cases cited by Staff and analyzed in *Gaetan Sanctions*, and after weighing all the relevant factors, the Panel believes it is fair, reasonable, proportionate, and in the public interest to impose the market access prohibitions requested by Staff, but for a period of **60 months** as opposed to permanently. Moreover, as was ordered in *Re Pandelidis*, the Panel believes it

is in the public interest to impose as a condition pursuant to section 134(1) that F Blouin not be eligible to reapply to be a registrant until he has paid in full the administrative penalty and costs orders (see below).

ii. Decision in respect to Administrative Penalty

38. The law regarding administrative penalties has also been set out in numerous cases, including recently in *Gaetan Sanctions* as follows:

> 37. Section 135.1 of the *Act* provides authority to impose an administrative penalty up to a maximum amount of $100,000 when it is in the public interest to do so. The relevant provisions read:
>
> > 135.1(1) The Commission may make an order pursuant to subsection (2) where the Commission, after a hearing:
> >
> > > (a) is satisfied that a person or company has contravened or failed to comply with:
> > >
> > > > (i) Saskatchewan securities laws; … and
> > >
> > > (b) considers it to be in the public interest to make the order.
> >
> > (2) In the circumstances described in subsection (1), the Commission may order all or any of the following:
> >
> > > (a) that the person or company pay an administrative penalty of up to $100,000;
> > >
> > > …
>
> 38. The Supreme Court of Canada discussed this "public interest" jurisdiction as well as how the concept of general deterrence may be taken into account in relation to administrative penalties in securities matters in *Cartaway Resources Corp. (Re)*, 2004 SCC 26, [2004] 1 SCR 672. The Court held that because sanctions, such as administrative penalties, are regulatory in nature, they need to be aimed at preventing future harm rather than punishing prior conduct. General deterrence is an important consideration in crafting orders in this regard. The Court reasoned:
>
> > 58 "Public interest" is not defined in the Act. This Court considered the scope of a securities commission's public interest jurisdiction in *Asbestos*, *supra*. At issue in *Asbestos* was the Ontario Securities Commission's jurisdiction to intervene in Ontario's capital markets, for purposes of protection and prevention, if it is in the public interest to do so pursuant to s. 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5. This Court held that the discretion to act in the public interest is not unlimited. In exercising its discretion, the Commission should consider "the protection of investors

> and the efficiency of, and public confidence in, capital markets generally" (Asbestos, supra, at para. 45). Because s. 127 is regulatory, its sanctions are not remedial or punitive, but rather are preventative in nature and prospective in application. As a result, this Court held that s. 127 could not be used to redress misconduct alleged to have caused harm to private parties or individuals: *Asbestos*, *supra*, at paras. 41-45. It should be observed that our Court was not considering the function of general deterrence in the exercise of the jurisdiction of a securities commission to impose fines and administrative penalties nor denying that general deterrence might play a role in this respect.
>
> …
>
> 60 In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos*, *supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para. 125).

39. As such, administrative penalties may be imposed to encourage future compliance with the *Act* and *Regulations* and to deter others from future misconduct. While administrative penalties cannot be punitive, retributive, or denunciatory in nature, and cannot be focused on punishing past conduct, they can be imposed to help protect the public through general and specific deterrence (*Thow v British Columbia (Securities Commission)*, 2009 BCCA 46 at para 38, 90 BCLR (4th) 36).

40. It has also been held that when considering the amount of an administrative penalty, the amount should not be so low that it would "amount to nothing more than another cost of doing business." (*Alberta (Securities Commission) v Brost*, 2008 ABCA 326 at para 54, 440 AR 7 [*Brost*]).

…

42. Since administrative penalties are also a type of sanction, the sanction factors set out above can be weighed and considered. In addition, we must ensure that the administrative penalty that is ordered is reasonable and proportional.

39. As for relevant case law regarding administrative penalties, some of the cases cited by Staff were analyzed in *Gaetan Sanctions* (at para 43). Staff requested a $65,000 administrative penalty in that case, but after reviewing the case law, and additional case law such as *Re Bergen* that involved more serious off-book trading conduct and resulted in an administrative penalty of $50,000, the panel ordered an

administrative penalty of $32,500. For the same reasons as above in respect to the length of the market access prohibitions, a $32,500 administrative penalty in this case is an appropriate starting point. Also, for the same reasons as above, this amount should be adjusted to take into account F Blouin's use of OPCAs as this conduct creates an increased risk to the public for future harm. In addition, alongside the other sanctions, the amount ordered needs to provide an appropriate level of deterrence, both general and specific, to help insure the public and capital markets are protected. The amount ordered should also account for the fact that the present case has less mitigating factors that in *Gaetan Sanctions*.

40. Having considered all of the above, the Panel believes it is in the public interest for F Blouin to pay an administrative penalty in the amount of **$40,000.**

IV. ANALYSIS REGARDING COSTS

41. In *Gaetan Sanctions*, the panel cited in part to *Re Aitkens* for the law on costs as follows:

> 46. Section 161 of the Act outlines the scope of the Panel's authority in respect to ordering costs. The ordering of costs is discretionary as is the amount ordered. In Re Aitkens, a panel of the FCAA set out various factors that may be considered by a panel in exercising its discretion in respect to costs. Citing to the Act, The Securities Regulations, c S-42.2 Reg 1 [Regulations], and the Local Policy, the panel stated:
>
> > [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 I) 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.
> >
> > …

[58] Section 20.2 of [the Local Policy] 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.

42. The panel also noted that decision makers have on occasion reduced the amount of costs when ordering full costs could "'negatively impact' the potential for eligible investors to collect financial compensation" (citing *Re Pastuch*).

43. Staff has requested costs in the amount of $9,467.70 and supported this request with a bill of costs. The $9,467.70 is made up of Panel Member per diems ($5,700) and Court Reporter/transcription costs ($3,767.70). Unlike in *Re Bergen* where the costs requested by Staff were reduced in part because there was overlap in time spent on the investigation between various respondents, Staff has not requested any costs relating to the investigation in this matter. As such, there is no overlap in costs between this proceeding and the related proceeding regarding F Blouin's brother Gaetan Blouin.

44. In *Gaetan Sanctions*, the panel reduced the costs requested by Staff in large part due to Gaetan Blouin's overall professional and cooperative approach throughout the proceedings. The panel described Gaeton Blouin's approach to his proceedings as follows:

> 53. …G Blouin conducted himself throughout these proceedings in a professional manner. He did not cause delay in the proceedings. He did not operate in any improper, vexatious, unreasonable, or negligent manner. He did not try to obstruct the proceedings and was cooperative. He made appropriate concessions and, as already noted, admitted responsibility for his actions. He also attended the proceedings virtually and in a prompt fashion. In general, G Blouin's approach to and conduct during the proceedings was reasonable.

45. By contrast, F Blouin's approach to these proceedings has not been professional or cooperative. Instead, his decision to employ OPCAs was obstructive, disruptive, abusive, and disrespectful to the hearing process. He caused unnecessary delay when he objected to the Panel's jurisdiction on frivolous grounds and continued his spurious tactics even after the Panel rejected them in the *Merits Decision*. The

continuation of this conduct is evidenced by the email he sent to the Registrar early in the morning before the hearing on sanctions and costs commenced. Unlike Gaetan Blouin, F Blouin did not make any admissions or concessions in these proceedings. He also did not attend the proceedings except for the very beginning of the hearing on the merits where, again, he engaged in obstructive and abusive conduct. His appearance did not assist the Panel in any way. Instead, his tactics ended up adding needless time and expense to this matter.

46. With this in mind, the Panel orders F Blouin to pay **$8,500** in costs related to this proceeding. While we are of the view that F Blouin's OPCA conduct was so serious that an order of full costs is available, we have reduced the costs requested by Staff by approximately $1,000 for the reason mentioned in *Re Pastuch*, namely in an effort to have the costs order not negatively impact the potential for investors to be paid financial compensation.

V. SUMMARY OF SANCTIONS AND COSTS

47. For all of the foregoing reasons, the Panel orders that F Blouin:

a. be prohibited from all of the activities listed at paragraphs 7(a) to 7(e) above in Saskatchewan for 60 **months** and, as a condition pursuant to section 134(1) of the *Act*, not be eligible to be reinstated as a registrant until the administrative penalty and costs orders are paid in full;

b. pay an administrative penalty in the amount of **$40,000**; and

c. pay costs of or related to these proceedings in the amount of **$8,500**.

48. What remains in this matter is Staff's request that F Blouin pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondent's contraventions of Saskatchewan securities laws. The Panel directs that this issue be the subject of a future hearing in accordance with the procedures set out in Part 13 of the *Local Policy*.

49. This is a unanimous decision of the Hearing Panel.

Dated at Regina this 26th day of July, 2021.

_”Howard Crofts”_____
Howard Crofts, Hearing Panel Chairperson

_”Norman Halldorson”_____
Norman Halldorson

__”Honourable Eugene Scheibel”_____
Honourable Eugene Scheibel