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

In the Matter of

***The Securities Act, 1988*, SS 1988-89, c S-42.2** ("the *Act*")

And

In the Matter of

Edna Keep

and

3D Real Estate Investments Ltd.

(Collectively referred to as the "Respondents")

RE: SANCTIONS AND COSTS

Hearing on:	April 28, 2022 (virtual via WebEx)
Before:	Norman Halldorson (Panel Chairperson)
	Peter Carton (Panel member)
	Honourable Eugene Scheibel (Panel member)
	(Collectively referred to as the "Panel")
Appearances:	Connor Smith (Counsel for the Securities Division of the Financial and Consumer Affairs Authority of Saskatchewan ("Securities Counsel")
	Edna Keep (Self represented and for 3D Real Estate Investments Ltd. ("3D"))
Date of Decision:	August 9, 2022

I. INTRODUCTION

a. Procedural Background

1. This Panel released its decision on the merits in this matter on March 07, 2022 (the "Merits Decision"), and this is the Panel's decision in respect to sanctions and costs. The Panel held a virtual hearing on sanctions and costs on April 28, 2022, and Edna Keep appeared and participated in the hearing on behalf of herself and 3D. In her Rebuttal to the Statement of Allegations dated November 1, 2021, Ms. Keep agreed that she was the directing mind of 3D.

2. In the Merits Decision, we set out the background to this matter including testimony and exhibit evidence the Panel received during the hearing on the merits, and the Panel has taken these into account

in considering the issues of sanctions and costs. In this decision, the Panel will analyze and discuss facts that are of particular importance to crafting sanctions and costs orders that are proportionate in the circumstances, having regard to the need to protect investors and to foster fair and efficient capital markets.

b. Background from Merits Decision

3. The Statement of Allegations issued by Staff on July 15, 2021, alleged breaches of the *Act* by the Respondents as a result of real estate investments in Regina, Saskatchewan.

4. The Panel found the Respondents are experienced with group real estate investments where the target property is identified by the promoter, the terms of acquisition are negotiated with the seller, the financing is arranged (including vendor financing) and investors are sought to raise sufficient cash to bridge the gap between available commercial mortgage financing and the purchase price of the property.

5. Also, the Panel found the Respondents acted as the promoter for two real estate investments. The promoter was responsible for overseeing all aspects of management of the residential rental properties, and the cash investors were passive unless required to fund cash calls proportional to their ownership interest. The group investment was structured whereby the rights and responsibilities of the participants were documented in a joint venture agreement, title to the property was held in a bare trustee corporation, with beneficial ownership belonging to the joint venture participants in proportion to their respective interests in the joint venture. The promoter's interest was in recognition for their contributions in kind, and the investors' interest was based on the amount of cash invested. The cash investors were to be repaid in installments, with the remaining balance paid at the end of the term when mortgage refinancing was to be in place, at which time they would retain their proportional interest of the property. While there were a number of other investors, only Investors 1 and 2 testified at the Merits Hearing.

6. In the Merits Decision, we found that:

a. The Respondents were the promoter for two group real estate investment opportunities in Regina, Saskatchewan that Investors 1 and 2 invested in.

b. One property is located at 2221 Robinson Street ("Robinson") and the second property is located at 27 Vaughn Street ("Vaughn") in Regina, Saskatchewan (collectively, the "Investment Properties").

c. For both Investment Properties, Ms. Keep engaged in marketing activities including preparing marketing materials and speaking at a client appreciation night where real estate investments were discussed.

d. These marketing activities attracted passive cash investors.

e. Titles to the Investment Properties were held in the name of bare trust numbered companies with ownership interests issued according to the terms of joint venture agreements (the "Joint Venture Agreements").

f. Investors 1 and 2 provided cash in exchange for a proportional interest in each joint venture.

g. The Respondents, as promoter, provided the essential managerial efforts to turn a profit, including identifying the target properties, negotiating the terms of acquisition, and arranging for financing.

h. The Respondent 3D was engaged to actively manage the Investment Properties.

i. The sale of these joint venture interests fell outside of Ms. Keep's approved activities as a registered representative of Pinnacle Wealth Brokers, and that she was therefore not acting on behalf of Pinnacle Wealth Brokers while selling these joint venture interests.

7. Based on the above, the Panel found that the Respondents contravened subsections 27(2)(a) and 58(1) of the *Act* in respect of Investors 1 and 2, both of whom invested in the Investment Properties through the Joint Venture Agreements.

8. The following allegations in the Statement of Allegations were not proven, namely: allegations of breaching unknown sections of *National Instrument 31-103* (Allegations 1, 7, 22, and 23), two allegations of giving an undertaking as to the future value of a joint venture agreement pursuant to subsection 44(2) of the *Act* (Allegations 2 and 8), two allegations of breaching unknown sections of *National Instrument 45-106* (Allegations 5 and 10), an allegation of fraudulent misrepresentation pursuant to subsection 55.11(1) of the *Act* (Allegation 3), an allegation of acting as an unregistered advisor with respect to the Vaughn Street investment (Allegation 6), allegations of acting as both an unregistered advisor and an unregistered dealer with respect to promissory notes (Allegations 22 and 23), an allegation of securities fraud pursuant to section 55.1 of the *Act* (Allegation 24), and ten further allegations for which no evidence was called (Allegations 11-21). The Panel dismissed all the allegations listed in this paragraph.

II. SUBMISSIONS BY THE PARTIES

a. Securities Counsel's Submissions

9. In written and verbal submissions, Securities Counsel submitted that the only mitigating factor in the Respondents' favour was the absence of a prior record of violations or other wrongdoing under the *Act*.

10. Securities Counsel further submitted that this matter involved several aggravating factors, notably:

a. Ms. Keep's experience as a registrant for more than a decade should have caused her to recognize that raising money from the public is regulated.
b. The Respondents' conduct was deliberately planned and prolonged and as such was full-blown unregistered dealing. These were not technical or mild breaches.
c. The potential for enrichment of the Respondents was substantial due to the high percentage ownership in the joint ventures (47.5% in Robinson and 38.788% in Vaughn).
d. The amount of capital raised from Investors for the two properties was substantial ($1,200,000).
e. The harm suffered by Investors 1 and 2 was significant.
f. The Respondents failed to inform Investors 1 and 2 of all the risk factors associated with real estate investments.
g. The knowledge imbalance between the experienced Respondent, Ms. Keep, and the inexperienced Investors made the Investors vulnerable.
h. The Respondents did not accept responsibility for wrongdoing and showed no remorse.
i. The Respondents would pose a significant risk to investors should they be permitted to continue participating in capital markets.

11. In written submissions at the Merits Hearing, Securities Counsel sought an order that the Respondents be permanently banned from the Saskatchewan securities markets in all capacities and the maximum available administrative penalty of $100,000.00 payable on a joint and several basis. At the Sanctions Hearing, Securities Counsel requested the following:

a. All of the exemptions in the *Act* not apply to the Respondents for a period of 10 years;
b. The Respondents shall cease trading in securities and derivatives in Saskatchewan for 10 years;
c. The Respondents shall cease acquiring securities and derivatives for and on behalf of residents in Saskatchewan for 10 years;
d. The Respondents shall cease giving advice respecting securities, trades, and derivatives in Saskatchewan for 10 years;
e. The Respondents be prohibited from being employed by any issuer, registrant, or investment fund manager in any capacity that would allow them to trade in securities or derivatives in Saskatchewan for 10 years;
f. The Respondents be prohibited from becoming or acting as a registrant, an investment fund manager, or a promoter for 10 years;
g. The Respondents be jointly and severally liable for a $60,000 administrative penalty; and
h. The Respondents be jointly and severally liable for $11,000 in costs.

12. In support of their position, Securities Counsel provided numerous cases which, in general, provide support for the following propositions:

a. Unregistered trading and distributions without a prospectus are inherently serious breaches of the *Act* (*Re Cook*, 2017 BCSECCOM 260, at para. 14);
b. Registered and formerly registered market participants are expected to understand securities regulations (*MRS Sciences Inc. (formerly Morningside Capital Corp.) et al.,* 2014 ONSEC 14, at para. 88(b));
c. Carelessness and or recklessness in meeting securities regulations is an aggravating factor even without intentional breaches (*Re Wireless Wizard,* 2015 BCSECCOM 443, at para. 17);
d. Failure to understand and accept responsibility for breaches is an aggravating factor (*1205676 Alberta Ltd., Re*, 2010 ABASC 544, at paras. 5, 27-29, 67, 73, and 97);
e. A prolonged pattern of breaches is more serious than an isolated incident (*Mohinder Ahluwalia*, 2013 ONSEC 1, at para. 41); and
f. Personal financial gain or receipt of a benefit by those who breach the *Act* is an aggravating factor (*1205676 Alberta Ltd., Re*, 2010 ABASC 544, at paras. 31, 61, 68, 71, 75, and 78).

b. Respondents' Submissions

13. In written and verbal submissions, the Respondents submitted that:

a. They relied on professional advice from real estate lawyers, and the lawyers were the ones who told them that with joint ventures, the joint venture agreement superseded anything to do with the Securities Commission, and there was no requirement to file a prospectus.
b. Ms. Keep's history of complying with all requirements for all the years she was a registrant should show that if she had any indication she needed to file a prospectus, she would have done so.
c. Investors 1 and 2 understood contributions in kind to a joint venture in return for ownership by the promoter. Investor 2 testified that he was familiar with this practice from his work experience in the mining industry.
d. The Respondents took all the risks of ownership of both properties prior to investor participation, and thereafter, proportional to their percentage ownership.
e. The Respondents guaranteed the whole Vaughn mortgage when investors refused to guarantee their share.
f. The Respondents' efforts to sell the Vaughn property were thwarted by investors not paying their share of the cash calls.

g. The Respondents gave up their ownership in the Robinson property as part of a negotiated agreement with investors, as they felt that was the best way for investors to recoup their investment.
h. Investors 1 and 2 signed documents for the Exempt Market Products they invested in saying they were sophisticated investors willing to take risks.
i. The investors were aware of the risks as they all own real estate in one form or another.
j. The Respondents believe a $60,000 administrative penalty is excessive. They submit it should be zero.

14. Ms. Keep also made submissions at the Merits Hearing to the effect that if the Panel identified problems with the Respondents' behaviour, the Respondents would be prepared to follow the Panel's directions in the future with respect to compliance with the *Act*. More is said on this below.

15. The Respondents did not cite any cases or legal authorities in support of their submissions, including in respect to the appropriate sanctions for the violations of the *Act* as found in the Merits Decision.

III. DECISION OF THE PANEL

16. Having considered all the written and oral submissions of the parties, the circumstances of the Respondents' contraventions, and aggravating and mitigating factors noted in section IV below, the Panel orders the following market access sanctions, administrative penalty and costs on the Respondents:

a. The Respondents are banned, as detailed below, from participation in the securities industry for a period of 4 years.
b. The Respondents are liable to pay an administrative penalty of $30,000.
c. The Respondents are liable to pay costs of the hearing in the amount of $8,700.

17. Our analyses and reasons for the above are as follows:

IV. ANALYSES AND REASONS FOR THE PANEL'S DECISIONS

a. Legal framework and sanctions

18. The primary goals of securities legislation are protecting the investing public and maintaining the integrity of the capital markets. Therefor, penalties imposed by regulators for contraventions of securities legislation should be focused on preventing future harm to the capital markets and investors. Any sanctions

that are imposed must be proportionate in respect to the circumstances of the matter, including the culpability of a respondent: *Blouin (Re)*, 2021 CanLii 142785 (SK FCAA) at para. 17.

19. In determining the proportionate sanctions, the applicability and importance of the following factors will vary according to the facts and circumstances of the case:

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 Respondents were 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.

20. We note that during the Merits Hearings, the Respondents submitted as follows: "*we're happy to comply with any rulings that come up that say, you know, we have to file some document ahead of doing any joint venture agreements … if there's some changes that need to happen going forward with our deals, we – we definitely can -- can comply with that if we know what that – what that actually is…*"[1]. By this, it seems the Respondents are arguing that some form of compliance direction from the Panel would be the appropriate remedy for their violations of the *Act*. We noted earlier that the Respondents submitted that no administrative penalty should be imposed. The Respondents did not provide any authority to support their position, and we are also unaware of any authority indicating that their position on sanctions would be appropriate for the types of infractions we are dealing with here.

21. We note that a "reprimand" and "compliance order" were issued in *Genus Capital Management Inc (Re)*, 2012 BCSECCOM 151 ("*Genus*"). The facts of that case, however, are so far removed from our present circumstances that it is not at all persuasive. In *Genus,* the respondent had been operating in the capital markets under a general exemption order for over a decade. Following an amendment to the

[1] Transcript of Proceedings, November 25, 2021, page 509 line 15 through page 510 line 9.

relevant securities legislation, the regulator warned the respondent that after a reasonable transition period, the exemption order would be revoked. Four (4) years after this warning, the order was revoked, and the revocation was communicated to the respondent's chief compliance officer. After receiving notification that the exemption order had been revoked, the respondent raised hundreds of millions of dollars as though it was still exempt from the statutory requirements. Two years later, a routine audit revealed the respondent's failure to comply with the securities legislation. The respondent then fully cooperated with the regulator's investigation, admitted all wrongdoing, made all outstanding filings and paid all outstanding fees, entered into a settlement agreement without a hearing, undertook to pay a $90,000 administrative penalty, and implemented changes to its practices and procedures to ensure future compliance. There was no evidence that any investor lost money as a result of the Respondent's non-compliance with the securities legislation. In *Genus,* the panel approved the settlement agreement, issued a written reprimand, and directed the respondent to further revise its compliance practices and procedures. We do not see a parallel between *Genus* and the present case.

22. On the other hand, as discussed below, there are a number of cases that have imposed significant sanctions in circumstances similar to the one we have here. We are of the view that directing the Respondents to simply comply with the *Act*, without an administrative penalty, would be inappropriate in the circumstances.

i. Market access prohibitions

23. Acting as a dealer while not registered to do so and trading in securities without filing a prospectus are serious violations of the *Act*. These statutory requirements are fundamental to ensuring investors are only offered suitable products with sufficient information to enable them to make informed investment decisions. The conduct is especially concerning in this case due to Ms. Keep's experience as a registered representative of an exempt market dealer. On her own evidence, Ms. Keep indicated that she had 20 years' experience in the industry. She should have known any product not sold under Pinnacle Wealth Brokers' exempt market dealer license will require its own license and prospectus requirements. Off-book dealing is serious conduct and has a tendency to harm the integrity of Saskatchewan's capital markets.

24. The Panel also considers the amount of funds raised in these joint ventures to be an aggravating factor. $1,200,000 is a high volume in our capital market, especially because this amount was raised from four couples, or 8 total investors.

25. The Panel heard the Respondents' argument that they relied on professional advice from real estate lawyers. However, Ms. Keep was a registrant for many years. She should have known relying on an advisor does not relieve her of her own responsibilities when soliciting investments from the public. Moreover, we expressly rejected the Respondents' assertions that all their joint ventures used the same agreement, and that their legal advisors never mentioned a filing or registration requirement: see para. 18

of the Merits Decision. At the end of the day, it was the Respondents' responsibility to ensure they were compliant with the *Act*, and the Respondents' "conduct falls far short of the due diligence required by anyone raising funds in the … capital markets, particularly a … registrant who should have known better": *Re Waters,* 2014 BCSECCOM 369, at para. 14. We consider this to be an aggravating factor.

26. On the other hand, the fact that this is the first time either Respondent has been called to answer allegations of breaching the *Act* is mitigating. Ms. Keep's lengthy career in the securities industry without incident is particularly mitigating.

27. In written submissions, Securities Counsel argued that Investors 1 and 2 have suffered serious harm because their house was subject to a Home Equity Line of Credit used to finance the purchase of the joint venture interests, and because participating in the joint ventures put their quality of life in retirement at risk. The factual basis for these two arguments was not included in the Statement of Allegations. The evidence lead in chief by both Investors 1 and 2 at the Merits Hearing clearly established that the harm, if any, caused by the Home Equity Lines of Credit is properly attributable to the conduct of a person other than the Respondents. As such, there is insufficient evidence on the record to quantify any harm caused to Investors 1 and 2, as argued by Securities Counsel, or to let us know how it may have financially affected Investors 1 and 2 in their retirement.

28. Securities Counsel also argued, in written and verbal submissions, that the Respondents positioned themselves to potentially "reap" significant financial gain. This position is unfounded and irrelevant. At the Merits Hearing, we heard uncontradicted evidence, from Investors 1 and 2 as well as the Respondents, that the Respondents transferred their joint venture interest in Robinson to the investors. Investor 2 expressly acknowledged that the Respondents have "not won anything on these deals."[2] No doubt, the Respondents intended to obtain significant financial gains. As a matter of fact, however, they did not. The factor for our consideration here is the extent to which the Respondents were actually enriched. The extent to which the Respondents could potentially have been enriched is irrelevant to the appropriate sanction.

29. The Respondents' position that any harm suffered by Investors 1 and 2 was mitigated by the Respondents transferring their joint venture interest in the Robinson property to the investors is similarly without evidentiary foundation. The uncontradicted evidence is that the beneficial interests in the Robinson property held by Investors 1 and 2 is subject to prior mortgages. We were presented with no evidence about the outstanding balance of those mortgages or their current interest rate. We were presented with no evidence about the value of the Investment Properties. However, we were presented with uncontradicted evidence that the Vaughn property is in foreclosure proceedings. In these circumstances, we simply do not

[2] Transcript of Proceedings, November 23, 2021, page 332 lines 12-15.

know whether the Respondents' transfer of their joint venture interest in the Robinson property to the investors benefited Investors 1 and 2 to the extent necessary to mitigate any harm caused.

30. Moreover, we found in the Merits Decision that a portion of the investments were structured as debt in that the respective initial purchase price of the joint venture interests was to be repaid in periodic payments over a term with a lump sum payment of the outstanding balance upon refinancing at the end of the respective terms. The uncontradicted evidence at the Merits Hearing was that the periodic payments over the terms were not fully paid for either Investment Property to Investors 1 and 2. The uncontradicted evidence was that the respective lump sum payment of the balance of the initial purchase prices was not repaid at the expiry of the terms because refinancing was frustrated by the mortgages registered against title to the Investment Properties. The facts that the initial purchase prices were not fully repaid was plead in the Statement of Allegations for both Investment Properties. The Respondents did not challenge this evidence, but instead sought to attribute the harm to market forces rather than to their own conduct. Although none of the parties made submissions at the Sanctions Hearing directly on this point, we are satisfied that the failure to return the purchase prices to Investors 1 and 2 is harm that they have suffered. The risk that the principal investment would not be returned according to the terms of the Joint Venture Agreements is exactly the sort of risk that ought to have been disclosed in a prospectus. This is an aggravating factor.

31. The Respondents' argument that they accepted significant risk by guarantying mortgages or providing their proportionate share of cash calls misses the mark. It is expected that the promoter of an investment will accept risk by participating in the investment. The risk to the promoter by having skin in the game is irrelevant in our consideration of the appropriate sanction. The relevant risk for our consideration is the risk to Investors 1 and 2 and to the investing public more generally, not risk to the Respondents.

32. Securities Counsel's argument that the Respondents failed to adequately warn the investors of the risks and the Respondents' argument that the investors should have known the risks are already accounted for in the seriousness of the conduct factor. A number of authorities, including in the authorities relied upon by Securities Counsel referenced in paragraph 12 above, establish that a failure to file a prospectus is inherently a serious breach of securities legislation precisely because it deprives investors of the opportunity to make an informed choice about the risk of investment. We have already considered both parties' arguments on this point in paragraph 23 above.

33. The Panel considers the Respondents' failure to acknowledge any wrongdoing or show any remorse to be a serious aggravating factor. If the Respondents honestly believe they have done nothing wrong, the risk of recurrence may be higher. Throughout the Merits and Sanctions hearings, the Respondents continued to assert that the investors suffered harm because they failed to invest further funds when called to do so. Given that we have already found that the Respondents breached the *Act* in the

Merits Decision, continuing to assert that the investors should have invested further funds is not indicative of the Respondents showing any sign of remorse. This is an aggravating factor.

34. Securities Counsel submitted that a ban of 5 years is commonly applied for violations of this nature, adjusted upward or downward based on aggravating or mitigating factors. In support of this position, Securities Counsel referenced cases from other jurisdictions involving breaches of comparable sections of the *Act* and, in some cases, comparable amounts of capital raised. However, Securities Counsel did not otherwise explain how the circumstances of those cases are similar to the circumstances of this case. We do not see how the circumstances in the authorities cited are comparable to the present case.

35. Securities Counsel also sought to distinguish two recent decisions from our jurisdiction, *Blouin (Re)*, 2021 CanLii 142784 (SK FCAA) ("*Gaetan"*), and *Blouin (Re)*, 2021 CanLii 142785 (SK FCAA) ("*Francois"*) (collectively, the "*Blouin* Cases"), on the basis that the *Blouin* Cases dealt with "dealing in off book securities, and not a non-registrant dealing in securities as is the case here." We found that neither investment was an approved Pinnacle Wealth Brokers investment product, and that Ms. Keep was not acting in her capacity as a registered representative of Pinnacle Wealth Brokers with respect to these investments. This is precisely the kind of "off-book" behaviour the Panel dealt with in the *Blouin* Cases. We are not persuaded by Securities Counsel's attempts to distinguish these cases.

36. The *Gaetan* case is like the present case as the respondent therein had a record of compliance with securities legislation for many years, until he sold $690,000 in off-book products to investors. As a result, *Gaetan* also involved breaches of section 27 of the *Act*, and a failure to properly report business activities outside of his licensed activities on behalf of a registered firm. However, that case involved a breach of section 55.13 of the *Act.* Yet, Gaetan Blouin took full responsibility for his wrongdoing and admitted the alleged breaches. *Gaetan* received a 3-year ban from capital markets, an administrative penalty of $32,500.00, and a costs award of $6,000.00.

37. The *Francois* case is like the present case as the respondent therein had a record of compliance with securities legislation for many years, until he sold $2,120,000 off-book product to investors. As a result, *Francois* also involved breaches of section 27 of the *Act*, and a failure to properly report business activities outside of his licensed activities on behalf of a registered firm. However, *Francois* involved a breach of a duty to deal with clients fairly, honestly, and in good faith in that there was a signed "Risk Acknowledgment" that purported to disclaim any securities obligations. Instead of accepting responsibility, *Francois* involved denial of responsibility and an uncooperative litigant. *Francois* received a 5-year ban from capital markets, an administrative penalty of $40,000.00, and a costs award of $8,500.00.

38. **The Panel's decision is to order a 4-year ban for the current case**. We believe this sanction is reasonable and proportionate in the circumstances as it provides the appropriate level of deterrence. Further it is consistent with the approach taken in the *Blouin* Cases.

ii. Proportionality for administrative penalty

39. Section 135.1 of the Act provides authority to impose an administrative penalty up to a maximum amount of $100,000 where the Commission considers it to be in the public interest to make the order.

40. In *Cartway Resources Corp. (Re)*, 2004 SCC 26, the Supreme Court of Canada discussed this "public interest" jurisdiction and how the concept of deterrence may be considered in relation to administrative penalties in securities matters. 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. Administrative penalties may be imposed to encourage future compliance with the *Act* and to deter others from future misconduct.

41. Securities Counsel requested that the Panel impose an administrative penalty of $60,000 against the Respondents. The Respondents suggest that there should be no administrative penalty imposed.

42. Based on our analysis above, we are of the view that an administrative penalty is appropriate in this case as a necessary deterrent. **This Panel's decision is to order an administrative penalty of $30,000** against the Respondents.

iii. Reasons for hearing costs

43. Section 161 of the Act outlines the scope of the Panel's authority for ordering costs. The ordering of costs is discretionary as is the amount ordered.

44. Section 20.2 of the *Saskatchewan Policy Statement 12-602* (the "*Local Policy*") lists factors a panel may consider in exercising its discretion under section 161 of the Act:

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 manner;
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.

45. Securities Counsel has requested costs of $11,000 be ordered against the Respondent, an amount rounded down from 65% of the total bill of costs from the Registrar of the Authority, of $17,396.50. The Respondents made no direct statement as to costs.

46. Securities Counsel refers to the *Gaetan* case where the respondent was ordered to pay approximately 50% of the total bill of costs. Securities Counsel argues that the case at hand is like that of *Gaetan* but for the absence of the mitigating factor of admitting responsibility and should be somewhat higher at 65%.

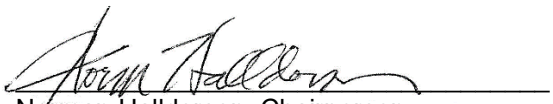
47. The Panel notes that Securities Counsel brought 24 allegations against the Respondents in their Statement of Allegations. During closing arguments on the merits, Securities Counsel submitted that 10 of the allegations should be dismissed due to lack of evidence and the Panel dismissed them. Of the remaining 14 allegations, only 4 were found to be proven. We should comment that the number of unnecessary allegations added undue complexity to the hearing and contributed to costs. Securities Counsel ought to have withdrawn the allegations for which it had insufficient evidence much earlier in the proceedings.

48. We should also note that the Respondents cooperated during the hearing and their conduct did not lengthen the duration of the proceeding. That being said, the Panel views imposing a costs order in this case appropriate as the Respondents were found to have contravened the *Act*, and their conduct resulted in a need for an investigation and a hearing. After weighing all the relevant factors and above issues, **the Panel's decision is to order the Respondent to pay costs of $8,700** being approximately 50% of the total bill of costs. The Panel considers the actions of Securities Counsel in paragraph 46 above to offset the absence of the mitigating factor of admitting responsibility by the Respondents, and 50% of the total bill of costs is a reasonable and appropriate costs amount.

49. What remains in this matter is Securities Counsel's request that the Respondents pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondents' contraventions of the *Act*. 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*.

50. This is a unanimous decision of the hearing panel.

Dated at Regina, Saskatchewan this 9 day of August, 2022.



Norman Halldorson, Chairperson

Peter Carton, Panel member

Honourable Eugene Scheibel, Panel member