ALBERTA SECURITIES COMMISSION

DECISION

Citation: 1205676 Alberta Ltd., Re, 2010 ABASC 544 **Date: 20101123**

1205676 Alberta Ltd., operating as "Front Row Tickets", 660648 Alberta Ltd., operating as "S & I Holdings" and "S & I Holdings (Ticket Today)", Windy Ridge Investments Ltd., Jason Allan Hunt, Sam Sakai Tamura, Anthony Pittarelli, Giovanna Campanelli-Pittarelli, Robert Claire Pilling, Daniel Neil McLeod, Jamie Craig Creason and Jimmy Ross Creason

Panel:	Glenda A. Campbell, QC Allan L. Edgeworth, P. Eng. Glen D. Roane
Appearing:	Richard Finn for Commission Staff
	Lawrence Ben-Eliezer for 1205676 Alberta Ltd., operating as "Front Row Tickets", Jason Allan Hunt, Anthony Pittarelli and Giovanna Campanelli-Pittarelli
	John D. Blair, QC for 660648 Alberta Ltd., operating as "S & I Holdings" and "S & I Holdings (Ticket Today)" and Sam Sakai Tamura
	S. Allan Low, QC for Robert Claire Pilling
	Jamie Craig Creason for himself and Windy Ridge Investments Ltd.
	Jimmy Ross Creason for himself
Date of Hearing:	29 October 2010
Date of Decision:	23 November 2010

I. INTRODUCTION

[1] On 20 May 2010 this panel of the Alberta Securities Commission (the "Commission") issued its decision and reasons (the "Merits Decision", cited as *Re 1205676 Alberta Ltd.*, 2010 ABASC 237) on the merits of allegations made by staff ("Staff") of the Commission in a 26 May 2008 amended notice of hearing. The panel made findings against 1205676 Alberta Ltd., operating as "Front Row Tickets" ("Front Row"), 660648 Alberta Ltd. ("660648"), operating as "S & I Holdings" and "S & I Holdings (Ticket Today)" (660648, S & I Holdings and S & I Holdings (Ticket Today) are collectively referred to as "S & I"), Windy Ridge Investments Ltd. ("Windy Ridge"), Jason Allan Hunt ("Hunt"), Sam Sakai Tamura ("Tamura"), Anthony Pittarelli ("Pittarelli"), Giovanna Campanelli-Pittarelli ("Campanelli-Pittarelli"), Robert Claire Pilling ("Pilling"), Daniel Neil McLeod ("McLeod"), Jamie Craig Creason ("Jamie Creason") and Jimmy Ross Creason ("Jimmy Creason") (collectively, the "Respondents"; we also refer to Hunt, Tamura, Pittarelli, Campanelli-Pittarelli, Pilling, McLeod, Jamie Creason and Jimmy Creason collectively as the "Individual Respondents").

[2] We found that the Respondents each contravened sections 75(1)(a) and 110(1) of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") in respect of trades and distributions of Front Row securities. We further found that Pilling made statements to one investor and McLeod "routinely" made statements to potential investors that Pilling and McLeod, respectively, knew or reasonably ought to have known were materially misleading and untrue, contrary to section 92(4.1) of the Act. Finally, we found that all of the misconduct by all of the Respondents was contrary to the public interest. Those findings in the Merits Decision concluded the first phase of this proceeding.

[3] We consider in this second phase of the hearing what, if any, orders should be made against the Respondents. We received written submissions from Staff and all Respondents or their representatives, except McLeod. During the hearing on sanction and costs held on 29 October 2010, we heard testimony from Pilling and received additional documentary evidence. We also heard oral submissions from Front Row, Hunt, Pittarelli, Campanelli-Pittarelli, Tamura and Pilling. Jimmy Creason was present but made no oral submissions. McLeod and Jamie Creason did not attend the hearing on sanction and costs.

[4] These are our reasons and decision as to the appropriate sanctions and costs to order against the Respondents. This decision should be read together with the Merits Decision (and the latter defines certain terms also used in this decision).

[5] In summary, for the reasons that follow, we order that:

- Front Row:
  - is barred from trading in or purchasing securities, using exemptions under Alberta securities laws, and all trading in or purchasing of securities of Front Row must cease, until such time, if ever, as the Executive Director of the Commission (the "Executive Director") issues a receipt for a prospectus in respect of any securities that Front Row wishes to trade;

- Hunt:
  - is barred from trading in or purchasing securities, using exemptions under Alberta securities laws (with limited exceptions) and acting as a director or officer of any issuer until (and including) 23 November 2020;
  - pay an administrative penalty of $85 000; and
  - pay $25 000 towards the costs of the investigation and hearing;

- Pittarelli:
  - is barred from trading in or purchasing securities, using exemptions under Alberta securities laws (with limited exceptions) and acting as a director or officer of any issuer until (and including) 23 November 2018;
  - pay an administrative penalty of $70 000; and
  - pay $20 000 towards the costs of the investigation and hearing;

- Campanelli-Pittarelli:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws (with limited exceptions) until (and including) 23 November 2015;
  - pay an administrative penalty of $25 000; and
  - pay $10 000 towards the costs of the investigation and hearing;

- S & I Holdings:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws until (and including) 23 November 2017;

- Tamura:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws (with limited exceptions) until (and including) 23 November 2017;
  - pay an administrative penalty of $30 000; and
  - pay $15 000 towards the costs of the investigation and hearing;

- Pilling:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws (with limited exceptions) until (and including) 23 November 2020;
  - pay an administrative penalty of $25 000; and
  - pay $10 000 towards the costs of the investigation and hearing;

- McLeod:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws (with limited exceptions) until (and including) 23 November 2018;
  - pay an administrative penalty of $25 000; and
  - pay $5000 towards the costs of the investigation and hearing;

- Windy Ridge:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws until (and including) 23 November 2020;

- Jimmy Creason:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws (with limited exceptions) until (and including) 23 November 2020;
  - pay an administrative penalty of $20 000; and
  - pay $10 000 towards the costs of the investigation and hearing; and

- Jamie Creason:
  - is barred from trading in or purchasing securities and using exemptions under Alberta securities laws (with limited exceptions) until (and including) 23 November 2013;
  - pay an administrative penalty of $5000; and
  - pay $5000 towards the costs of the investigation and hearing.

II. PARTIES' POSITIONS

A. Staff

[6] Staff outlined the various roles played by all Respondents in the Front Row illegal trades and distributions – as set out in the Merits Decision – emphasizing that some roles were more significant than others, hence Staff's differing recommendations as to the appropriate sanctions against each of the Respondents.

[7] Staff contended that the following orders would be in the public interest in light of the Respondents' serious breaches of Alberta securities laws (as costs orders are not sanctions, we address those separately below):

- Against Front Row, that all trading in or purchasing of the securities of Front Row cease, and that Front Row be denied all exemptions in Alberta securities laws, in both cases permanently;

- Against Hunt, that he:
  - cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of any issuer, in both cases for 10 years;
  - be denied all exemptions in Alberta securities laws for 15 years; and
  - pay an administrative penalty of $250 000;

- Against Pittarelli, that he:
  - cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of any issuer, in both cases for 10 years;
  - be denied all exemptions in Alberta securities laws for 15 years; and
  - pay an administrative penalty of $250 000;

- Against Campanelli-Pittarelli, that she:

- cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of any issuer, in both cases for 5 years;
- be denied all exemptions in Alberta securities laws for 15 years; and
- pay an administrative penalty of $100 000;

- Against S & I, that all trading in or purchasing of the securities of S & I cease, and that S & I be denied all exemptions in Alberta securities laws, in both cases permanently;

- Against Tamura, that he:
  - cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of any issuer, in both cases for 10 years;
  - be denied all exemptions in Alberta securities laws for 15 years; and
  - pay an administrative penalty of $250 000;

- Against Pilling, that he:
  - cease trading in or purchasing securities for 15 years;
  - be prohibited from becoming or acting as a director or officer of any issuer permanently;
  - be denied all exemptions in Alberta securities laws, permanently; and
  - pay an administrative penalty of $250 000;

- Against McLeod, that he:
  - cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of any issuer, in both cases for 5 years;
  - be denied all exemptions in Alberta securities laws for 10 years; and
  - pay an administrative penalty of $75 000;

- Against Windy Ridge, that all trading in or purchasing of the securities of Windy Ridge cease, and that Windy Ridge be denied all exemptions in Alberta securities laws, in both cases permanently;

- Against Jimmy Creason, that he:
  - cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of an issuer, in both cases for 10 years;
  - be denied all exemptions in Alberta securities laws for 15 years; and
  - pay an administrative penalty of $35 000; and

- Against Jamie Creason, that he:
  - cease trading in or purchasing securities and be prohibited from becoming or acting as a director or officer of an issuer, in both cases for 5 years;
  - be denied all exemptions in Alberta securities laws for 10 years; and
  - pay an administrative penalty of $15 000.

B. The Respondents

1. Front Row, Hunt, Pittarelli and Campanelli-Pittarelli

[8] Front Row, Hunt, Pittarelli and Campanelli-Pittarelli submitted that the appropriate sanction in their circumstances would be the imposition of an administrative penalty alone, in the amounts of:

- $25 000 for Front Row;
- $25 000 for Hunt;
- $25 000 for Pittarelli; and
- $5000 for Campanelli-Pittarelli.

2. S & I and Tamura

[9] Tamura suggested that the appropriate sanctions in his circumstances would be a two-year ban on capital market participation (with no need for a director-and-officer ban), accompanied by either no administrative penalty or one in the range of $10 000 to $15 000. No specific submissions were made on behalf of S & I.

3. Pilling

[10] Pilling did not object to the market-access bans sought by Staff or the imposition of an administrative penalty, but characterized the administrative penalty of $250 000 (and costs) sought by Staff as "so excessively high as to be absurd" and well beyond his ability to pay. Pilling did not propose a specific alternate amount, but suggested that "a much more modest figure" would be appropriate in his circumstances and one that he could realistically attempt to retire.

4. McLeod

[11] McLeod did not appear and made no submissions.

5. Windy Ridge

[12] As in the merits phase of this proceeding, Jamie Creason apparently represented both himself and Windy Ridge, but made no specific submissions on behalf of Windy Ridge.

6. Jimmy Creason

[13] Jimmy Creason did not address the specifics of the sanctions sought by Staff, but noted several personal factors and stated that he would not be able to pay the "administrative cost" sought by Staff.

7. Jamie Creason

[14] Jamie Creason seemed to suggest that the administrative penalty sought by Staff was too high and that either no amount or only a very small amount should be assessed against him in the circumstances.

III. ANALYSIS AND ORDERS

A. Sanctions

1. Principles and Factors

[15] Sections 198 and 199 of the Act empower the Commission with a strong public interest mandate to protect investors and the Alberta capital market – both the integrity of and confidence in that market. The Commission's exercise of its public interest powers is neither punitive nor

remedial; rather that exercise is intended to be prospective by protecting against and preventing future harm to investors and the Alberta capital market (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). In determining what, if any, sanctions are appropriate in the circumstances, we also consider the principles of specific deterrence (intended to deter the particular respondent from engaging in future capital market misconduct) and general deterrence (aimed at deterring others from future capital market misconduct) – see *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17.

[16] In conjunction with the above principles, we are also guided by the factors set out in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253), as refined in *Re Workum and Hennig*, 2008 ABASC 719 at para. 43:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

[17] This all leads us to consider the specific facts of the case before us and the applicability of and weight to be given to the factors in light of those circumstances. This results in our ordering sanctions that are appropriate and proportionate to the misconduct found and, above all, in the public interest.

2. Applying the Principles and Factors

(a) Specific and General Deterrence

[18] It was Staff's view that all the Respondents pose a "clear and present risk to the public interest" because of the fundamental illegality of their actions. In seeking sanctions that would provide substantial specific as well as general deterrence, Staff effectively minimized the significance of each particular Respondent's intentions and role in the misconduct while emphasizing the "gravity of the contraventions" and resulting harm. The Respondents, however, implied that, while general deterrence measures may be warranted, little to no specific deterrence is required given the particular circumstances of each Respondent.

[19] In our view, the illegal activities by the Respondents properly attract sanctions that will provide the appropriate measure of specific and general deterrence (varying with the particular Respondent's circumstances) to help ensure that investors and the capital market are protected from future similar misconduct by these Respondents and others.

[20] There is no doubt that illegal trades and distributions of securities harm particular investors and jeopardize the integrity of and confidence in our capital market because investors are provided with neither the information they need to make informed investment decisions nor advice from a professional adviser as to the suitability of the investment. In our view, although serious, the illegal trades and distributions of Front Row securities were not as reprehensible as

argued by Staff. While the Respondents clearly did not meet securities laws requirements – therefore, did not provide investors with the concomitant protections – there was no evidence of a dishonest, malicious or fraudulent scheme or of a deliberate misuse or flouting of Alberta securities laws. In this case, Front Row had, at one point, a seemingly viable business model – the evidence indicated that Front Row was able to access a strong market for event-ticket resales at extremely high profit margins, at least for some events – which produced, at times, significant returns on money invested. Also noteworthy, the roles of the Respondents in the misconduct differed, which we take into account in assessing the requisite level of specific and general deterrence. Moreover, if a particular respondent had good intentions but contravened Alberta securities laws by not realizing those laws existed or applied (as was suggested was the case here), such respondent may require less specific deterrence. However, significant general deterrence might still be warranted in that case to ensure others accessing our capital market learn of the nature of the misconduct, become aware of the fact that the misconduct contravened Alberta securities laws and understand that there are serious consequences for non-compliance with Alberta securities laws.

[21] The misleading statements by Pilling and McLeod are of a different nature. Such misconduct demonstrates a level of intentional dishonesty that calls for a higher measure of specific deterrence to ensure that Pilling and McLeod are deterred from repeating such behaviour in the future. General deterrence is also required to impress on the public that there will be severe consequences for those who make misleading statements while selling securities to investors.

(b) General Discussion of Applicable Factors

(i) Seriousness of Misconduct

[22] Front Row securities were sold in Alberta and elsewhere, raising a significant sum of money – in the Merits Decision we conservatively concluded that this predominantly cash business had raised at least $15 million from investors, although a precise determination was rendered impossible because of Front Row's poor record-keeping. Some portion (we do not know how much) of that $15 million was returned to investors during the time Front Row carried out its securities-related activities and operations. However, some Front Row investors did not – and may never – receive a return of their principal, the promised interest or both. We do not know what happened to the funds not affected by the Freeze Orders (the amounts then outstanding in cash, in non-frozen bank accounts or in tickets purchased but not yet resold).

[23] Pilling and McLeod made statements to investors (or to one investor in the case of Pilling) that returns from their Front Row investment were "guaranteed"; Pilling also told the one investor there was no risk. The objective of these statements was apparently to entice investors to lend money to Front Row for the purpose of purchasing event tickets for eventual resale. This succeeded, as at least some investors did lend money to Front Row on the basis of those misleading or untrue statements.

[24] These contraventions of the Act – illegal trades and distributions of Front Row securities by all Respondents and misrepresentations made to investors by Pilling and McLeod – are serious ones. In finding that such conduct was contrary to the public interest, we stated in the Merits Decision (at paras. 211-12):

> Investors would have been aware of [details of the investment and attendant risks] and other pertinent information had they been afforded a prospectus and the advice of a registrant attentive to their financial circumstances, risk tolerances and investment objectives. Investors thus would have known the potential risks and been able to reach an informed opinion on Front Row's ability to continue to operate and compensate investors as agreed. In the absence of registrant involvement and a prospectus, the investing public was put at risk of making ill-advised, uninformed investment decisions, which in turn put in jeopardy the integrity of the Alberta capital market.
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> Misrepresentations induce investors to invest based on inaccurate and misleading information about the securities being offered. This puts individual investors at risk and undermines confidence in the Alberta capital market.

[25] Illegal trades and distributions of securities and misrepresentations made in the course of selling securities to investors defeat the protective measures afforded to investors by Alberta securities laws and must be deterred by the application of appropriate sanctioning orders. Thus, this is an appropriate factor to consider in assessing what orders to make against each of the Respondents.

(ii) Recognition and Understanding of Misconduct and Its Seriousness

[26] Genuine recognition of wrongful misconduct and a complete understanding of the seriousness of that misconduct can be a useful predictor of a respondent's propensity to engage in future contraventions of Alberta securities laws. A respondent's failure to recognize and understand what was done wrong, why it was wrong, the gravity of the wrongdoing and the actual or potential harm caused creates the risk that investors and the Alberta capital market might be more likely to be subjected to similar wrongdoing by that respondent in the future.

[27] Some of the Individual Respondents expressly accepted responsibility for their actions, acknowledging that they should have been more careful about becoming involved, and playing a part, in the trades and distributions of the Front Row securities without ensuring compliance with Alberta securities laws. Other of the Individual Respondents did not seem to have as fully – or at all – reached or acknowledged such an understanding. For example, some Respondents made comments (themselves or through counsel) that their problems with Alberta securities laws stemmed from the Freeze Orders, not from their own actions, or that they were more akin to victims themselves because they had trusted other Respondents.

[28] The significance that some of the Respondents attach to the effect of the Freeze Orders minimizes the undisclosed risks to which Front Row investors were exposed by investing in Front Row. Although the Freeze Orders, issued in February 2007, preserved approximately US$1.9 million and $728 000 held in Front Row and S & I bank accounts, that contention ignores that the Freeze Orders did not preserve investor money held in other forms. The argument also ignores Front Row's poor record-keeping, unexplained delays in payments to investors and that not all of the $15 million raised as Loans was repaid to Front Row investors. We further reject the implication that one truly shows awareness and acceptance of responsibility by blaming others for one's predicament.

[29] In this case, some of the Individual Respondents fully appreciated and understood the nature or seriousness of their contraventions of Alberta securities laws; some did not. Thus, this

is an appropriate factor to consider in assessing what orders to make against the Individual Respondents.

(iii) Benefits Received by Respondents

[30] The Individual Respondents all benefited (as set out below) from their illegal trading and distributing of Front Row securities. It follows that Pilling and McLeod were also enriched as a result of their making misrepresentations to investors (or in Pilling's case, one investor) that prompted at least some of those investors to invest money in Front Row. We do not know if Front Row, S & I or Windy Ridge received direct financial benefit, but clearly their principals did through them, although we were unable to quantify the exact benefit received by Hunt, Jimmy Creason and Jamie Creason.

[31] It is important to send a message to the Respondents and others who may be tempted to emulate their activities that contravention of securities laws may result in a direct financial cost to them. Thus, this is an appropriate factor to consider in assessing what orders to make against each of the Individual Respondents.

(iv) Harm to Particular Investors and the Capital Market

[32] As noted, at least $15 million was raised through the sale of Front Row securities. The evidence indicates that Front Row made interest payments and had repaid principal amounts (although payments were often made later than promised) to most, if not all, of the Front Row investors until early 2007, when the payments stopped. Although the losses can apparently not be quantified, those investors who did not receive returns of their principal or payments of the promised interest have been harmed. Knowledge of these losses also harms the reputation of the capital market generally and confidence in that market.

[33] While the Respondents suggested that the disruption in payments to investors and resulting losses were caused by the Freeze Orders, we are not convinced that the Front Row Loans program, operated in the manner it was, would have allowed for the continuing payments of high returns promised to investors. Also, as mentioned, we were not told what happened to the outstanding funds and tickets not subject to the Freeze Orders, nor why such resources were apparently not used to repay investors their principal or interest.

[34] The Respondents essentially contended that they had no intent to mislead investors or engage in dishonest business practices by conducting the illegal trades and distributions. In contrast, Pilling and McLeod knew or ought to have known that their statements were misrepresentations. Regardless of intent, all of these actions may have jeopardized overall investor confidence in the fairness and integrity of the Alberta capital market. As this Commission stated in *Re Maitland Capital Ltd.*, 2007 ABASC 818 (at para. 26):

> . . . Investors who know or learn of circumvention of the registration and prospectus requirements of the Act and other misconduct in the capital market, such as occurred here, may well find their confidence in the integrity and fairness of the capital market damaged. In consequence, investors may be less inclined to invest, and legitimate issuers may be less able to raise funds, in the capital market. The potential for harm to the capital market is real, albeit difficult to quantify.

[35] Investors – and the reputation of the Alberta capital market generally – must be protected from harm caused by those who contravene Alberta securities laws. The risk of future harm from such wrongful conduct can be addressed by the application of appropriate sanctioning

orders. Thus, this is an appropriate factor to consider in assessing what orders to make against each of the Respondents.

(v) Capital Market Experience

[36] Only two of the Individual Respondents have prior capital market experience or education. Pilling had some securities training and experience related to his United States capital market activity. McLeod was an insurance salesperson and had been registered as a mutual fund salesperson.

[37] In 2000, Pilling was sanctioned in the state of Utah for capital market misconduct, including acting as an unregistered securities agent. None of the other Respondents had been previously sanctioned by any securities regulatory authority.

[38] A respondent who has prior capital market knowledge or experience or has been previously sanctioned for securities-related misconduct ought to have a level of understanding or awareness that raising money from the public may be subject to some type of regulation, such as securities laws. That respondent should also have the knowledge or awareness to take care to ensure compliance with any applicable laws and to ensure the accuracy of representations made in the course of soliciting the public. Evidence of a history of discipline for capital market misconduct may also suggest a propensity to disregard securities laws, creating a risk that investors and the Alberta capital market might be subjected to similar wrongdoings by the respondent in the future. Thus, this is an appropriate factor to consider in assessing what orders to make against certain of the Individual Respondents.

(vi) Mitigation

[39] Facts that might mitigate the harm caused by a respondent's misconduct or the risk of future harm from the particular respondent are relevant to the Commission's consideration of potential sanctions against that respondent. Mitigating factors may include, depending on the circumstances: cooperation with the investigation, including agreement on facts (without prejudicing a respondent's right and ability to present a defence); admissions, which narrow the focus of the hearing and may indicate a recognition of the seriousness of the misconduct admitted to (again, without prejudicing a respondent's right and ability to present a defence); restitution made or attempted to be made by a respondent to harmed investors; the nature of the misconduct; the respondent's role and evidence as to the respondent's character, which may affect the Commission's determination of the extent of the future risk posed by that respondent; and proper seeking of and reasonable reliance on professional advice.

[40] Here, many of the Respondents cooperated with Staff during this matter. A respondent's cooperation with Staff during the course of an investigation and hearing might mitigate somewhat the need for significant sanction, as such cooperation may indicate some recognition by that respondent of the fact and seriousness of the contraventions of Alberta securities laws. Cooperation with Staff is also consonant with the public interest, as it assists in earlier resolution of wrongful conduct leading to earlier implementation of protective and preventative measures that will restore investor confidence in the integrity of the Alberta capital market.

[41] Some of the Respondents made or facilitated the return of money to investors. Restitution made by a respondent to harmed investors is a factor that may lessen the need for significant specific deterrence, as it tends to exhibit a respondent's recognition of the seriousness

of the misconduct and a willingness to right harm caused to particular investors by that misconduct.

[42] Some of the Respondents provided character references and indications of genuine remorse and contrition. Such evidence might well lessen the need for significant specific deterrence, as it is suggestive of a respondent's disinclination to engage in similar capital market misconduct in the future.

[43] Some of the Respondents suggested that their current straitened financial circumstances should mitigate against the imposition of substantial sanctions and, in particular, a large administrative penalty. As Staff noted, this Commission has not generally viewed a respondent's ability to pay as a mitigating factor in the determination of what, if any, protective and preventative orders to make, including whether to impose an administrative penalty and the size of such penalty. As this Commission commented recently in *Re Delta 3 Capital Corporation Inc.*, 2010 ABASC 465 (at para. 39):

> The Commission has not generally accepted poverty as a mitigating factor. That is because poverty by itself does not preclude, or indicate a diminished risk of, a recurrence of misconduct. Further, an administrative penalty can be an effective deterrent – specific or general – even when a respondent's financial circumstances may make payment of the penalty difficult. We do not find the Individual Respondents' current financial straits to be a mitigating factor, nor a compelling argument against an otherwise-warranted administrative penalty.

[44] Another comment by this Commission is set out in *Re Park*, 2006 ABASC 1056 (at paras. 39-41):

> We do not consider Park's current financial plight to be a mitigating factor. We do not believe his ability to pay an amount we might order to be paid a factor relevant to our determination of what orders are in the public interest in the circumstances. Here, given the nature and magnitude of Park's transgressions and the need to protect Alberta investors and maintain public confidence in the integrity of our capital market, we gave little weight to Park's financial circumstances in assessing the appropriate sanction.
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> Our view coincides with the comments expressed in *Hogan v. British Columbia (Securities Commission)*, 2005 BCCA 53, dismissing the appeal from *Re Hogan*, 2002 BCSECCOM 811. The court recognized the importance that an administrative penalty can play in effecting specific and general deterrence (at para. 16), even when a respondent's financial situation may make payment of a penalty difficult. The court stated (at para. 17):
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> > . . . if Mr. Hogan were correct in saying that the amount of the penalty should be commensurate with his ability to pay, then individuals such as himself, who have no other assets and who do not make their living as licensed players in the market, could engage in the same type of activity as Mr. Hogan, and because of their straightened [sic] financial circumstances (after disgorging any profit they made) face no real penalty. The amount of the administrative penalty in this case recognizes the need to deter just those types of players from manipulating the market.
>
> Accordingly, the BC Court of Appeal held there that the [British Columbia Securities Commission] did not act unreasonably in giving little weight to Hogan's financial circumstances.

[45] Generally, therefore, ability to pay has been accorded little or no weight. However, these and other Commission decisions do not preclude our consideration of ability to pay as a relevant

factor in assessing appropriate public interest orders – there may, for example, be cases in which a respondent's financial circumstances warrant greater consideration in assessing the quantum of a monetary penalty.

[46] Thus, these are some of the mitigating factors we consider in assessing what orders to make against each of the Respondents.

(vii) Previous Decisions

[47] Some of the parties referred to previous decisions in proposing their views of appropriate sanctions.

[48] While illegal trades and distributions are clearly serious misconduct, Staff stated – and we conclude – that this case did not involve either a scam or a sham. Although we stated our concerns as to whether the Front Row operation was viable longer-term, there was no evidence of the dishonesty, maliciousness or misuse of exemptions which often – as in many of the previous decisions cited – accompany illegal trades and distributions of securities.

[49] We found that Staff proved misleading statements by Pilling to only one investor. Previous decisions are not helpful in Pilling's situation as those decisions typically involve many instances in which misleading statements were being made. McLeod clearly made more misleading statements, as we accepted his admission that he "routinely" made such statements. However, McLeod's conduct is more appropriately and usefully assessed relative to the other Respondents here, rather than to a respondent in a completely different factual situation.

[50] Thus, we do not find the previous decisions provided to us useful when assessing what orders to make against each of the Respondents.

(viii) Access to the Capital Market

[51] The Respondents essentially argued that they had not realized their raising of money from the public to finance Front Row's purchase of event tickets comprised trades and distributions of securities, requiring compliance with Alberta securities laws. Therefore, some Respondents, for example, contended that they had not "engaged in dishonest business practices that [misled] the public" and there is "no basis for prohibiting any of them from trading in securities providing that they do so in accordance with" securities laws.

[52] None of the Respondents complied with the registration and prospectus requirements or demonstrated reliance on available and applicable exemptions from those requirements when soliciting the Loans from the public. It is true that this misconduct did not involve the more typical abuse of the exempt market, such as when a respondent deliberately misuses an exemption by telling potential investors that they need not meet that exemption's requirements. While there was no wilful abuse of the exempt market, the illegal trades and distributions here were careless or reckless. The Respondents, in their respective roles, did not raise money from the public with the required care and diligence.

[53] Although the intentions here may lead to the conclusion that there is little – even no – risk of certain of the Respondents engaging in similar misconduct in the future, we disagree with the contention that no market-access bans, such as trading-and-purchasing bans and denial-of-exemptions orders, are warranted here. Raising money in the exempt capital market is permitted

only in certain limited circumstances in which potential investors are deemed not to need the protections provided by a prospectus or registration; that assumption is undermined if no attempt is made to determine whether an exemption is available. To ensure the appropriate care and diligence in the future from these Respondents and others who may be considering raising money in the capital market, we conclude it is appropriate to impose a measure of specific and general deterrence in the form of market-access bans.

[54] As for misrepresentations, those investing in securities must be able to rely on the integrity of those selling securities. Making misleading or untrue statements indicates a level of dishonesty that warrants both specific and general deterrence by removing access to the capital market.

(c) Appropriate Sanctions for Each Respondent

[55] We now discuss the sanctioning principles and factors in relation to each Respondent.

(i) Front Row

[56] Front Row, as the issuer of the securities, was entitled to receive all of the investor funds for the Loans – conservatively estimated at $15 million. The Loans called for Front Row to invest that money, pay a return and, eventually, repay the principal to the investors. However, it seems clear that not all of the funds were officially recorded as Front Row funds. To the contrary, many of the Loans were accompanied by paperwork that ranged from weak to non-existent, and a large number of the documented Loans and associated money appear not to have passed through any Front Row account, being conducted as "cash" transactions.

[57] As mentioned, the Respondents, including Front Row, made no attempt to use exemptions for the trades and distributions here or determine if there were laws that applied to the capital-raising activities. It is clear that Front Row lacked any basic understanding of the applicability of securities laws in the exempt market.

[58] No evidence was adduced to indicate Front Row's current financial position or the manner in which it dispersed investor money. We have inferred from the evidence (such as the imposition of the Freeze Orders) that it is likely Front Row is dormant and all money invested with it is gone. Staff did not believe Front Row had generated any income and did not consider Front Row would be a threat to the investing public, if subject to a cease-trade order.

[59] Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and key factors relevant in Front Row's circumstances, we are of the view that Front Row must be removed from participating in the Alberta capital market until a prospectus has received a receipt from the Executive Director for any securities that Front Row wishes to trade or purchase. Such an order will provide the requisite specific deterrence by ensuring that, if Front Row were ever to seek to raise capital for itself or others again, potential future investors and the Alberta capital market would be protected by ensuring such investors would receive the information they would need to make an informed investment decision. Such an order will also provide the requisite general deterrence by informing those who might otherwise consider emulating Front Row's conduct that, if they seek to raise money from the Alberta capital market, they must determine what laws apply (including Alberta securities laws) and ensure compliance with them, or face the consequence of being banned from raising money until compliance is effected.

[60] Having removed Front Row from the Alberta capital market until such time as it is able to offer or purchase securities under a prospectus, we do not believe that any monetary penalty is warranted in the public interest. Indeed, if any money does remain in Front Row, it should be for the benefit of Front Row investors who may seek to recover their funds.

(ii) Hunt

[61] Hunt, as the sole director, officer and shareholder of Front Row, was its "guiding mind" and "played an active role in Front Row's daily operations and activities, including directing the sale of Front Row securities to the public" (Merits Decision at para. 152). Hunt played the primary role in the illegal trades and distributions of the Front Row securities, which we have found was serious misconduct. Hunt acknowledged receiving benefits of approximately $300 000 during part of the Relevant Period.

[62] In suggesting an appropriate sanction for Hunt, Staff did not appear to recognize any mitigating factors. Staff focused instead on Hunt's primary role with Front Row and in the illegal trades and distributions, stating that specific and general deterrence require the significant sanctions sought by Staff.

[63] Hunt argued that although he failed to comply with the registration and prospectus requirements of the Act:

- he did not mislead any investors, lie or engage in dishonest business practices;
- he did not put investors' funds at risk (he argued that the Freeze Orders precluded payment of interest and repayment of principal);
- he stated under oath that, in his counsel's words, "the transactions that formed the subject matter of the investigation were conducted in violation of the technical requirements set out in the Act and did not qualify for any exemptions to those requirements" (therefore, he submitted that the lack of any formal admissions was not a relevant factor);
- he cooperated with and did not impede the investigation, including answering all questions "in a meaningful and responsive fashion"; and
- he lacked prior experience with securities or any specialized investment experience.

[64] Hunt argued that all these circumstances lead to a need for general deterrence only. In particular, he argued that there is no public interest basis on which to restrict his access to the capital market through market-access bans because his misconduct did not involve dishonest business practices that misled investors.

[65] Hunt submitted that the appropriate sanction in his circumstances would be the imposition of a $25 000 administrative penalty alone, which would provide an appropriate measure of general deterrence – or, as he phrased it, "an educational function" – by communicating to the public that those who may be inclined to engage in similar regulatory

misconduct will face substantial monetary consequences. He considered Staff's suggested administrative penalty disproportionate to his circumstances.

[66] Although Hunt pointed out that investors were apparently receiving funds until the Freeze Orders were imposed, we concluded in the Merits Decision (at para. 210) that "the continued viability of Front Row's business was, in our view, questionable". Hunt also chose not to give evidence during the hearing, leaving gaps in our understanding as to the nature of Front Row's operations as discussed above. As Front Row's sole officer, Hunt was also responsible for the selling activities of the other Respondents and for ensuring that they complied with all regulatory requirements when selling Front Row securities. There was no evidence as to the extent of Hunt's supervision over the selling activities of the other Respondents. Indeed, the evidence suggests that Hunt distanced himself from the selling activities of others. We also note that, although Hunt made certain statements during the Hunt Interview, he did not cooperate with Staff to the degree demonstrated by those Respondents who made formal admissions prior to or during the hearing.

[67] Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and key factors relevant in Hunt's circumstances, we are not convinced that the extent of sanctions sought by Staff is warranted, nor do we agree with Hunt's submission that only general deterrence through an administrative penalty is necessary. We accept that Hunt was unfamiliar with the requirements of Alberta securities laws and capital-raising in the public market. Even though we did not find that Hunt intentionally engaged in misconduct or was involved in a fraudulent scheme, his misconduct was serious, harmed identifiable investors and caused potential, if not real, harm to the reputation and integrity of the Alberta capital market. We are also not satisfied that Hunt fully recognizes and understands the nature or seriousness of his contraventions of Alberta securities laws.

[68] We conclude that market-access bans for a considerable time are necessary. The actions or inactions by Hunt, who was at the core of the misconduct here, convince us that he would pose a risk to Alberta investors and the Alberta capital market if he were permitted to have continued unrestricted access to investors and the capital market. We also agree with Staff that these bans should include a director-and-officer ban, given Hunt was Front Row's sole director and officer and given his apparent inability or unwillingness to follow proper record-keeping and other procedures in managing a corporate entity raising money from the public. We do not foresee any risk to investors or the capital market if Hunt were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[69] In conjunction with these market-access bans, we conclude that a substantial administrative penalty is a crucial part of Hunt's sanction package. Hunt benefited financially from his contraventions of Alberta securities laws, whether through carelessness or recklessness, and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of general deterrence and, to a somewhat lesser extent in the circumstances, of specific deterrence, because failures to comply with Alberta securities laws are typically motivated by financial considerations.

[70] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Hunt's lack of

capital market experience and disciplinary history; and limited, albeit serious, findings of contraventions of Alberta securities laws. Accordingly, in making the sanction proportionate to Hunt's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

(iii) Pittarelli

[71] Pittarelli played the second-most important role in the illegal trades and distributions of the Front Row securities, which we found to be serious misconduct. He was Hunt's associate in Front Row, played an active role in its day-to-day operations and recruited and managed at least some of its sales agents. In addition to accepting investors' money, Pittarelli also signed some investor documentation on behalf of Front Row and was involved in setting rates of return for the Loans. From his Front Row activities, Pittarelli received a benefit of approximately $400 000. Pittarelli had no prior securities industry experience nor any disciplinary history.

[72] Staff submitted that Pittarelli should receive sanctions comparable to those imposed on Hunt because Pittarelli's involvement in Front Row was comparable to Hunt's, regardless of their official roles or titles. Staff contended that the admissions made by Pittarelli came too late to significantly mitigate sanction, except, perhaps, to the extent that his admissions might demonstrate some recognition of the seriousness of his misconduct. Staff did not appear to recognize any other mitigating factors. Pittarelli proffered arguments to the same effect as Hunt's, suggesting that all the circumstances lead to a need for general deterrence only and implying Staff's suggested administrative penalty was disproportionate; he, like Hunt, suggested that only an administrative penalty of $25 000 should be imposed.

[73] Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and key factors relevant in Pittarelli's circumstances, we are not convinced that the extent of sanctions sought by Staff is warranted, nor do we agree with Pittarelli's submission that only general deterrence through an administrative penalty is necessary. We accept that Pittarelli was unfamiliar with the requirements of Alberta securities laws and capital-raising in the public market. Even though we did not find that Pittarelli intentionally engaged in misconduct or was involved in a fraudulent scheme, his misconduct was serious, harmed identifiable investors and caused potential, if not real, harm to the reputation and integrity of the Alberta capital market. While we give some credit to Pittarelli for taking responsibility for his misconduct by making the Pittarelli Admissions during the hearing (even though not before the hearing started), we are not satisfied that Pittarelli fully recognizes and understands the nature or seriousness of his contraventions of Alberta securities laws.

[74] We conclude that market-access bans for a considerable time are necessary. The actions or inactions by Pittarelli, who was in the midst of the misconduct here, convince us that he would pose a risk to Alberta investors and the Alberta capital market if he were permitted to have continued unrestricted access to investors and the capital market. We agree with Staff that these bans should include a director-and-officer ban, as Pittarelli essentially acted as a de facto director and officer of Front Row and also demonstrated an apparent inability or unwillingness to follow proper record-keeping and other procedures in managing a corporate entity raising money from the public. We do not foresee any risk to investors or the capital market if Pittarelli were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[75] In conjunction with these market-access bans, we conclude that a substantial administrative penalty is a crucial part of Pittarelli's sanction package. Pittarelli benefited financially from his contraventions of Alberta securities laws, whether through carelessness or recklessness, and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of general deterrence and, to a somewhat lesser extent in the circumstances, of specific deterrence.

[76] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Pittarelli's lack of capital market experience and disciplinary history; limited, albeit serious, findings of contraventions of Alberta securities laws; and his cooperation with Staff. Accordingly, in making the sanction proportionate to Pittarelli's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

[77] We also are of the view that slightly shorter market-access bans and a slightly smaller administrative penalty than those ordered against Hunt are appropriate because Pittarelli played a slightly less-central role in Front Row's impugned capital-raising activities and the Pittarelli Admissions suggest that Pittarelli accepts (to a greater degree than Hunt) some responsibility for his misconduct.

(iv) Campanelli-Pittarelli

[78] Campanelli-Pittarelli had an active role in the sale of Front Row securities, including limited record-keeping functions, selling securities, accepting money, paying investors (after receiving authorization from Hunt), setting rates of return and signing Loan Documentation. She earned approximately $240 000 through her involvement with Front Row. Although an important figure in Front Row's activities, Campanelli-Pittarelli took instructions from Hunt and Pittarelli and clearly had a role secondary to theirs. Campanelli-Pittarelli had no prior securities industry experience nor any disciplinary history.

[79] Staff stated that, because "her degree of complicity in the conception and operation" of Front Row was "considerably less than" Hunt's or Pittarelli's, the public interest would be adequately protected by the imposition of lesser sanctions than those imposed on Hunt or Pittarelli. Campanelli-Pittarelli proffered arguments to the same effect as Hunt and Pittarelli, suggesting that all the circumstances lead to a need for general deterrence only and an administrative penalty of $5000 would suffice.

[80] Although we agree that Campanelli-Pittarelli was less involved and less integral than Hunt and Pittarelli, she clearly had an active and important role in Front Row's impugned capital-raising activities – she was for some investors their primary, if not only, contact at Front Row. In our view, Campanelli-Pittarelli was more involved in the Front Row venture than suggested by either her or Staff.

[81] Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and key factors relevant in Campanelli-Pittarelli's circumstances, we are not convinced that the extent of sanctions sought by Staff is warranted, nor do we agree with Campanelli-Pittarelli's submission that only general deterrence through an administrative penalty is necessary. We accept that Campanelli-Pittarelli was unfamiliar with

the requirements of Alberta securities laws and capital-raising in the public market. Even though we did not find that Campanelli-Pittarelli intentionally engaged in misconduct or was involved in a fraudulent scheme, her misconduct was serious, harmed identifiable investors and caused potential, if not real, harm to the reputation and integrity of the Alberta capital market. While we give some credit to Campanelli-Pittarelli for taking responsibility for her misconduct by making the Campanelli-Pittarelli Admissions during the hearing (even though not before the hearing started), we are not satisfied that Campanelli-Pittarelli fully recognizes and understands the nature or seriousness of her contraventions of Alberta securities laws.

[82] We conclude that market-access bans for some time are necessary. However, given her role in Front Row, we perceive no public interest need for a director-and-officer ban. Further, we do not foresee any risk to investors or the capital market if Campanelli-Pittarelli were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[83] We are of the view that an administrative penalty is a crucial part of Campanelli-Pittarelli's sanction package. Campanelli-Pittarelli benefited financially from her contraventions of Alberta securities laws, whether through carelessness or recklessness, and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of general deterrence and, to a lesser extent in the circumstances, of specific deterrence.

[84] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Campanelli-Pittarelli's lack of capital market experience and disciplinary history; limited, albeit serious, findings of contraventions of Alberta securities laws; and her cooperation with Staff. Accordingly, in making the sanction proportionate to Campanelli-Pittarelli's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

[85] We concur with Staff and Campanelli-Pittarelli that the sanctions imposed against her should be less than those imposed against Hunt and Pittarelli. We have moderated the sanctions ordered against Campanelli-Pittarelli to take into account her more limited role in the misconduct found here and her acceptance (to a greater degree than Hunt) of some responsibility for her misconduct.

(v) S & I

[86] S & I was Tamura's personal holding company. As S & I's director, officer and guiding mind, Tamura used the S & I bank accounts as a "line of credit" to receive money from and pay money to Front Row investors. Although no S & I securities were issued to investors, some investors wrote cheques payable to S & I for their investments in Front Row and received returns from Front Row via cheques payable from S & I. It follows that some investors could have believed that S & I was part of the Front Row operation.

[87] We understand that S & I is now essentially a defunct company. However, companies can be revived and return to conducting business. Given the seriousness with which we view illegal trades and distributions of securities, S & I – considering its important, but tangential, role in the illegal trades and distributions of Front Row securities – must have its ability to trade and

purchase securities and to access the exempt market restricted for some time. We are satisfied that such market-access bans will provide the appropriate protection and deterrence in S & I's circumstances.

(vi) Tamura

[88] Tamura played an important role in the illegal trades and distributions of Front Row securities. He received investor money and deposited it into the S & I bank accounts, was involved in setting rates of return payable on the Loans, and discussed potential rates of returns with prospective investors. Tamura also managed or gave instructions to some of the selling agents of Front Row securities, one of whom was Pilling. Tamura had no prior securities industry experience nor any disciplinary history. He was paid approximately $400 000 for services to Front Row.

[89] Staff contended that "Tamura acted, in many ways, like a principal of Front Row" or "in many ways . . . an equal partner with both Hunt and Pittarelli". Tamura, while conceding that he certainly played a role in the Front Row venture, contended that he was not a director, officer or guiding mind of Front Row, nor did he "conceive of or implement the Front Row fund-raising operations".

[90] Tamura contended that the sanctions sought by Staff were too severe, particularly the quantum of the administrative penalty sought. Tamura argued that Staff's recommended sanctions do not sufficiently take into account several factors that should lessen significantly the appropriate sanctions otherwise warranted against him. Tamura emphasized several such factors: his cooperation with Staff; his lack of appreciation that his soliciting money for Front Row was "dubious or improper" or lacked the required compliance with securities laws; his embarrassment and high level of contrition regarding his involvement with Front Row's financing operations; his personal investments in Front Row; his primary dealings with family and friends rather than strangers; and, critically, his partial restitution through his willing disgorgement to a group of Front Row investors of virtually all his exigible assets (including his watch, an amount representing the value of a vehicle and all the money in the S & I accounts –at least $750 000, of which $150 000 were apparently his personal funds).

[91] Tamura submitted some highly-favourable character references, and his counsel emphasized that Tamura is a senior with "a long career in business without any blots on his record, let alone prior regulatory sanctions". Moreover, Tamura stated that the only investor witness testifying in relation to Tamura expressed faith in him and did not blame him.

[92] We note that the money in the S & I bank accounts was subject to the Freeze Orders and subsequent court proceedings, so that it may not have been Tamura's decision to return that money to investors as restitution. However, Tamura did provide a 1 June 2009 letter from counsel for approximately 170 plaintiffs in a civil action against Tamura and others relating to those plaintiffs' losses from their Front Row investments. That letter stated that those plaintiffs and Tamura had reached a confidential settlement and concluded:

> On behalf of our investor clients we request that, as part of any resolution that Mr. Tamura may reach with the [Commission] or as part [of] any [Commission] ruling against Mr. Tamura, either no fine, or as small a fine as possible, be imposed so that Mr. Tamura may devote his resources to the settlement with the investors. In the event that any fine is imposed, we ask the Commission to forebear from enforcing such fine for the same reason.

[93] A further letter from the same counsel, dated 20 July 2010, was addressed to the panel members, included in Tamura's submissions and entered in evidence. That letter stated, in part:

> I would like to confirm that Mr. Tamura was cooperative during the investor litigation lawsuits in which [certain counsel] acted on behalf of Front Row investors. He was the only defendant who provided a proper list of his assets as directed by the Court, he appeared to be forthcoming and complete in his evidence, and generally he impressed me as having been caught up in some unfortunate circumstances which I believe he did not originally intend.
>
> When the file was settled, Mr. Tamura remained very cooperative and transferred to us the [S & I] bank accounts, which to my understanding contained personal money as well as Front Row money. In addition, he provided a Statutory Declaration outlining his assets, turned over his watch and made a lump sum payment representing the value of his vehicle and other assets. We satisfied ourselves that he was disgorging virtually all of his exigible assets to the benefit of Front Row investors.

[94] While Staff questioned the utility of these letters, they did accept that restitution may be considered a mitigating factor.

[95] Because of Staff's view of Tamura's role, Staff asked for sanctions that mirrored those sought for Hunt and Pittarelli. Staff gave no credit to Tamura for the Tamura Admissions (despite acknowledging that those might reflect Tamura's recognition of the seriousness of his misconduct), Tamura's other cooperation, or Tamura's significant restitution to investors.

[96] Tamura clearly played an important role in Front Row's operations. However, he neither originated nor developed the Front Row endeavour. We accept that Tamura was unfamiliar with the requirements of Alberta securities laws and capital-raising in the public market. Even though we did not find that Tamura intentionally engaged in misconduct or was involved in a fraudulent scheme, his misconduct was serious, harmed identifiable investors and caused potential, if not real, harm to the reputation and integrity of the Alberta capital market.

[97] We are, however, satisfied that Tamura appreciates the seriousness of his misconduct and has experienced financial, social and emotional hardships as a result of his involvement with Front Row. Evidencing his recognition of the seriousness of his misconduct and the harm caused to specified Front Row investors, Tamura seems to have made significant attempts at providing partial restitution to some of those investors in the civil litigation arena. Tamura's restitution and character evidence indicates that he appears to have accepted responsibility for his actions and expressed regret and contrition. These factors satisfy us that Tamura himself presents little, if any, future risk to investors and the Alberta capital market. Accordingly, we do not believe there is as great a need for prolonged or substantial specific deterrence for Tamura as there is for some of the other Respondents. There remains, however, the need to ensure a considerable measure of general deterrence. Thus, the orders we make are intended to demonstrate to Tamura the consequences of engaging in such misconduct in the future and, more significantly, to communicate that message to other market participants.

[98] Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and the key factors relevant in Tamura's circumstances, we conclude that market-access bans for a considerable time are necessary. Considering Tamura's lack of corporate responsibility with Front Row and the nature of the misconduct found against

him, we see no public interest need to impose a director-and-officer ban. Further, we do not foresee any risk to investors or the capital market if Tamura were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[99] In conjunction with these market-access bans, we conclude that an administrative penalty is a crucial part of Tamura's sanction package. Tamura initially benefited financially from his contraventions of Alberta securities laws, whether through carelessness or recklessness, and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of general deterrence and, to a lesser extent in the circumstances, of specific deterrence.

[100] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Tamura's lack of capital market experience and disciplinary history; limited, albeit serious, findings of contraventions of Alberta securities laws; his cooperation with Staff; and his significant restitution payments to some investors. Accordingly, in making the sanction proportionate to Tamura's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

[101] We emphasize that the most significant factors in reducing the substantial sanctions we would have otherwise ordered against Tamura are: recognition of the partial restitution made by Tamura; his acknowledgement of and contrition for his misconduct, its seriousness and the resulting harm to investors and the Alberta capital market; and his cooperation with Staff. We made such reductions also to communicate to other respondents in future matters that cooperation with Staff, true contrition and, especially, restitution are factors that will moderate sanction.

(vii) Pilling

[102] Pilling was a "sales consultant" with Front Row. He actively solicited investors and sold Front Row securities to them. Investors included Pilling's friends and relatives, who resided in Canada (approximately $240 000 was paid in Loans to Front Row) or the United States (approximately US$7.5 million was paid in Loans to Front Row). From his selling activities, Pilling received commissions from Front Row of $80 000 and US$216 000. Pilling had some securities industry background. Although Pilling had no disciplinary history with the Commission, he had been convicted in a Utah court proceeding in 2000 of "securities fraud" and acting as an "unregistered securities agent". Pilling testified that his involvement there was as a salesperson selling "bank debentures". Pilling was sentenced to 180 days in jail and ordered to pay restitution of over US$1 million, jointly and severally with his co-defendants.

[103] Pilling told one investor that his money loaned to Front Row was not at risk and that the returns promised were guaranteed. These representations were not true because the Loans made to Front Row were not guaranteed by any other party, and Pilling was or should have been aware that there were risks associated with Front Row's venture. There was no evidence before us of any other such statements being made by Pilling to any other Front Row investors.

[104] Staff acknowledged that there was no evidence suggesting Pilling was involved in the oversight or management of Front Row's operations. However, Staff contended that "the sheer

size of the contribution made by Pilling (and the rewards reaped by him . . .)", his misleading statements and his securities-related conviction call for the imposition of significant sanctions. Staff apparently considered there were no mitigating factors apart from the existence of the Pilling Admissions.

[105] Pilling agreed with Staff that he was not involved in Front Row's management, characterizing himself as a "true believer" and "a salesman and only a salesman" who was, in some ways, "himself a victim", naively relying on representations made to him by some of the other Respondents. Pilling also emphasized that the panel found evidence of misleading statements by Pilling to only one investor, not to other investors. Pilling submitted that his cooperation with Staff during the investigation, including the extensive documentary production by him, greatly assisted Staff in their investigation of Front Row and its principals and ought to be considered a mitigating factor in determining any appropriate sanction.

[106] Pilling testified during the sanction portion of the hearing and provided a statutory declaration that evidenced his straitened financial condition. He noted that such disclosure of his financial condition resulted in a discontinuance of a civil action brought against him for restitution by some of the Front Row investors. As noted, Pilling contended that it would be appropriate here for us to take his financial situation into account.

[107] Pilling did not have an operational role in Front Row, although he did raise a large amount of money from investors. His misconduct was serious, harmed identifiable investors and caused potential, if not real, harm to the reputation and integrity of the Alberta capital market.

[108] Pilling's conduct also involved aggravating factors. Pilling has a conviction for securities fraud and acting as an unregistered securities agent, which yielded him jail time and an order to pay restitution of more than US$1 million. With that history, he should have had some inkling that soliciting individuals to loan money on the promise of extremely high returns generated from the efforts of others might attract the operation of securities laws or some other law. At the very least, he should have ensured that his extensive and lucrative selling activities did not engage any legal requirements. Pilling did not do so, but actively pursued his selling activities in contravention of securities laws – this time, Alberta securities laws. Pilling now seeks to justify his non-compliance with Alberta securities laws and his current predicament by referring to his reliance on representations and information provided to him by some of the other Respondents. Even if that is so, it does not excuse his misconduct. Further, Pilling told at least one investor that there was no risk in investing with Front Row – thus engaging in misconduct with an element of dishonesty – when Pilling himself had to know that the promised returns could not have been achieved without risk.

[109] Nevertheless, it is clear that Pilling cooperated with Staff throughout the investigation and hearing, including his provision of extensive documentation and the admissions he made before the start of the hearing. We also understand that, once Pilling learned Staff were investigating his soliciting of investors to make the Loans to Front Row as potentially contrary to Alberta securities laws, he immediately ceased his solicitations. Such action suggests to us that Pilling had not realized until then that he had engaged in unlawful trades and distributions of securities. That said, while we are satisfied that the circumstances here do not call for the very significant sanctions sought by Staff or that might otherwise be warranted, we are of the view

that the sanctions ordered against Pilling do need to be substantial, given his securities-related conviction in the US and his misrepresentations to one investor.

[110] Given the seriousness with which we view illegal trades and distributions of securities and misleading statements to investors, and having considered the principles and the key factors relevant in Pilling's circumstances, we conclude that market-access bans for a considerable time are necessary. Considering Pilling's lack of corporate responsibility with Front Row and the nature of the misconduct found against him, we see no public interest need to impose a director-and-officer ban. Further, we do not foresee any risk to investors or the capital market if Pilling were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[111] In conjunction with these market-access bans, we conclude that an administrative penalty is a crucial part of Pilling's sanction package. Pilling benefited financially from his contraventions of Alberta securities laws and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of specific and general deterrence. Although some of his actions may have been made through carelessness or recklessness, his misrepresentations – although only to a single investor – were intentional.

[112] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Pilling's limited role, including that he never held investor money; Pilling's previous capital market experience and disciplinary history; serious findings of contraventions of Alberta securities laws, including misrepresentations to one investor; and his cooperation with Staff. In Pilling's case and with the evidence presented, we gave his ability to pay some consideration as part of the totality of his circumstances when assessing the appropriate quantum of the administrative penalty. Accordingly, in making the sanction proportionate to Pilling's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

(viii) McLeod

[113] McLeod acted as an "independent agent" for Front Row. He actively solicited investors and sold Front Row securities to them. McLeod received commissions of $50 000 to $60 000 for his activities in selling approximately $3 million of Front Row securities to approximately 160 investors in Alberta and elsewhere. McLeod forwarded the money he received from investors to Front Row, prepared some Loan Documentation and discussed rates of returns with prospective investors. McLeod "routinely" told some potential investors that their principal invested and interest to be paid were guaranteed. That was untrue. McLeod had a background in the securities industry; he was an insurance salesperson and had been registered with the Executive Director as a mutual fund salesperson from 1987 to 1988 and from 1990 to 1991. McLeod had no disciplinary history.

[114] Staff argued that the significant sanctions they sought against McLeod were appropriate because of the large amount of money McLeod raised from investors and the misleading statements he made, despite his lack of an oversight or management role with Front Row. Moreover, Staff submitted that McLeod's history as a registrant should have made him more alert to the possibility that he was selling securities, for which compliance with Alberta securities laws was required. As noted, McLeod made no submissions.

[115] McLeod was a registrant in the past, raised a significant amount of money from investors and made misleading statements to some potential investors. Sanctions reflecting significant specific and general deterrence are warranted in these circumstances. However, McLeod cooperated with Staff throughout the investigation and hearing, including his provision of some documentation and the admissions he made before the start of the hearing. These admissions do suggest to us that McLeod has some appreciation of the nature and seriousness of his misconduct. However, we have no other information on any other factors that could be considered mitigating.

[116] Given the seriousness with which we view illegal trades and distributions of securities and misleading statements to investors, and having considered the principles and the key factors relevant in McLeod's circumstances, we conclude that market-access bans for a considerable time are necessary. Considering McLeod's lack of corporate responsibility with Front Row and the nature of the misconduct found against him, we see no public interest need to impose a director-and-officer ban. Further, we do not foresee any risk to investors or the capital market if McLeod were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[117] In conjunction with these market-access bans, we conclude that an administrative penalty is a crucial part of McLeod's sanction package. McLeod benefited financially from his contraventions of Alberta securities laws and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of specific and general deterrence. Although some of his actions may have been made through carelessness or recklessness, his misrepresentations were intentional.

[118] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; McLeod's limited role; McLeod's previous capital market experience; his lack of a disciplinary history; serious findings of contraventions of Alberta securities laws, including misrepresentations; and his cooperation with Staff. Accordingly, in making the sanction proportionate to McLeod's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

(ix) Windy Ridge

[119] Jamie Creason and Jimmy Creason – as the director and de facto director, respectively, of Windy Ridge – used the Windy Ridge bank accounts to receive money from and pay money to Front Row investors. Although no Windy Ridge securities were issued to investors, investors wrote cheques payable to Windy Ridge for their investments in Front Row and received returns from Front Row via Windy Ridge. It follows that some investors could have believed that Windy Ridge was part of the Front Row operation.

[120] We understand that Windy Ridge is essentially a defunct company, having been struck from the Alberta corporate registry in 2009. However, companies can be revived and return to conducting business. Given the seriousness with which we view illegal trades and distributions of securities, Windy Ridge – considering its important, but tangential, role in the illegal trades and distributions of Front Row securities – must have its ability to trade and purchase securities

and to access the exempt market restricted for some time. We are satisfied that such market-access bans will provide the appropriate protection and deterrence in Windy Ridge's circumstances.

(x) Jimmy Creason

[121] Although not formally a director or officer of Windy Ridge, Jimmy Creason was a de facto director and officer of Windy Ridge, guiding and directing Windy Ridge in its dealings with Front Row and with investors who invested in Front Row through Windy Ridge. Jimmy Creason explained the Front Row venture to approximately 20 people, some of whom invested in Front Row through Windy Ridge. Although to a lesser extent than some of the other Respondents, Jimmy Creason was also involved in discussions that led to setting the rates of returns for investors. Jimmy Creason had no prior securities industry experience nor any disciplinary history.

[122] In seeking more significant sanctions against Jimmy Creason than against Jamie Creason, Staff emphasized Jimmy Creason's primary role in Windy Ridge's operations, his dominant role relative to his son (Jamie Creason) and his involvement in determining the rates of return for Front Row investments.

[123] Jimmy Creason asked the panel to consider that: there were no trades or purchases of Windy Ridge securities; he would be 74 years old when Staff's proposed market-access bans would expire in 10 years; he was never a registered director of Windy Ridge; much of the conservatively-estimated $15 million raised by Front Row was not lost because investors had been repaid their investments and returns; the Commission – through the Freeze Orders – had actually prevented Front Row from paying Front Row investors; and he would not be able to pay the claimed "administrative cost". Much of the remainder of Jimmy Creason's written submissions focused on disagreeing with findings in the Merits Decision, disagreeing with Staff's interpretation of those findings, and stating that the Front Row activities actually benefited the capital market – in his view, the fact that people are able to invest funds in the capital market and receive a return increases confidence in that market. Thus, it was Jimmy Creason's position that – given the legitimacy of the Front Row event-ticket-buying business and the investor confidence fostered by the Front Row venture – there were no public interest concerns to address by issuing any sanctions against him.

[124] In this phase of the hearing, we determine what orders, if any, are warranted in the public interest, based on the findings in the Merits Decision. We do not revisit the evidence or findings made. Further, we consider Jimmy Creason's position on investor confidence an over-simplification. Investor confidence is fostered not only from successful investments but also from investors' ability to make informed investment decisions in a fair and efficient market, based on full and complete information about the issuer and the securities it is offering.

[125] We conclude that Jimmy Creason does not recognize the seriousness of his misconduct, nor does he appreciate the importance of protecting investors and the Alberta capital market from investment ventures that are too unclear or poorly-managed to allow investors to make an informed initial investment decision and to monitor that investment once made. Jimmy Creason also does not understand the nature of the exempt market, as shown by his submission that, "[i]f there was an exemption contained in the Alberta securities law, why not have that apply to Windy Ridge, Jamie Creason, Jimmy Creason". Staff do not "apply" exemptions, nor does a

hearing panel. Exemptions are also not applied after-the-fact. A party trading or distributing a security is responsible for ensuring that registration and prospectus requirements are complied with or that an applicable exemption is available in the circumstances of the particular investor or offering. In this way, investors receive the protections afforded to them by Alberta securities laws.

[126] We find concerning Jimmy Creason's failure at this stage to understand fundamental concepts about the raising of capital and the proper treatment of investors. We conclude that, if not removed from the capital market for some time, he poses a threat to the public interest, including the interests of investors and the efficiency of and confidence in the Alberta capital market.

[127] Jimmy Creason played a somewhat significant role in the Front Row venture, although not as extensive as some of the other Respondents. Jimmy Creason raised a significant amount of money from investors and he did so in contravention of Alberta securities laws. In the result, investors were harmed and investor confidence in our capital market was jeopardized.

[128] We are of the view that the sanctions ordered against Jimmy Creason need to be significant, particularly considering his failure to recognize the nature or seriousness of his misconduct. Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and the key factors relevant in Jimmy Creason's circumstances, we conclude that market-access bans for a considerable time are necessary. Considering Jimmy Creason's lack of corporate responsibility with Front Row and the nature of the misconduct found against him, we see no public interest need to impose a director-and-officer ban. Further, we do not foresee any risk to investors or the capital market if Jimmy Creason were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[129] In conjunction with these market-access bans, we conclude that an administrative penalty is a crucial part of Jimmy Creason's sanction package. Jimmy Creason benefited or expected to benefit financially (in an unquantifiable amount) from his contraventions of Alberta securities laws, whether through carelessness or recklessness, and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a strong message of specific and general deterrence.

[130] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Jimmy Creason's lack of capital market experience and disciplinary history; limited, albeit serious, findings of contraventions of Alberta securities laws; and his lack of recognition of the seriousness of his misconduct or of such misconduct in general. Accordingly, in making the sanction proportionate to Jimmy Creason's circumstances, we are of the view that sanctions of a slightly lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

(xi) Jamie Creason

[131] Although Jamie Creason was the sole director of Windy Ridge, Jimmy Creason was, in fact, Windy Ridge's guiding mind in its selling of Front Row securities – Jamie Creason played

"a subordinate role, following his father's directions" (Merits Decision at para. 58). But Jamie Creason did illegally trade and distribute Front Row securities to some 10 investors, discussed rates of return with them and took money from them that was paid into the Windy Ridge bank accounts, ultimately for Front Row. Jamie Creason had no prior securities industry experience nor any disciplinary history. Jamie Creason accepted responsibility for his actions, apologized for the harm he caused and promised to be diligent in the future.

[132] Staff emphasized that "Jamie Creason's level of complicity in the Front Row Tickets distribution was significantly less than Jimmy Creason's", including the fact that Jamie Creason was not involved in setting rates of return for prospective Front Row investors.

[133] Jamie Creason argued that the findings of his very minor role in the illegal selling of the Front Row securities coupled with his resolving certain Front Row investor claims should minimize the need for any significant sanction against him – he implied that the administrative penalty sought by Staff was too high. He provided a letter written in the context of a civil action against him, which recommended no or a small administrative penalty be imposed because Jamie Creason had reached an undisclosed agreement with the plaintiffs in that action. Jamie Creason said that he had not signed the "generic admissions statement" prepared by Staff because he was not willing to admit to contraventions in which he had not engaged.

[134] In our view, Jamie Creason was the least culpable of the Respondents. We accept that Jamie Creason was unfamiliar with the requirements of Alberta securities laws and capital-raising in the public market. We also accept that Jamie Creason has made at least some restitution to some investors as part of a civil settlement. Finally, we accept that Jamie Creason recognizes the seriousness of his misconduct and poses little, if any, risk to investors and the Alberta capital market in the future.

[135] That said, Jamie Creason did raise some money from investors and he did so in contravention of Alberta securities laws. In the result, investors were harmed and investor confidence in our capital market was jeopardized.

[136] Given the seriousness with which we view illegal trades and distributions of securities, and having considered the principles and the key factors relevant in Jamie Creason's circumstances, we conclude that market-access bans for a short time are necessary. We conclude that a director-and-officer ban against Jamie Creason would not serve a protective or preventative purpose in his circumstances. Further, we do not foresee any risk to investors or the capital market if Jamie Creason were permitted limited personal trading or purchasing of securities under the supervision of a registrant. Accordingly, we have permitted this exception to the market-access bans.

[137] In conjunction with these market-access bans, we conclude that a modest administrative penalty is a crucial part of Jamie Creason's sanction package. Jamie Creason benefited or expected to benefit financially (in an unquantifiable amount) from his contraventions of Alberta securities laws, whether through carelessness or recklessness, and in so doing harmed investors and the integrity of the capital market. A direct financial penalty is necessary to send a message of general deterrence and, to a very minor degree in the circumstances, of specific deterrence.

[138] In assessing the extent of appropriate sanction, we consider: that Front Row appeared to be paying investors the promised returns; that this was not a fraudulent scheme; Jamie Creason's lack of capital market experience and disciplinary history; limited, albeit serious, findings of contraventions of Alberta securities laws; his cooperation with Staff; and his limited role in the Front Row venture. Accordingly, in making the sanction proportionate to Jamie Creason's circumstances, we are of the view that sanctions of a lesser magnitude than those sought by Staff would achieve the appropriate measures of specific and general deterrence.

3. Sanctions Ordered

[139] Failures to comply with the registration and prospectus requirements of the Act will generally attract significant sanctions. These often include considerable curtailment – or even a permanent denial – of the privilege of access to our capital market. Such restrictions are frequently accompanied by monetary administrative penalties of sufficient magnitude to achieve the necessary protection and specific and general deterrence in the public interest. Many of the enforcement proceedings before the Commission are shams or involve the abuse of exemptions; that was not the case here. However, in all the circumstances and for the reasons given, we are satisfied that the public interest demands the imposition of sanctions against all of the Respondents – and significant sanctions against some of them.

[140] Accordingly, considering that it is in the public interest to do so, we order that:

Front Row

- under sections 198(1)(a), (b) and (c) of the Act, all trading in or purchasing of securities of Front Row cease, Front Row cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to Front Row, until such time, if ever, as the Executive Director issues a receipt for a prospectus in respect of any securities that Front Row wishes to trade;

Hunt

- under sections 198(1)(b) and (c), Hunt cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2020, except that this order does not preclude Hunt from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
  - one account for Hunt's benefit;
  - registered retirement savings plans ("RRSPs"), registered retirement income funds ("RRIFs") or registered education savings plans ("RESPs") (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts ("LIRAs") for the benefit of one or more of Hunt, his spouse and his children; or
  - both;
- under sections 198(1)(d) and (e), Hunt resign all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, until (and including) 23 November 2020; and
- under section 199, Hunt pay an administrative penalty of $85 000;

Pittarelli

- under sections 198(1)(b) and (c), Pittarelli cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2018, except that this order does not preclude Pittarelli from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
  - one account for Pittarelli's benefit;
  - RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of Pittarelli, his spouse and his children; or
  - both;
- under sections 198(1)(d) and (e), Pittarelli resign all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, until (and including) 23 November 2018; and
- under section 199, Pittarelli pay an administrative penalty of $70 000;

Campanelli-Pittarelli

- under sections 198(1)(b) and (c), Campanelli-Pittarelli cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to her, until (and including) 23 November 2015, except that this order does not preclude Campanelli-Pittarelli from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
  - one account for Campanelli-Pittarelli's benefit;
  - RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of Campanelli-Pittarelli, her spouse and her children; or
  - both; and
- under section 199, Campanelli-Pittarelli pay an administrative penalty of $25 000;

S & I

- under sections 198(1)(b) and (c), S & I cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to S & I, until (and including) 23 November 2017;

Tamura

- under sections 198(1)(b) and (c), Tamura cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2017, except that this order does not preclude Tamura from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
  - one account for Tamura's benefit;
  - RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of Tamura, his spouse and his children; or
  - both; and
- under section 199, Tamura pay an administrative penalty of $30 000;

Pilling

- under sections 198(1)(b) and (c), Pilling cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2020, except that this order does not preclude Pilling from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
    - one account for Pilling's benefit;
    - RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of Pilling, his spouse and his children; or
    - both; and
- under section 199, Pilling pay an administrative penalty of $25 000;

McLeod

- under sections 198(1)(b) and (c), McLeod cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2018, except that this order does not preclude McLeod from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
    - one account for McLeod's benefit;
    - RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of McLeod, his spouse and his children; or
    - both; and
- under section 199, McLeod pay an administrative penalty of $25 000;

Windy Ridge

- under sections 198(1)(b) and (c), Windy Ridge cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to Windy Ridge, until (and including) 23 November 2020;

Jimmy Creason

- under sections 198(1)(b) and (c), Jimmy Creason cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2020, except that this order does not preclude Jimmy Creason from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
    - one account for Jimmy Creason's benefit;
    - RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of Jimmy Creason, his spouse and his children; or
    - both; and
- under section 199, Jimmy Creason pay an administrative penalty of $20 000; and

Jamie Creason

- under sections 198(1)(b) and (c), Jamie Creason cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 23 November 2013, except that this order does not preclude Jamie Creason from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:

- one account for Jamie Creason's benefit;
- RRSPs, RRIFs, RESPs or LIRAs for the benefit of one or more of Jamie Creason, his spouse and his children; or
- both; and

- under section 199, Jamie Creason pay an administrative penalty of $5000.

B. Costs

1. Parties' Positions

(a) Staff

[141] Staff sought total costs of $148 161.98 (investigation costs of $80 892.40; hearing costs of $67 269.58) as itemized in the tendered bill of costs and detailed in supporting documentation. Staff allocated these costs among the Individual Respondents. Investigation costs were allocated equally among the Individual Respondents, with $10 111.55 sought against each Individual Respondent. Hearing costs of $9319.94 were sought against each of Hunt, Pittarelli, Campanelli-Pittarelli, Jimmy Creason and Jamie Creason; and hearing costs of $6889.96 were sought against each of Tamura, Pilling and McLeod – the lower amounts in recognition of the latter three's Statements of Admissions. Staff noted that Hunt, Jimmy Creason and Jamie Creason did not sign a statement of admissions, and that those from Pittarelli and Campanelli-Pittarelli were received late in the hearing. Staff apparently did not deduct any amount for cooperation or efficiencies in the proceedings, other than the deductions relating to the Statements of Admissions by Tamura, Pilling and McLeod. Staff made no costs claim against Front Row, S & I and Windy Ridge.

[142] During oral submissions Staff acknowledged that there should be some deduction from their claimed costs against each Individual Respondent because the June 2009 adjournment was granted as a result of Staff's failure to provide the requisite disclosure to the Respondents. Staff suggested a deduction of $500 from each Individual Respondent's costs (therefore, $4000 total) would be appropriate as representing the time Staff spent on the application (not the amount that any of the Respondents may have expended, as there is no authority for respondents to recover costs).

(b) Respondents

(i) Hunt, Pittarelli and Campanelli-Pittarelli

[143] These three Respondents argued that they "were co-operative throughout the process, and did not impede the investigation in any way once they became aware of the concerns raised with respect to the subject transactions". These Respondents made no specific reply to Staff's costs claims. They did, however, suggest that, because they had attempted to settle with Staff by admitting to the misconduct ultimately found in the Merits Decision, Staff ought to be ordered to pay these Respondents' costs of $38 025.31. Staff strongly rejected this contention in written submissions, and the matter was not raised during oral submissions. We address this issue later in these reasons.

(ii) Tamura

[144] Tamura acknowledged that some investigation and hearing costs would appropriately be awarded against him. However, he noted that he should not have to pay costs for his successful adjournment application – a contention with which Staff agreed during the oral submissions, as noted above. Tamura submitted that an amount representing his own costs (estimated by counsel for Tamura as a minimum of $3000) of bringing the adjournment application should be deducted

from Staff's claimed costs. Tamura also contended that much of the investigation and hearing costs related to allegations not proven. Ultimately, Tamura "[left] it to the Panel to consider a fair costs award".

(iii) Pilling

[145] Pilling also mentioned that the costs sought by Staff were too high, but did not refer to that again in his written or oral submissions. However, Pilling did emphasize his cooperation, particularly his extensive provision of documents, throughout the investigation.

(iv) McLeod

[146] McLeod made no submissions on costs.

(v) Jimmy Creason

[147] Jimmy Creason did not refer directly to Staff's costs arguments, except to state that, in his view, Staff's time records indicated very little time spent on Windy Ridge, Jamie Creason and Jimmy Creason. He also submitted that he could not afford the amount claimed by Staff, although it was unclear whether he was including costs in that reference, or only the proposed administrative penalty.

(vi) Jamie Creason

[148] Jamie Creason disputed the amount of costs sought by Staff, arguing that an equal split of costs among all Respondents was inappropriate given his level of cooperation and his lesser role in the misconduct overall. Jamie Creason also noted that the costs claimed by Staff do not account for all the duplicative effort caused by changes in Staff counsel or the few minutes that involved him during the hours of hearing time.

2. Principles in Awarding Costs

[149] An order to pay costs is separate and distinct from any sanction ordered after an enforcement hearing. The purpose of ordering costs against a respondent is to recover certain costs incurred by the Commission in taking enforcement action against a respondent who is ultimately found to have engaged in capital market misconduct, as those costs would otherwise be indirectly paid by law-abiding market participants whose regulatory fees fund the Commission's operations (see *Re Ironside*, 2007 ABASC 824 at para. 159; also see paras. 160-62 and the references to *Re Capital Alternatives Inc.*, 2007 ABASC 482 at paras. 111-13 (appeal dismissed *Alberta Securities Commission v. Brost*, 2008 ABCA 326)). It is appropriate that a respondent found to have engaged in capital market misconduct pay at least some of the associated investigation and hearing costs. The authority to make costs orders also provides the Commission with a tool with which to encourage procedural efficiencies in enforcement proceedings. Thus, in assessing the quantum of costs to order, relevant considerations include the extent to which a party contributed to or impeded the efficient conduct and resolution of the proceeding.

[150] The types of costs claimable here were set out in former section 202 of the Act and sections 191.1 and 191.2 of the Alberta Securities Commission Rules (General) (the "Rules"). Under those provisions, this panel may order a respondent to pay costs of an investigation and hearing – within the allowable categories and limits of costs – if satisfied that the respondent has not complied with a provision of Alberta securities laws or has not acted in the public interest. There is no similar provision for respondents to claim costs relating to Commission proceedings.

Thus, the Commission has no authority to order Staff to pay costs to a respondent (see *Ironside* at paras. 164, 166).

3. Analysis

(a) Staff's Methodology

[151] None of the Respondents objected to the three corporate Respondents – Front Row, S & I and Windy Ridge – being excluded from sharing in the payment of any of the claimed costs. Given that all three corporate Respondents have essentially ceased their operations and any funds remaining in those entities ought to be for the benefit of investors, we also do not consider it necessary to order any payment of costs by Front Row, S & I or Windy Ridge. However, we consider it appropriate that their respective principals, rather than all of the Respondents, bear the recoverable costs that would otherwise have been allocated to the three corporate Respondents.

[152] Staff submitted that their total potentially recoverable investigation costs were $101 111.55 – after deducting time for "duplication of counsel effort" – and their total potentially recoverable hearing costs were $74 559.54. In allocating costs to the eight Individual Respondents, Staff divided the investigation costs by ten not eight, because, according to Staff, those costs included costs attributable to two individuals who were originally named in the notice of hearing but were not part of the hearing. In this way, one-tenth of the potentially recoverable investigation costs was allocated by Staff to each of the eight Individual Respondents – totalling $80 892.40. Staff also allocated one-eighth of the potentially recoverable hearing costs to each of the Individual Respondents, but further discounted the costs apportioned to each of Tamura, Pilling and McLeod by approximately 25% to reflect the contributions that their respective Statements of Admissions made to the efficiency of the hearing.

[153] While we understand that Staff's "pro-rata" approach was intended to achieve fairness, we note that it did not achieve a fair or reasonable allocation of the costs in all the circumstances here. It did not fully account for some moderating or other relevant factors. We discuss those factors next, then address the issue of appropriate costs for each Respondent.

(b) Claimed Investigation Costs

[154] There may be cases in which it is reasonable to allocate investigation costs equally among respondents. However, that approach should not apply here. Nor do we consider it appropriate to include in the potentially recoverable investigation costs any investigation costs attributable to those other than the Respondents in the hearing.

[155] At the start of an investigation, Staff may be uncertain as to which parties will eventually become their focus. That focus, however, generally becomes clearer as the investigation proceeds. Accordingly, greater investigation costs are likely to be incurred in relation to the parties who come to be perceived as the more significant players in the alleged misconduct. Here, for example, the Individual Respondents at the centre of the illegal trading and distribution activities were Hunt, Pittarelli and Tamura, with Campanelli-Pittarelli, Pilling, McLeod, Jimmy Creason and Jamie Creason playing less significant roles in that activity. It would be unfair to equally apportion investigation costs to those lesser-involved Respondents.

[156] We note that much of the preliminary investigative work – including Staff's applications for interim and extended cease-trade orders – occurred before Windy Ridge, Jimmy Creason and Jamie Creason apparently became subjects of the investigation (they were added to the notice of

hearing on 26 May 2008). We also note that other steps taken during the investigation, such as the Freeze Orders, did not involve all of the Respondents. Such facts suggest to us that equally apportioning investigation costs would not be fair to some of the Respondents, such as Pilling, McLeod, Windy Ridge, Jimmy Creason and Jamie Creason.

[157] Staff further did not take into account that their allegations of misleading statements were not proved against Hunt, Pittarelli, Tamura, Jimmy Creason and Jamie Creason. Staff are not entitled to recover costs relating to those failed allegations, so some deduction should be made for costs incurred in investigating that alleged but unproved misconduct.

[158] We agree with Staff that the current Respondents should not be responsible for costs incurred in investigating those who were originally part of the investigation but were not ultimately Respondents in the hearing. However, we disagree that Staff's proposed allocation of investigation costs accomplished this objective. Staff's approach erroneously assumed that the same amount of time was spent investigating all eleven individuals (the eight current Individual Respondents, the two individuals initially named as respondents and another individual also earlier named, then removed). It also ignored the time spent investigating the conduct of and activities relating to the three corporate entities that ultimately did not remain respondents and the three corporate entities that did so remain. In our view, a more equitable approach is to deduct an amount that is fairly representative of the costs incurred in investigating those six parties (three individuals and three corporations) that were not ultimately Respondents in the hearing.

[159] Finally, by apportioning the claimed investigation costs equally among the Individual Respondents, it is clear that Staff did not consider any efficiencies that some Individual Respondents brought to the investigative process, such as their cooperation during interviews or their provision of documents and other information.

[160] These factors call for some reduction in the total amount of potentially recoverable investigative costs as well as some reduction in the investigation costs allocated to certain of the Individual Respondents.

(c) Claimed Hearing Costs

[161] As is the case with investigation costs, there may be cases in which it is reasonable to allocate hearing costs equally among respondents. However, that approach is not appropriate here.

[162] We agree with the concept of deducting an amount from hearing costs attributable to Tamura, Pilling and McLeod to reflect efficiencies in the hearing process flowing from their provision of Statements of Admissions. However, we do not agree with Staff that no reduction in the hearing costs attributable to Pittarelli and Campanelli-Pittarelli should be given because their Statements of Admissions were received too late to result in any efficiencies in the hearing.

[163] In our view, efficiencies in the hearing process are always engendered by admissions. Admissions received early in the hearing process focus issues and streamline Staff's approach in a hearing by eliminating the need to prove what was admitted, thus abbreviating hearing time. However, admissions are also helpful when received during – even nearer to the end of – a

hearing. Such admissions may result in some evidence not being required, may narrow the scope of the issues in dispute and may assist in the panel's determination of the allegations before it.

[164] As noted – and rejected – Hunt, Pittarelli and Campanelli-Pittarelli claimed their costs associated with the hearing. As part of the rationale, counsel for those three Respondents stated:

> Shortly after being retained and attending at the interviews conducted by Mr. Gallucci, counsel for these Respondents offered to resolve this litigation by having [these] Respondents admit to engaging in the illegal distribution of securities, having the allegations of making misleading representations withdrawn and proceeding directly to [sanction]. Counsel for [these] Respondents repeated this offer on numerous occasions in writing and by telephone discussions with [S]taff lawyers. The offers were rejected and the matter proceeded to what these Respondents submit was an unnecessary hearing as against them, with that hearing resulting in entirely avoidable expense for legal fees and disbursements.

[165] Staff replied that referring to such discussions "constitutes a violation of the common law settlement privilege" and is thus "entirely improper".

[166] There are important and legitimate reasons for not disclosing the fact of settlement discussions or negotiations to a panel during the merits portion of a hearing. There is a similar rationale for not disclosing the specifics of settlement discussions or negotiations to a panel during the sanction portion of a hearing. However, counsel for these Respondents did neither of those things. He disclosed, during the sanction portion of the hearing, that his clients had offered to admit to the illegal trading and distribution allegations and proceed to a resolution of appropriate sanction on those allegations only, with the remaining allegations against those Respondents being dropped. He gave no indication what potential sanctions were under discussion or even if any specific potential sanctions were ever discussed. As phrased, counsel for these Respondents appropriately emphasized that his clients were attempting to contribute to the efficiency of the hearing by decreasing or minimizing the need for hearing time relating to these Respondents. We find nothing improper in that approach. We are satisfied that these Respondents made – or attempted to make – some contribution to the efficiency of the hearing.

[167] We also reiterate that not all of Staff's allegations were proved against Hunt, Pittarelli, Tamura, Jimmy Creason and Jamie Creason. Staff did not seem to take into account any adjustment for time spent during the hearing on allegations that were not proved, which argues for some reduction in the amount of hearing costs to be allocated to those five Individual Respondents.

[168] These factors call for some reduction in the hearing costs allocated to certain of the Individual Respondents.

(d) Quantification of Potentially Recoverable Investigation and Hearing Costs

[169] After examining the costs material submitted by Staff, we conclude that some of the claimed investigation and hearing costs are not properly recoverable from any of the Respondents.

[170] Some of the claimed investigation costs included amounts – related to certain categories or to the six parties that were not ultimately Respondents in the hearing – which are not

appropriately claimed in the circumstances. We also saw duplication in areas other than the legal counsel expenses already accounted for by Staff.

[171] Having reviewed Staff's costs material in detail, we adjust the amount of potentially recoverable investigation costs to $60 000.

[172] Some of the hearing costs amounts claimed by Staff included amounts not properly claimed in the circumstances. Some items were clearly included erroneously, such as witness costs for an individual who was not a witness in the hearing and charges in excess of the daily maximum for hearing administration costs prescribed in the Rules. We also allow some deduction to account for costs incurred by Staff for the June 2009 adjournment application.

[173] Having reviewed Staff's costs material in detail, we adjust the amount of potentially recoverable hearing costs to $40 000.

[174] In the result, we find that the total recoverable costs are $100 000.

(e) Allocation of Recoverable Investigation and Hearing Costs

[175] We now allocate the recoverable investigation and hearing costs to the Individual Respondents.

(i) Hunt

[176] Hunt played a central role in the illegal Front Row activities. Accordingly, it is reasonable to conclude that his activities were a primary focus of the investigation, and they were a primary focus of the hearing. As noted, Staff's allegations that Hunt illegally traded and distributed Front Row securities were upheld, but their allegations that he made misleading statements to investors failed. Although Hunt cooperated during the investigation, we do not discern an unusually high level of cooperation that would justify a significant reduction in costs. As for the hearing, we discern no unusual level of cooperation, nor did he make any formal admissions.

[177] In the circumstances of Hunt, we consider it appropriate that he pay the most significant portion of the recoverable investigation and hearing costs, including some of the costs attributable to Front Row. We therefore order pursuant to section 202 of the Act that Hunt pay $25 000 towards the costs of the investigation and hearing.

(ii) Pittarelli

[178] Pittarelli played a highly significant role in the illegal Front Row activities. Accordingly, it is reasonable to conclude that his activities were a significant focus of the investigation, and they were a significant focus of the hearing. As noted, Staff's allegations that Pittarelli illegally traded and distributed Front Row securities were upheld, but their allegations that he made misleading statements to investors failed. Although Pittarelli cooperated during the investigation, we do not discern an unusually high level of cooperation that would justify a significant reduction in costs. Pittarelli did somewhat contribute to efficiency in the hearing process by providing the Pittarelli Admissions that were entered into evidence after two days of the hearing. The Pittarelli Admissions were helpful in framing the issues for argument and in our determinations as reflected in the Merits Decision.

[179] In the circumstances of Pittarelli, we consider it appropriate that he pay a significant portion of the recoverable investigation and hearing costs, including some of the costs attributable to Front Row. We therefore order pursuant to section 202 of the Act that Pittarelli pay $20 000 towards the costs of the investigation and hearing.

(iii) Campanelli-Pittarelli

[180] Campanelli-Pittarelli played a significant, albeit lesser, role in the illegal Front Row activities. It is reasonable to conclude that her activities were an important focus of the investigation, and they were an important focus of the hearing (although at both stages receiving less attention than did those of Hunt and Pittarelli). The investigation surrounding Campanelli-Pittarelli appeared directed more at the specifics of the Loans and the involvement of the other Individual Respondents (particularly Hunt and Pittarelli) and less at her role. The focus of the hearing was similar. Staff were successful in proving all of their allegations against Campanelli-Pittarelli. Although Campanelli-Pittarelli cooperated during the investigation, we do not discern an unusually high level of cooperation that would justify a significant reduction in costs. Campanelli-Pittarelli did somewhat contribute to efficiency in the hearing process by providing the Campanelli-Pittarelli Admissions that were entered into evidence after two days of the hearing. The Campanelli-Pittarelli Admissions were helpful in framing the issues for argument and in our determinations as reflected in the Merits Decision.

[181] In the circumstances of Campanelli-Pittarelli, we consider it appropriate that she pay a moderate portion of the recoverable investigation and hearing costs. We therefore order pursuant to section 202 of the Act that Campanelli-Pittarelli pay $10 000 towards the costs of the investigation and hearing.

(iv) Tamura

[182] Tamura played an important role in the illegal Front Row activities. Accordingly, it is reasonable to conclude that his activities were a major focus of the investigation, and they were a major focus of the hearing. As noted, Staff's allegations that Tamura illegally traded and distributed Front Row securities were upheld, but the allegations that he made misleading statements to investors failed. Tamura did contribute to a more efficient investigation through his cooperation and provision of documents. Tamura also contributed to a more efficient hearing by providing the Tamura Admissions.

[183] In the circumstances of Tamura, we consider it appropriate that he pay a significant portion of the recoverable investigation and hearing costs, including some of the costs attributable to S & I. We therefore order pursuant to section 202 of the Act that Tamura pay $15 000 towards the costs of the investigation and hearing.

(v) Pilling

[184] Pilling played an important, albeit lesser, role in the illegal Front Row activities. Accordingly, it is reasonable to conclude that his activities were an important focus of the investigation, and they were an important focus of the hearing (although at both stages receiving less attention than did those of Hunt, Pittarelli and Tamura). Staff were successful in proving all of their allegations against Pilling. Pilling did contribute to the efficiency of both the investigation and hearing through his cooperation with Staff, his provision of extensive documentation and his provision of the Pilling Admissions at the start of the hearing.

[185] In the circumstances of Pilling, we consider it appropriate that he pay a moderate portion of the recoverable investigation and hearing costs. We therefore order pursuant to section 202 of the Act that Pilling pay $10 000 towards the costs of the investigation and hearing.

(vi) McLeod

[186] McLeod played an important, albeit lesser, role in the illegal Front Row activities. Accordingly, it is reasonable to conclude that his activities were an important focus of the investigation, and they were an important focus of the hearing (although at both stages receiving less attention than did those of Hunt, Pittarelli and Tamura). Staff were successful in proving all of their allegations against McLeod – McLeod admitted all of the allegations. McLeod did contribute to the efficiency of both the investigation and hearing through his cooperation with Staff, his provision of some documentation and his provision of the McLeod Admissions at the start of the hearing, which essentially obviated the need for his involvement in the merits portion of the hearing.

[187] In the circumstances of McLeod, we consider it appropriate that he pay a small portion of the recoverable investigation and hearing costs. We therefore order pursuant to section 202 of the Act that McLeod pay $5000 towards the costs of the investigation and hearing.

(vii) Jimmy Creason

[188] Jimmy Creason played an important role in the illegal Front Row activities. He apparently became a target of the investigation some time after it started, and his activities in Front Row were a lesser focus of the hearing. Staff's allegations that Jimmy Creason illegally traded and distributed Front Row securities were upheld, but the allegations that he made misleading statements to investors failed. We do not discern an unusually high level of cooperation from Jimmy Creason in either the investigation or hearing that would justify a significant reduction in costs.

[189] In the circumstances of Jimmy Creason, we consider it appropriate that he pay a moderate portion of the recoverable investigation and hearing costs, including some of the costs attributable to Windy Ridge. We therefore order pursuant to section 202 of the Act that Jimmy Creason pay $10 000 towards the costs of the investigation and hearing.

(viii) Jamie Creason

[190] Jamie Creason played the least important role in the illegal Front Row activities. He apparently became a target of the investigation some time after it started, and his activities in Front Row were a minor focus of the hearing. Staff's allegations that Jamie Creason illegally traded and distributed Front Row securities were upheld, but the allegations that he made misleading statements to investors failed. We do not discern that Jamie Creason unduly complicated or prolonged the investigation or hearing. Although Jamie Creason did not agree to the admissions against him as had other of the Respondents, he was not obliged to do so. Indeed, it appears that he had good reason not to admit some of those allegations.

[191] In the circumstances of Jamie Creason, we consider it appropriate that he pay a small portion of the recoverable investigation and hearing costs, including some of the costs attributable to Windy Ridge. We therefore order pursuant to section 202 of the Act that Jamie Creason pay $5000 towards the costs of the investigation and hearing.

IV. INTERIM ORDERS

[192] By its terms, the 25 July 2007 interim cease trade order, extended on 8 August 2007 and 12 September 2007, expires against Front Row, S & I, Hunt, Tamura, Pittarelli, Campanelli-Pittarelli, Pilling and McLeod with the issuance of this decision.

V. PROCEEDING CONCLUDED

[193] This proceeding is concluded.

23 November 2010

For the Commission:

"Original Signed By"
Glenda A. Campbell, QC

"Original Signed By"
Allan L. Edgeworth, P. Eng.

"Original Signed By"
Glen D. Roane