ALBERTA SECURITIES COMMISSION

DECISION

Citation: Arbour Energy Inc., Re, 2012 ABASC 416 **Date: 20120927**

**Arbour Energy Inc., Dennis Morice, Milowe Brost,
The Institute For Financial Learning, Group of Companies Inc.,
Merendon Mining Corporation Ltd. and Gary Sorenson**

Panel:	Glenda A. Campbell, QC Neil W. Murphy Karen A. Prentice, QC
Appearing:	Don Young and Deanna Steblyk for Commission Staff
	Chris Archer and John James for Dennis Morice
	Glenn Solomon, QC for Gary Sorenson
Submissions Completed:	5 September 2012
Date of Decision:	27 September 2012

I. INTRODUCTION

[1] In a 30 March 2012 decision (the "Merits Decision", cited as *Re Arbour Energy Inc.*, 2012 ABASC 131), this panel of the Alberta Securities Commission (the "Commission") considered allegations of contraventions of Alberta securities laws by Commission staff ("Staff") against Arbour Energy Inc. ("Arbour"), Dennis Morice ("Morice"), Milowe Brost ("Brost"), The Institute For Financial Learning, Group of Companies Inc. ("IFFL"), Merendon Mining Corporation Ltd. ("Merendon") and Gary Sorenson ("Sorenson") (collectively, the "Respondents"). We found that the Respondents had contravened the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") and acted contrary to the public interest, specifically that:

- Arbour, Morice, Brost and IFFL breached section 75(1)(a) of the Act by trading in Arbour securities without registration or exemptions;

- Arbour, Morice, Brost and IFFL breached section 110(1) by distributing Arbour securities without a prospectus or exemptions;

- Brost and IFFL breached section 75(1)(b)(i) by acting as advisors without registration or exemptions;

- Arbour and Morice breached section 92(4.1) (and its predecessor provision) by making statements in three Arbour offering memoranda that they knew or reasonably ought to have known were untrue or misleading;

- Brost and IFFL breached sections 93.2 and 93.1 by failing to comply with their written undertakings to the Commission and a Commission order accepting those undertakings;

- the Respondents breached section 93(b) (and its predecessor provision) by perpetrating a fraud on Alberta investors; and

- in so doing, the Respondents engaged in conduct contrary to the public interest.

[2] The Merits Decision concluded the first phase of a hearing (the "Merits Hearing") into the merits of Staff's allegations. In this second phase, we consider what, if any, orders under sections 198, 199 and 202 ought to be made against each of the Respondents.

[3] We received written and oral submissions from Staff, Morice and Sorenson. We received no written or oral submissions from Arbour, Brost, IFFL or Merendon.

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

[5] For the reasons set out below, we conclude that it is in the public interest to make orders sanctioning all of the Respondents. We also conclude that it is appropriate to make costs orders against all Respondents except Arbour. In summary, we order the following:

- Arbour:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws, and all trading in or purchasing of Arbour securities shall cease, until such time, if ever, that a final receipt for a prospectus filed by Arbour is issued by the Commission's Executive Director;

- Morice:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws (subject to limited carve-outs), for 15 years;
  - is barred from acting as a director or officer of any issuer, permanently;
  - shall pay an administrative penalty of $150 000; and
  - shall pay $50 000 towards the costs of the investigation and hearing;

- Brost:
  - is barred from trading in or purchasing securities, from using exemptions under Alberta securities laws, from acting as a director or officer of any issuer, and from advising in securities, permanently;
  - shall pay an administrative penalty of $3 million; and
  - shall pay $85 000 towards the costs of the investigation and hearing;

- IFFL:
  - is barred from trading in or purchasing securities, from using exemptions under Alberta securities laws, and from advising in securities, permanently;
  - shall disgorge to the Commission $10 million; and
  - shall pay $85 000 towards the costs of the investigation and hearing;

- Merendon:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws, permanently;
  - shall disgorge to the Commission $38.6 million; and
  - shall pay $70 000 towards the costs of the investigation and hearing; and

- Sorenson:
  - is barred from trading in or purchasing securities, from using exemptions under Alberta securities laws, and from acting as a director or officer of any issuer, permanently;
  - shall pay an administrative penalty of $2 million; and

- shall pay $70 000 towards the costs of the investigation and hearing.

II. BACKGROUND

[6] The Merits Decision sets out the factual background and the complex interconnections among the Respondents and others, together with our detailed conclusions regarding the Respondents' capital-market misconduct.

[7] Morice, Brost and Sorenson are Calgary residents.

[8] Arbour had been a reporting issuer in Alberta since December 2001 and is apparently now defunct. Morice was its president, secretary, CEO, CFO and a director at the times relevant to our findings. We found that Morice became involved in Arbour as a nominee for Brost and Sorenson, but later realized (or should have realized) the plans that Brost and Sorenson had for flowing Arbour investor money to Merendon and eventually to other entities owned or controlled by, or associated with, Brost, Sorenson or both (the "Brost/Sorenson Entities").

[9] IFFL is an Alberta corporation owned and controlled by Brost, who is also its guiding mind, sole shareholder, CEO and a director. Brost claimed IFFL was "an information club", teaching its members various financial strategies. In reality, however, IFFL – through salespersons called "structurists" – encouraged people to become IFFL members by promising them access to domestic investments that also offered a lucrative "international" component. IFFL members were then encouraged to purchase securities in Brost-connected entities (such as Arbour). We found that "IFFL's primary business activity was to promote and sell to IFFL members securities of Brost-connected entities."

[10] Merendon, a private Alberta junior exploration mining company, had its head office in Calgary until relocating its head office to Belize in 2007. Merendon's headquarters for its mining operations was in Honduras during the period relevant to the allegations. Some of Merendon's subsidiaries, including COREL, TRL, Merendon Honduras and Merendon Ecuador, played roles in the overall fraudulent scheme and misconduct set out in the Merits Decision. We found that Sorenson – Merendon's CEO, chairman, the controlling shareholder and a director – was its guiding mind. He was also the guiding mind of Eiger and was a shareholder of SGD.

[11] We set out in the Merits Decision (at paras. 1030-51) comments as to the breaches found and our conclusions as to such breaches being conduct contrary to the public interest.

[12] We now turn to the parties' positions on sanction and costs.

III. PARTIES' POSITIONS

A. Staff

[13] Staff emphasized that the misconduct found here – conducted by sophisticated and experienced market participants with a history of regulatory misconduct – showed complete "disregard for the securities regulatory regime . . . [T]he magnitude of the fraud and the breadth and depth of the misconduct and deceit in this matter make this one of the most egregious matters ever brought before the [Commission]".

[14] Staff submitted that orders imposing the following sanctions would be appropriate:

- as against Arbour:
  - a prohibition against trading in securities of Arbour and using exemptions under Alberta securities laws, until such time, if any, as Arbour has filed a prospectus with the Commission and been issued a receipt;

- as against Morice:
  - a prohibition against trading in or purchasing securities, using exemptions under Alberta securities laws and acting as a director or officer of any issuer, for 15 years; and
  - a $500 000 administrative penalty;

- as against Brost:
  - a prohibition against trading in or purchasing securities, using exemptions under Alberta securities laws, acting as a director or officer of any issuer and advising in securities, permanently; and
  - a $3 million administrative penalty;

- as against IFFL:
  - a prohibition against trading in securities and exchange contracts, using exemptions under Alberta securities laws and advising in securities, permanently; and
  - disgorgement in the amount of $10 million;

- as against Merendon:
  - a prohibition against trading in securities and exchange contracts, and using exemptions under Alberta securities laws, permanently; and
  - disgorgement in the amount of $38 599 848; and

- as against Sorenson:
  - a prohibition against trading in or purchasing securities, using exemptions under Alberta securities laws and acting as a director or officer of any issuer, permanently; and
  - a $3 million administrative penalty.

[15] Staff also sought costs from all Respondents except Arbour. We address costs separately, as they are not a sanction order.

B. Arbour

[16] We received no submissions from Arbour on sanction.

C. Morice

[17] Morice submitted that appropriate sanctions against him would be:

- a ban on trading in securities and a denial of exemptions, each for 15 years, "except for RSP's and RESP's";
- a ban on acting as a director or officer of any issuer for 15 years; and
- a $65 000 administrative penalty.

[18] Morice contended that he was "relatively inexperienced" in the capital markets, despite his position at Arbour. He also noted that the panel relied at the Merits Hearing on his extensive compelled evidence. Morice submitted that his role in the Arbour scheme was not as ringleader, mastermind or co-conspirator. He characterized himself as "a cog in a wheel in a complex machine that was designed to run with or without him" and "but a bit player". Morice compared himself favourably to Wigmore and Regier, and submitted that Morice's monetary sanction should be less than the $200 000 ordered against Regier in the sanction portion of *Re Capital Alternatives Inc.*, 2007 ABASC 482 and an amount comparable to the $60 000 Wigmore settled for in this case (*Re Wigmore*, 2009 ABASC 642).

[19] Morice contended throughout his submissions that he was not minimizing the seriousness of his actions, but was putting them in the proper context – that is, with Morice as only "a minor player". Morice also noted that the sanctions here should not be much different from those ordered in *Capital Alternatives*, because the cases are similar and the misconduct found here occurred before the Commission rendered its decision in *Capital Alternatives*.

D. Brost

[20] We received no submissions from Brost on sanction.

E. IFFL

[21] We received no submissions from IFFL on sanction.

F. Merendon

[22] We received, through the Commission Registrar, a 22 May 2012 letter from Merendon's legal counsel advising that his firm no longer represented Merendon (but continued to represent Sorenson). Therefore, although Merendon and Sorenson were jointly represented throughout the Merits Hearing and treated together for many purposes in the Merits Decision, we deal with them separately here.

[23] We received no submissions from Merendon on sanction.

G. Sorenson

[24] Sorenson noted that his submissions on sanction are based on the findings in the Merits Decision. He conceded that the findings were serious, therefore warranting against him:

- bans on trading in or purchasing securities and a denial of all Alberta securities law exemptions, permanently, with no carve-outs or exceptions;

- a ban on acting as a director or officer of any issuer, permanently, with no exceptions; and

- an administrative penalty of no more than $650 000.

[25] Therefore, Sorenson disputed only the amount of the administrative penalty (and costs) sought by Staff.

[26] Regarding the quantum of the administrative penalty, Sorenson acknowledged the seriousness of the single allegation upheld against him – perpetrating a fraud on Alberta investors. He also acknowledged the harm to investors caused by such fraudulent misconduct. However, Sorenson submitted that he had limited capital-market or public company experience, as his business experience was with private corporations. Sorenson further contended that there was only limited harm to the capital market in general because the events here arose in the exempt market context. Sorenson also argued that, although he "received a relatively modest salary" through Merendon, there was "no suggestion that he received funds beyond that".

[27] Sorenson submitted that permanent capital-market bans would provide sufficient specific deterrence, ensuring, as they naturally would, that he would never again participate in the Alberta capital market. In his view, general deterrence would be satisfied with the imposition of those sanctions coupled with an administrative penalty of, at most, $650 000, as such sanctions would send the requisite clear message to other market participants.

IV. ANALYSIS

A. Sanction

1. Principles and Factors

[28] There is no dispute as to the legal principles applicable to our task of determining what, if any, sanctions are appropriate to order against the Respondents under sections 198 and 199 of the Act. This Commission has set out the principles and factors relevant to sanction in many decisions, commencing with *Re Lamoureux*, [2002] A.S.C.D. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253). These principles and factors assist us in imposing sanctions that are appropriate in the public interest, given the particular circumstances before us.

[29] The Commission's mandate is not to punish respondents or to remedy harm they have caused. Rather, sanctions imposed by the Commission are designed to further its goals of protecting Alberta investors and the Alberta capital market through the prevention of future harm caused by either a particular respondent (specific deterrence) or others who may be tempted to engage in similar behaviour (general deterrence). These principles have been set out and confirmed as appropriate by the Supreme Court of Canada in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45; and *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62. These principles

have also been applied in many decisions issued by this Commission, including *Re Wealthstreet Inc.*, 2011 ABASC 611; and *Re Gold-Quest International Corp.*, 2010 ABASC 278.

[30] In crafting sanctions that will provide the requisite investor and capital-market protection and prevent their exposure to similar future misconduct, Commission panels keep in mind those general principles and examine factors applicable in the particular circumstances, including (as stated in *Re Workum and Hennig*, 2008 ABASC 719 (affirmed 2010 ABCA 405) 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.

2. Categories of Sanctions

[31] Section 198 of the Act empowers the Commission to order one or more of several sanctions, including various capital-market bans and disgorgement. Under section 199, the Commission may order an administrative penalty against a respondent that contravened or failed to comply with Alberta securities laws. Orders under both sections 198 and 199 are made if the Commission considers such orders to be in the public interest.

Capital-Market Bans

[32] This category of sanction is designed to remove – for a time or permanently – the privilege of participating in certain activities in the Alberta capital market.

[33] Section 198(1)(a) of the Act allows us to order that a particular security not be traded in or purchased. This is commonly used when, for example, securities of a particular issuer ("issuer" is defined in section 1(cc) of the Act as a person or company that "(i) has outstanding securities, (ii) is issuing securities, or (iii) proposes to issue securities") have been the subject of illegal trades or distributions or been used to perpetrate a fraud. Section 198(1)(b) empowers us to order that a person or company cease trading in or purchasing securities. This sanction protects other market participants from what could otherwise be improper trading in or purchasing of securities by that respondent in the future. Section 198(1)(c) allows us to order that any or all exemptions contained in Alberta securities laws do not apply to a particular respondent. This can be particularly important when sending a message of specific and general deterrence relating to abuses of the exempt market or to egregious capital-market abuses, such as fraud, by removing access to the exempt capital market.

[34] Sections 198(1)(d) and (e) permit us to restrict a person from acting as a director or officer (or both) of an issuer, which protects the public by restraining future abuses of those positions by respondents who need such specific deterrence and by sending a clear deterrent message to others who occupy such positions of trust and control that a failure to discharge

properly their duties as directors or officers is not acceptable in our capital market and may result in removal from such positions. The Act includes as directors and officers those without those titles, but who perform functions similar to those performed by formally-appointed directors and officers.

[35] Section 198(1)(e.1) allows us to prohibit a respondent from advising in securities. This is particularly relevant when a respondent has engaged in misconduct relating to advising investors or potential investors regarding securities. This sanction provides protection to the investing public by prohibiting potentially harmful future investment advice being given by the respondent.

Disgorgement

[36] Section 198(1)(i) of the Act allows us to order that a respondent pay to the Commission what is termed disgorgement – a payment of an amount of money obtained as a result of the respondent's non-compliance with Alberta securities laws.

[37] This Commission discussed the underlying principles of disgorgement in *Re Planned Legacies Inc.*, 2011 ABASC 278 at paras. 71-75, referring there to several other cases. As noted in *Planned Legacies*, disgorgement is another tool that may be used to achieve specific and general deterrence. The Commission stated there (at para. 71) that disgorgement "reflects the equitable policy designed to remove all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Act. It is not a compensation mechanism for victims of the wrongdoing." In *Planned Legacies*, the Commission accepted the principle from the Ontario Securities Commission's decision in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 at para. 53 that Staff bear the initial burden of proving the amount obtained by a respondent through its non-compliance with the Act, with the burden then shifting to the respondent to disprove the reasonableness of that amount. We also note that the relevant amount is that "obtained", not the amount retained, the profit, or any other amount calculated by considering expenses or other possible deductions.

Administrative Penalty

[38] Section 199 of the Act permits the Commission to order an administrative penalty of not more than $1 million for each contravention of or failure to comply with any provision of Alberta securities laws, after a hearing and if the Commission considers it to be in the public interest. The objective for imposing an administrative penalty is to provide a deterrent effect – deter the particular respondent from future participation in the same or similar misconduct and communicate to others that the impugned conduct will not be tolerated in the Alberta capital market. In assessing the appropriate quantum of the administrative penalty to order, the Commission is cognizant that an effective deterrent requires consideration of the benefit realized or amount of money raised by the wrongdoer's non-compliance with Alberta securities laws, the severity of the misconduct, the perceived efficacy of previously-ordered sanctions, and other factors.

3. Principles and Factors Applied

[39] One type of sanction order in isolation will usually not effectively address specific and general deterrence, particularly in complicated circumstances with multiple contraventions of the Act. Accordingly, in determining appropriate sanction here, we consider the effect of a specific sanction order, its contribution to the overall combined effect of different sanction orders, and the proportionality of the sanctions ordered to the circumstances and conduct of each Respondent.

(a) Relevant Factors

(i) Serious Misconduct and Recognition of Seriousness

Arbour

[40] We found that Arbour engaged in serious capital-market misconduct – fraud, illegal trades, illegal distributions and making statements in the Arbour OMs that it knew or reasonably ought to have known were untrue or misleading – all of which also comprised conduct contrary to the public interest. Arbour, whose securities were illegally sold to raise money for ultimately Brost, Sorenson and the Brost/Sorenson Entities, was integral to the perpetration of almost all of the contraventions found in this case.

Morice

[41] We found that Morice engaged in serious capital-market misconduct – fraud, illegal trades, illegal distributions, making statements in the Arbour OMs that he knew or reasonably ought to have known were untrue or misleading – all of which also comprised conduct contrary to the public interest. Morice was also the individual responsible for directing Arbour's illegal actions, although he was, in turn, directed to a great extent by Brost and to a lesser extent by Sorenson.

[42] In his submissions, Morice recognized to a large degree the seriousness of his actions. He acknowledged that Staff's recommended 15-year capital-market bans were appropriate in the circumstances for his misconduct. He also conceded the need for an administrative penalty. However, such acknowledgement and recognition are diminished somewhat by the tone of Morice's submissions, which emphasized that Morice's role was as "a bit player" – a mere "cog". Morice appeared to accept the first part of our conclusion – that he began as "wilfully blind" to the misuse by Brost and Sorenson of Arbour and the Arbour funds raised from investors. However, Morice seemed to disclaim all understanding of the second part of our conclusion – that he (and Arbour) "certainly at some point . . . became willing accomplices in the scheme". Morice may have had a more passive involvement in this fraudulent scheme than Brost and Sorenson, but Morice's consensual involvement was critical to the successful implementation of the scheme.

Brost

[43] We found that Brost contravened many key provisions of Alberta securities laws. He engaged in illegal trades and distributions of securities, illegally advised investors and potential investors, was one of the two architects behind a complex massive fraud perpetrated on Alberta and other investors and engaged in conduct contrary to the public interest. Considerable aspects of Brost's misconduct occurred while he was subject to the Brost Undertaking and the

Undertaking Order. As we found in the Merits Decision, Brost was IFFL's guiding mind, directing and controlling its illegal selling of securities with some input from Sorenson. This was all very serious misconduct. Given Brost's initiation of and involvement in the fraudulent scheme, his direct interaction with investors, and his numerous breaches of Alberta securities laws, Brost's misconduct was the most egregious before us in this proceeding. We are convinced that he presents a serious risk to the investing public.

[44] Brost did not participate in the Merits Hearing and made no submissions on merits or sanction (or costs). Brost, having been involved in Commission matters before, clearly understood the significance and importance of a Commission enforcement proceeding. We conclude that Brost has not recognized the seriousness of his misconduct nor accepted responsibility or showed any remorse for his abhorrent misconduct and the devastating consequences that he caused to Alberta and other investors. These circumstances heighten the need for severe sanction.

IFFL

[45] As was the case with Brost, IFFL was found to have contravened some of the most critical provisions of Alberta securities laws – it engaged in illegal trades and distributions of securities, illegally advised investors and potential investors, and was integral to the successful perpetration of the massive fraud that was committed on Alberta and other investors (as the vehicle used to supply investors and their funds) – and consequently engaged in conduct contrary to the public interest. IFFL continued to contravene Alberta securities laws while subject to the IFFL Undertaking and the Undertaking Order. IFFL, under the stewardship of Brost, engaged in very serious misconduct and, in our view, presents a serious risk to the investing public.

Merendon

[46] We found Merendon, led and controlled by Sorenson, to be a participant in – and a significant beneficiary of – a massive complex securities fraud; further, its role in the fraudulent scheme was conduct contrary to the public interest. Perpetrating a fraud is obviously a most serious contravention of Alberta securities laws.

Sorenson

[47] We found that Sorenson contravened Alberta securities laws and acted contrary to the public interest through his participation in the fraudulent scheme involving Arbour, the sale of its securities and the use of those funds raised from Arbour investors. Along with his cohort, Brost, Sorenson devised the complex fraudulent scheme, using Merendon as the vehicle to receive and disburse investor money. Clearly his was egregious behaviour, although not to the same extent as Brost's and IFFL's misconduct – Sorenson did not have the same direct contact with investors as did Brost and IFFL and was not found to have contravened multiple provisions of Alberta securities laws.

[48] We disagree with Staff that Sorenson does not recognize the significant harm he caused to investors. In written submissions, Sorenson clearly acknowledged the "high level of seriousness" of our findings against him and the "significant harm" caused to investors and the capital market by the Respondents' conduct. We find his recognition to be more than a panacea,

given his proposal that permanent capital-market bans and an administrative penalty of up to $650 000 would be appropriate sanctions to order in his circumstances. Further, Sorenson conceded that no carve-outs should be made from the proposed capital-market bans, resulting in his permanent removal from participation in the Alberta capital market. Sorenson himself appreciates and, we agree, that his misconduct should attract severe sanction.

(ii) Capital-Market Experience

[49] An assessment of a respondent's capital-market activity and any previous sanction history is important in determining sanction because such history is a useful indicator of that respondent's knowledge of securities regulatory requirements. In some circumstances, respondents with less experience in the capital market may be subject to less severe sanctions because they may truly not have understood the extent of their capital-market responsibilities or the potentially severe consequences that could result from their misconduct. Here, however, given the nature of the contraventions – most of which involved a high level of dishonesty and deceit – even a lack of capital-market experience would not significantly moderate the otherwise-appropriate sanctions.

Arbour

[50] Arbour had not previously been sanctioned by the Commission. Although Arbour was incorporated in 2001, it was not commandeered by Brost's and Sorenson's team until June 2004, when it almost immediately started down the path of trading and distributing securities illegally, making misrepresentations and perpetrating a fraud. Arbour was effectively controlled and directed by Brost (with input from Sorenson), with Morice, initially a dupe, later knowingly complicit in its activities. Given the roles of these three individuals, we think it appropriate to fix Arbour with a moderate level of capital-market experience, such that Arbour clearly knew it was obliged to comply with Alberta securities laws and act honestly and in the best interests of its shareholders and potential shareholders.

Morice

[51] We reject Morice's contention that he "was relatively inexperienced" in the capital market. Morice was a professional, having been a certified general accountant for many years prior to his involvement with Arbour. He had public company experience as a result of his positions with Bellringer, a public company, in the early 1990s. He had a securities regulatory disciplinary history stemming from two settlement agreements with the Commission, in 1996 and 1998, as a result of contraventions of Alberta securities laws committed by Bellringer and himself personally during his tenure as one of its directors and, apparently, also an officer. We conclude that Morice should have been, if he was not, very well aware of the nature and extent of Alberta securities laws and the importance of ensuring compliance with those and other legal requirements. And, as noted, much of his misconduct was inherently dishonest, so that any lack of capital-market experience would not have lessened the need for sanctions.

Brost

[52] It is clear from the Merits Decision and the evidence before us at the Merits Hearing that Brost had a great deal of capital-market experience, including active involvement in the Alberta capital market. Brost had been registered with the Commission as a mutual fund salesperson

between 1992 and 1996. He had formed and operated – or was otherwise involved in – several corporate entities, including Capital Alternatives, Bellringer, SGD, True North and, of course, IFFL. In September 2004, Brost gave the Brost Undertaking and the IFFL Undertaking to the Commission for himself and IFFL, respectively, which were accepted by the Commission as reflected in the Undertaking Order. We note that at the time Brost gave those undertakings not to trade or advise, the Arbour scheme was already in progress, with Brost and IFFL continuing to illegally trade and advise in securities for several months afterward. Around the same time (between May 2004 and August 2005), Brost was engaging in similar capital-market misconduct involving different issuers, for which he was ultimately sanctioned by the Commission in its 2007 decision, *Capital Alternatives*. Brost, as an active capital-market participant with his prior securities regulatory disciplinary history, was all too aware of the need to comply with Alberta securities laws when selling securities to the public, but failed to do so.

[53] Brost's extensive and varied capital-market experience coupled with his dishonest actions greatly heighten the need for severe sanction against him.

IFFL

[54] We ascribe to IFFL the same extensive capital-market experience, including active involvement in the Alberta capital market that its controlling mind, Brost, had. IFFL was the successor entity to Capital Alternatives and used by Brost as the vehicle to recruit public investors and take their money. As did Brost, IFFL clearly knew it was obliged to comply with Alberta securities laws and act honestly and in the best interests of the investors from whom it was soliciting money.

[55] IFFL's extensive and varied capital-market experience and the inherent dishonesty of its actions greatly heighten the need to impose severe sanction on it.

Merendon

[56] The Merendon group of companies appears to be a complex and extensive operation. Although composed of private entities, many of these entities received enormous amounts of money sourced from the capital market. As a corporate entity, operated and controlled by a sophisticated businessman – Sorenson (as discussed below) – Merendon certainly should have been aware of the existence of and necessity for compliance with Alberta securities laws and other legal requirements, but acted dishonestly. Further, in 2000 Merendon entered into a settlement agreement with the Commission as a result of illegally trading and distributing its securities without proper exemptions. Merendon's capital-market experience and prior securities regulatory disciplinary history greatly heighten the need for severe sanction.

Sorenson

[57] We disagree with Sorenson's characterization of himself as having "limited" experience and activity in the capital market. It is true that he has never been a registrant and has not been directly involved in public companies. However, the evidence established that Sorenson is a very astute and experienced businessman with extensive experience with multiple private companies – domestic and offshore – that were sourcing huge amounts of capital from the capital market. Sorenson also had a prior securities regulatory disciplinary history. In 2000 Sorenson

entered into a settlement agreement with the Commission arising from his involvement in illegal trading and prohibited representations connected to sales of securities of Merendon and another issuer. Further, Sorenson, as one of the architects of a very complex fraudulent scheme involving Arbour securities, demonstrated considerable knowledge of the workings of – and regulatory requirements for – public companies and companies raising money through the use of exemptions provided for under Alberta securities laws. We have no doubt that Sorenson knew of Alberta securities law requirements and, in collaboration with Brost, structured a fraudulent scheme using Arbour and Morice in an attempt to avoid regulatory detection and scrutiny. Sorenson's capital-market experience and prior securities regulatory disciplinary history, combined with the inherent dishonesty of his actions, greatly heighten the need for severe sanction.

(iii) Benefit Received and Harm to Investors and Capital Market

Arbour

[58] Arbour was involved in the majority of the contraventions found in this case. Arbour securities were illegally traded and distributed to investors and the Arbour OMs used to sell the Arbour securities contained misrepresentations. Arbour was the entry point for investors into the fraudulent scheme concocted by Brost and Sorenson and was strongly associated as one of the sources of the financial harm suffered by Arbour investors.

[59] Although Arbour was the direct and immediate beneficiary of the approximately $45.5 million illegally raised from Arbour investors, Arbour did not retain most of that money. As part of the scheme, Arbour loaned Merendon $38.6 million and paid a further $5.3 million to acquire COREL from Merendon and its three partners. Arbour, once the recipient of more than $45 million, is apparently now defunct and inactive, with little, if any, assets for the benefit of its shareholders and creditors.

Morice

[60] Morice engaged in the same types of misconduct as Arbour, much of which, as noted, involved a level of dishonesty and awareness of that dishonesty. Morice, as a senior officer and a director of Arbour, held positions of trust, authority and responsibility with Arbour. But Morice allowed himself and his positions as a director and officer of Arbour to be misused and manipulated. Morice was responsible for the Arbour OMs that contained misrepresentations. Although Morice authorized Arbour to sell its securities to raise money from the public, Morice had surprisingly little direct contact with the investors and prospective investors being solicited to invest their money in Arbour. He may not have been privy to all of what investors were being told by Brost and IFFL about investing in Arbour, but, as Arbour's CEO and CFO, he should have been. Morice was probably correct in his submission that the Arbour scheme could have been run without his involvement, but he never questioned or stopped the flow of investors' funds out of Arbour. When he eventually must have realized what was going on, Morice should have resigned and notified the proper authorities. He instead chose to remain, capitulated to the instructions of Brost and Sorenson, and continued to allow Arbour investor funds to be siphoned off to Brost, Sorenson and the Brost/Sorenson Entities. Regardless of his level of knowledge throughout the relevant time about what was really transpiring, Morice bears responsibility for

the financial harm that was suffered by Arbour's investors and the resultant damage to the reputation and integrity of the Alberta capital market.

[61] Staff and Morice agreed that the primary benefit received by Morice was his salary from Arbour. It was clear that Morice did not receive the significant financial benefits that Brost and Sorenson ensured they received for themselves. However, as we noted in the Merits Decision, Morice apparently remained on with Arbour in "the hope of future economic rewards".

Brost

[62] Brost, as one of the masterminds of the fraudulent scheme to misuse investors' funds, resurrected and used a public company – Arbour – for the sole purpose of finding and luring investors, advising those investors to invest in Arbour (among other companies), and then diverting investor money out of the public company to a private company where the money would be available for his and Sorenson's personal use and benefit. Brost's contraventions of Alberta securities laws and his fraudulent activities caused direct financial harm to Arbour investors. His actions also impaired investor confidence in and harmed the integrity and reputation of the Alberta capital market.

[63] As we concluded in the Merits Decision, it was apparent that Brost became a wealthy man from the money invested in Arbour, although the evidence was not particularly helpful in proving exactly how much money Brost, Sorenson, the Brost/Sorenson Entities or others may have ultimately received. What we do know is that approximately $45.5 million was illegally obtained from Arbour investors through the efforts of Brost and IFFL; some small amount stayed with Arbour to fund its minimal oil and gas operations. We also know that $38.6 million of Arbour investors' money was loaned to Merendon (and another $5.3 million was paid to Merendon and its three partners for COREL). From there, at least some of that money received by Merendon from Arbour was distributed to other Brost/Sorenson Entities. Brost clearly received a sizeable financial benefit directly and indirectly through corporate entities controlled by him.

IFFL

[64] IFFL masqueraded as an educational entity. It purported to educate investors and to assist them in maximizing their returns on investments and minimizing their taxes payable. In reality, however, IFFL existed primarily, if not solely, to generate money that could be funnelled out of investors' reach into the control of Brost, Sorenson and the Brost/Sorenson Entities. IFFL illegally advised investors to invest money in Arbour, and those investors have now lost much, if not all, of their money. The existence and operation of such a sham harmed investors and damaged the reputation and integrity of the Alberta capital market.

[65] Brost and IFFL also received some portion of Arbour investor money for fees and commissions paid for Brost's and IFFL's illegal advising activities, although those amounts were not quantified in evidence before us. Based on the time period during which Brost and IFFL were advising and the evidence from Sorenson that IFFL was raising at least $6 million per month in early 2005, we find reasonable Staff's estimate of $10 million as IFFL's portion retained from those fund-raising activities.

Merendon

[66] Merendon's participation in the fraudulent Arbour scheme directly harmed Arbour investors financially and damaged the integrity and reputation of the Alberta capital market.

[67] Merendon was the primary initial recipient of the funds illegally raised from Arbour investors. Merendon received a massive and distinct financial benefit of at least $38.6 million. Those amounts were ostensibly to pay for Merendon's sale of its interest in the commercially, to date, unproven assets, for which Merendon itself had paid a pittance a year or so earlier. Merendon, under the control and direction of Sorenson, then paid some of those millions out to other Brost/Sorenson Entities, including a number of Merendon's subsidiaries.

Sorenson

[68] Sorenson clearly was a mastermind of the entire fraudulent plot. His fraudulent actions resulted in Arbour investors suffering significant financial harm, in some cases losing life-altering amounts of money. We reject Sorenson's contention that the harm caused is "limited, given that these events arose within the exempt markets, as opposed to the broader public markets". That position is untenable. The exempt market is a crucial component of the Alberta capital market. As this Commission has stated many times, misconduct in the exempt market affects not only the investors involved. Any conduct this egregious has ramifications beyond such strict limits. Fraud also significantly damages the integrity of the capital market as a whole, by affecting investors' confidence in the Alberta capital market, thus making it more difficult for legitimate and honest issuers to raise funds from investors, whether through public or exempt market financings. This was a massive fraud which caused immense financial and reputational damage to Arbour investors, potential investors, the exempt market and the Alberta capital market in general. The reputational damage of this fraud extended well beyond Alberta's borders.

[69] Sorenson benefited from his fraudulent activities, although the exact amount of that benefit was not well-quantified. Staff suggested the benefits received by Sorenson were "staggering", and that Sorenson "personally benefi[t]ed from – or, at worst, had access to" the entire $38.6 million loaned by Arbour to Merendon. Sorenson, however, argued that the evidence did not suggest that he received money from Merendon beyond "a relatively modest salary". He also noted that any benefit received "cannot be double-counted", presumably meaning that Merendon and Sorenson cannot each be considered to have received the full $38.6 million. In response, Staff re-asserted that Sorenson was the controlling mind of Merendon, so that any funds received – and able to be used – by Merendon (or ultimately its subsidiaries) were also received and able to be used by Sorenson.

[70] We agree with Staff that Sorenson had control over all money received by Merendon and that he directed what was done with those funds. We concluded in the Merits Decision that much of the Arbour investor money was paid to Merendon, some of which was then directed by Sorenson to the various Brost/Merendon Entities. As with Brost, Sorenson personally profited from this scheme, describing himself as "a very wealthy man" as a result of money raised by IFFL. His lifestyle, as demonstrated through the evidence adduced in the Merits Hearing,

showed an extreme level of wealth that could not have been supported by "a relatively modest salary" or by money earned by the Merendon subsidiaries, which were generally dependent on Merendon providing them with money to run their operations. In the result, we are satisfied the evidence clearly demonstrated that Sorenson received significant financial benefits from his fraudulent activities, although it is not clear how much he personally received from the $38.6 million.

(iv) Previous Decisions

[71] We were referred to a number of decisions, including Commission decisions *Capital Alternatives* and *Gold-Quest*, for guidance. Previous decisions generally provide little assistance to a Commission panel in determining appropriate sanctions because sanction orders are crafted to deal with the particular facts of the respondent, the capital market, and other conditions prevalent at the time.

[72] That said, there are similarities between this case and *Capital Alternatives*. In *Capital Alternatives*, Brost was one of the respondents, along with IFFL's "predecessor", Capital Alternatives. Although less money was fraudulently taken from investors in that case, $24.6 million from Alberta investors and almost $36.5 million total was still a considerable sum. Further, it appears that the Arbour fraud essentially carried on from where the Capital Alternatives fraud left off, moving on to source money from investors' RRSPs and investing those funds in a "new" investment opportunity – Arbour. In *Capital Alternatives*, Brost received permanent trading, exemption and officer and director bans, along with an administrative penalty of $650 000. Two other respondents there (including Regier) received administrative penalties of $200 000, and another received an administrative penalty of $65 000.

[73] In *Gold-Quest* approximately $30 million was taken from investors in a classic Ponzi and pyramid scheme. The Commission in that case ordered against the two main respondents permanent capital-market bans coupled with $2 million administrative penalties.

[74] From the *Capital Alternatives* decision in 2007 to the *Gold-Quest* decision in 2010, the magnitude of administrative penalties ordered by Commission panels increased. This was a function of different factual scenarios, but also reflected the comments in *Capital Alternatives* (at para. 99) that if large administrative penalties do not appear to be providing sufficient specific and general deterrence, there may be a need "to impose higher administrative penalties in appropriate circumstances in the future". Since the release of *Capital Alternatives*, this Commission continues to see capital-market misconduct, including fraud. Some potential miscreants will have been deterred by the administrative penalties and other sanctions imposed in the last few years. Others, however, have not been. We consider it ever more crucial to emphasize to those tempted to engage in such misconduct – particularly fraudulent schemes that are dishonest endeavours from the outset – that such behaviour is unacceptable, will not be tolerated in the Alberta capital market and will be dealt with harshly. This focus is evident in the increased administrative penalties ordered in recent years. For example, in *Re Aurora*, 2012 ABASC 7, in which findings were made of illegal trades and distributions and misrepresentations (but no fraud), the Commission imposed on two of the four respondents permanent capital-market bans and administrative penalties of $3.3 million and $1.2 million,

respectively. The quantum of the administrative penalties in *Aurora* specifically included an amount in excess of the financial benefit obtained to ensure that the penalty reflected more than merely a return of illegally-obtained gains. Decisions such as these do provide a foundation for the orders we will make.

[75] Contrary to Morice's assertion, comparisons of his role to that of Regier's in both Arbour and in *Capital Alternatives* and comparisons to Wigmore's settlement agreement are not useful. Morice's submission seemed to suggest that Morice's misconduct was not as egregious as that of Regier (both in this case in which Regier was not a respondent and during the course of the *Capital Alternatives* events) and was comparable to that of Wigmore; therefore, any administrative penalty imposed on Morice should be of an amount akin to the $60 000 administrative penalty agreed to by Wigmore, and much less than the $200 000 administrative penalty ordered against Regier in *Capital Alternatives*. With respect to Regier, we agree with Morice that Regier seemed to have played quite an important role in some of the Brost-connected entities; however, we do not accept Morice's contention that "Morice ran Arbour while Regier ran the fraud." In our view, Regier was like Morice; he was not a "ring leader nor an inspiration, a designer, architect, mastermind, or co-conspirator" but did Brost's bidding as commanded. As we set out earlier, when fraud and misrepresentations are involved, the inherent dishonesty cannot be minimized by claims of being ignorant or a mere puppet. Although Morice began his career at Arbour as a puppet, he eventually made the conscious choice to engage in multiple fraudulent and otherwise dishonest acts, such as certifying the Arbour OMs (despite their misrepresentations) and permitting the diversion of Arbour money to Merendon for assets not commercially proven. Comparisons to Regier do not make Morice's conduct less appalling. With respect to Wigmore, we note that Wigmore was not the president, CEO and CFO of Arbour, nor was he apparently involved in any of its day-to-day operations. Further, as often stated by this Commission, the many factors and circumstances involved with effecting settlement agreements make them less-than-helpful comparators for sanction hearings, which is the case here.

(v) Mitigating Factors

[76] Sorenson did not point to any mitigating factors, and we do not discern any in his circumstances.

[77] Morice claimed the following mitigating factors:

a) His financial benefit appears to have been in the form of a salary[.]
b) He admitted to his role[.]
c) He co-operated fully with the [Commission.]
d) He was not a directing mind[.]
e) He was a figurehead leader at Arbour, and was perhaps the least connected to Brost and Sorenson of the three directors, Wigmore, Weis, and Morice.
f) He was not an insider.

[78] We acknowledge that Morice did admit to aspects of his role in this scheme, although he attempted to minimize his role beyond what the evidence indicated and what we found in the Merits Decision. We cannot conclude that Morice showed a great deal of cooperation by submitting to compelled interviews by Staff; we saw no other indicia of cooperation. Morice, as

an officer and director of Arbour, was an insider of Arbour and had the ability to control and operate it legally or leave his position with Arbour rather than participate in and enable a fraudulent scheme. On balance, we find that any mitigation there could otherwise have been is outweighed by the fundamental dishonesty and weakness showed by Morice's continued participation in and facilitation of the Arbour scheme, especially when it became apparent to him that he was being used to ensure that Arbour money taken from investors would be directed to Brost, Sorenson and the Brost/Sorenson Entities.

[79] We find there to have been no mitigating factors in relation to any of the other Respondents.

(b) Specific and General Deterrence

[80] All of the Respondents were involved in perpetrating a systemic massive fraud on Alberta and other investors, involving a complicated web of domestic and offshore corporate and other entities, bank accounts and offerings. Investment fraud is reprehensible and completely unacceptable capital-market misconduct; instances of fraud in the capital market severely threaten the public's confidence and sense of fairness in the whole of our capital market. A high level of both specific and general deterrence is required against each Respondent on the basis of our fraud findings alone.

[81] In addition to the fraud, four of the Respondents engaged in illegal trades and distributions of securities – two of those Respondents illegally acted as advisors and breached undertakings or a Commission order (Brost and IFFL); the other two made untrue or misleading statements in offering documents provided to investors – the Arbour OMs (Arbour and Morice). All of this is serious misconduct as well. Illegal trades and distributions, as commented on by this Commission many times, impair investor confidence in the fairness and efficiency of our capital market, striking at the heart of our disclosure-based system. Making misrepresentations to or improperly advising investors or potential investors – many of whom may be vulnerable and unsophisticated – also undermines confidence in the legitimacy of our securities regulatory regime. Breaching an undertaking given to the Commission (or an order confirming an undertaking) shows not only disregard for the Alberta securities regulatory regime, but also disdain for the enforcement of Alberta securities laws.

[82] Based on the misconduct proven – and the factors discussed below – we are convinced that very severe sanctions must be imposed that will see these Respondents removed from participation in the capital market so that they cannot engage in further capital-market misconduct, and will see them receive very significant financial sanctions so that they and other like-minded people are dissuaded from so acting.

4. Conclusions on Sanction

(a) Capital-Market Bans

[83] In our view, Brost, IFFL, Merendon and Sorenson need to be removed from participating in our capital market, permanently. Their serious contraventions, history of repeated securities laws violations over an extensive period and ability to plan and execute a complex fraud involving multiple offshore and domestic corporations, bank accounts, securities distributions

and nominees make their continued presence in our capital market an ongoing and serious risk to investors and the integrity and effectiveness of the Alberta capital market. The orders we make will address that risk by permanently removing their ability to trade in or purchase securities and to use Alberta securities laws exemptions. Brost and Sorenson must also be banned, permanently, from acting as directors or officers of any issuer.

[84] Brost and IFFL also engaged in illegal advising. This is very serious misconduct because it puts investors and potential investors – often those most in need of sage and honest advice – at risk from those who would take such advantage of them. The investors were advised to invest money, at times RRSP money, in securities of Arbour. Arbour was clearly not a suitable investment, as its purpose was to flow money to Brost, Sorenson and the Brost/Sorenson Entities. Further, Brost and IFFL continued to illegally advise investors even while subject, respectively, to the Brost Undertaking and the IFFL Undertaking, and to the Undertaking Order. Therefore, we conclude in the circumstances that orders prohibiting Brost and IFFL from ever advising again are appropriate here, in addition to the other capital-market bans imposed on them.

[85] Arbour was a public company used as a vehicle by others – particularly Brost (with Sorenson always in the background) – to perpetrate a complex fraudulent scheme. In our view, the public interest requires Arbour to be removed from participation in the Alberta capital market. That said, we recognize that Arbour is a public company with public shareholders who have suffered as a result of the Respondents' misconduct. It is possible that Arbour could resurrect itself under new management for the benefit of its shareholders by filing a prospectus that is vetted and receipted by Commission Staff. In the result, we are prepared to accept Staff's recommendation on that point. We conclude that it would be in the public interest to prohibit any trading in or purchasing of Arbour securities, prohibit Arbour from trading in or purchasing all securities and deny Arbour access to all of the exemptions contained in Alberta securities laws until such time, if ever, as Arbour receives a final receipt for a prospectus.

[86] Taking into account the role played by Morice in this case and his securities disciplinary history, we are of the view that Morice must be removed from participation in the Alberta capital market for a significant time. We conclude, as conceded by Morice, that Staff's suggested 15-year capital-market bans are generally appropriate and in the public interest. We accept that limited carve-outs are appropriate here and would not be prejudicial to the public interest. However, we would go farther in one aspect than recommended by Staff. In our view, Morice cannot be trusted to act as a director or officer of any issuer ever again. We say this because all of his contraventions arose while carrying out his functions as a director and officer of Arbour; he allowed himself, Arbour and these important positions to be compromised to the detriment of Arbour investors and the capital market in general. Morice is also a repeat offender, having been sanctioned twice earlier for contraventions of Alberta securities laws while acting as a director and officer of a public company. For these reasons, we are of the view that Morice would present a real risk to Alberta investors if ever again permitted to act as a director or officer of any issuer. We will therefore prohibit Morice from acting as a director or officer of any issuer, permanently.

(b) Disgorgement

[87] Staff sought disgorgement from IFFL of $10 million and from Merendon of $38 599 848. Neither IFFL nor Merendon disputed the amounts claimed by Staff or made any submissions contending that the amounts sought were overstated or otherwise inappropriate. We find that Staff met its burden of proving that $10 million is a reasonable – likely conservative – estimate of the amount obtained by IFFL through commissions and other payments, and that the amount obtained by Merendon was at least the $38.6 million loaned to it by Arbour (as noted, the amount "obtained" is the relevant amount; no deduction need be made for Merendon's $152 in costs as suggested by Staff). Therefore, we accept the amounts of $10 million and $38.6 million as amounts obtained as a result of the non-compliance with Alberta securities laws by IFFL and Merendon, respectively.

[88] In our view, disgorgement orders of the amounts obtained by IFFL and Merendon, respectively, are appropriate here because they obtained that money through their contraventions of the Act by participating in – indeed being crucial players in – the scheme to defraud Arbour investors of their money (and, of course, IFFL engaged in additional illegal misconduct, as found). The money was, therefore, unlawfully obtained and should be disgorged so that neither IFFL nor Merendon retains any financial benefit from its non-compliance with Alberta securities laws. We will so order.

(c) Administrative Penalty

[89] Staff did not seek administrative penalties against Arbour, IFFL or Merendon; in the circumstances, including the other sanctions we are imposing, we see no useful objective in ordering an administrative penalty against any of these corporate respondents.

[90] Staff sought orders that each of Brost and Sorenson be required to pay a $3 million administrative penalty and Morice a $500 000 administrative penalty. Morice and Sorenson both agreed that our findings warranted an administrative penalty, but contended that the respective amounts should be considerably lower than those sought by Staff. Brost made no submissions.

[91] Brost contravened six sections of the Act, Sorenson one section of the Act and Morice four sections of the Act, and they did so over and over again each time one of the hundreds of investors was defrauded when illegally sold Arbour securities. Thus, the maximum administrative penalty we could order would be in the hundreds of millions of dollars, if we were to consider separately each of the Respondents' contraventions. Rather than attempt such a quantification, we adopt the approach suggested by the British Columbia Securities Commission in *Re Castiglioni*, 2011 BCSECCOM 62 at para. 45 and determine the appropriate penalty "having regard to a respondent's conduct as a whole in light of the public interest".

[92] Brost's misconduct was the most egregious before us. He committed multiple contraventions of Alberta securities laws, most of which involved base dishonesty. He also contravened the Brost Undertaking and the Undertaking Order, and caused IFFL to breach the IFFL Undertaking and the Undertaking Order. With his background – and the dishonesty inherent in many of his contraventions – Brost well knew that his conduct was wrong. He chose to continue in that activity to the detriment of investors and the capital market, and to his own

financial benefit. Based on our findings and considering all of the relevant factors discussed above, we are of the view that ordering a $3 million administrative penalty against Brost would provide the requisite specific and general deterrence demanded in his circumstances.

[93] Sorenson contended that an administrative penalty of no more than $650 000 would be appropriate in his circumstances, as that was the quantum of administrative penalty imposed against Brost in *Capital Alternatives* for a similar fraud and for more contraventions of Alberta securities laws. Sorenson also contended that no specific deterrence would be required beyond the permanent and complete capital-market bans agreed to by Sorenson as appropriate. We disagree. Although the capital-market bans will remove Sorenson from certain positions and activities in the Alberta capital market, we conclude that the fraudulent nature and immense scope of his misconduct require further specific deterrence together with a significant measure of general deterrence to be effective. In determining the appropriate administrative penalty, we consider that while Sorenson's wrongdoing was fraud, his wrongdoing did not encompass as many aspects as that of Brost. In all the circumstances, we conclude that an administrative penalty of $2 million is warranted against Sorenson.

[94] Morice himself did not mastermind the Arbour fraud but played an important role in its implementation. He chose to make misrepresentations in the Arbour OMs that were used to raise money for Arbour under the OM Exemption. He knew or ought to have known that it was commercially prudent to obtain a proper valuation of the TRL technology to assess its commercial viability before he permitted Arbour to acquire the TRL technology in return for extinguishing Arbour's loan to Merendon under the $45 Million Loan Agreement, but he chose to act contrary to Arbour's best interests by concluding that loan without the commercially-reasonable TRL valuation. Morice knew money was flowing into Arbour from investors at a surprising and unjustifiable rate, but did not question it. He knew that Arbour was not retaining enough money to fund its stated oil and gas aspirations, but allowed the money to continue flowing to Merendon, a company in need of capital and with the majority of its assets located offshore. Given Morice's actions – and failures to act – we are convinced that significant specific and general deterrence are warranted to ensure that Morice and other directors and officers of public companies do not compromise their positions in this manner in the future. In his circumstances, we consider that an appropriate administrative penalty for Morice, in conjunction with the capital-market bans already discussed, is $150 000.

B. Costs

1. Parties' Positions

[95] Pursuant to section 202 of the Act and former sections 191.1 and 191.2 of the *Alberta Securities Commission Rules (General)* (the "Rules"), Staff seek orders requiring the payment of costs incurred by the Commission in bringing this action.

[96] Staff referred to the principle underlying costs awards as set out in *Re Marcotte*, 2011 ABASC 287 at para. 20:

> A costs order is not a sanction, but rather a means of recovering, from a respondent found to have engaged in capital-market misconduct, certain investigation and hearing costs that would otherwise be borne indirectly by law-abiding market participants whose fees fund the

> Commission's operations. It is generally appropriate that a respondent pay at least some portion of the relevant costs. Determination of the appropriate portion may involve assessing parties' contributions to the efficient conduct and ultimate resolution of the proceeding.

[97] None of the Respondents disputed the relevant legal principles.

[98] Morice made no comment on the overall categories or quantum of Staff's costs, but contended that costs against him should be "nominal" because of his minimal "overall involvement in the scheme". He also argued that the majority of Staff's case dealt with Sorenson and Brost, and that Staff's costs associated with Sorenson's lengthy defence should not be visited on Morice.

[99] Sorenson contended that Staff's proposed equal division of costs (after choosing not to pursue Arbour for any costs) should not be followed. Although Sorenson agreed he should pay some costs and did "not admit or dispute any of the line items relating to costs", Sorenson submitted that he was not initially part of the investigation so should not bear a share of costs for early investigation stages. He also pointed to the two others Staff had been investigating – Weis and Wigmore – arguing that they should be allocated a portion of investigation costs as well. Sorenson further stated that he did not oppose much of Staff's evidence, but that admissions from him would not have increased hearing efficiency because the non-participation of Arbour, Brost and IFFL would have required Staff to prove facts regardless of any admissions by Sorenson. Finally, Sorenson contended that he should not be responsible for costs associated with the pre-hearing applications, many of which were resolved in the Respondents' favour. Sorenson opposed numerous adjournment applications so that the Merits Hearing could proceed; he submitted that he should not be penalized and ordered to pay any costs for taking that position.

[100] Two issues relate to costs. First, we must examine whether the total costs set out by Staff in their "Investigation and Hearing Costs" summary and the costs actually claimed are warranted. Second, we must determine the amount of costs, if any, to be assessed against each Respondent.

2. Quantum of Costs

[101] Staff provided a summary of actual costs incurred that totalled $552 763.80 (after deducting almost $77 000 for legal services provided by a second counsel). Staff indicated that they were only seeking costs of $90 000 from each of Morice, Brost, IFFL, Merendon and Sorenson, for a total of $450 000 in costs. Staff did not seek costs from Arbour (presumably, that would have been $90 000 had Staff chosen to seek costs against Arbour as well) because any monetary orders against Arbour could aggravate harm already suffered by Arbour shareholders. Therefore, the total recoverable costs claimed by Staff would appear to be $540 000, with $90 000 deducted to reflect costs that would have been attributed to Arbour; this would also seem to reflect deductions associated with rounding down the investigation portion of the costs from $146 454.01 to $140 000 and the hearing portion of the costs from $406 309.79 to $400 000. We continue our analysis on that basis.

[102] After reviewing the costs records submitted by Staff, and noting no objections to the amounts by any of the Respondents, we are satisfied that the types and quanta of costs generally fall within the categories and limits prescribed by the Act and Rules at the time. Therefore, we

accept that $540 000 was the total amount of recoverable costs. However, Staff withdrew two of its allegations during argument, after all the evidence had been adduced – against Arbour and Morice (failing to file or provide certain required continuous disclosure) and against Merendon and Sorenson (illegal trading and distribution of Arbour securities). There should be no recovery of any costs associated with those discontinued allegations. To account for this we will reduce the amount of recoverable costs against Arbour, Morice, Merendon and Sorenson. We turn now to a determination of how to allocate the costs among the Respondents.

3. Allocation of Costs among Respondents

[103] We accept Staff's decision not to seek costs against Arbour. However, we disagree with Staff that this is an appropriate case for assessing costs equally against all the other Respondents. In this regard, we find persuasive some of Sorenson's arguments, as will be discussed. We also agree with Morice's contention that a portion of Staff's case (and Sorenson's defence) did not relate directly to Morice, so that Staff's costs related to that should not be paid by him. As noted, costs orders relate to investigation and hearing costs attributable to a respondent and to that respondent's contribution or not to the efficiency and effectiveness of the conduct and resolution of the proceeding.

Investigation Costs

[104] As noted, Staff claimed a total of $140 000 in investigation costs apparently to be allocated equally among the six Respondents. We agree with Sorenson that Staff's allocation does not account for the fact that eight respondents – the six Respondents, as well as Wigmore and Weis – were involved until approximately the time the Merits Hearing started. Investigation costs would have been incurred for all eight, not just for the six Respondents Staff considered when formulating their position on costs. We noted that in his settlement with Staff, Wigmore agreed to pay $15 000 towards investigation costs. Because Staff considered $15 000 to be a fair allocation for Wigmore, we think that amount likely reflects a fair allocation for costs incurred in investigating Weis had he been required to pay any investigation costs, given the similar allegations made against him and the fact that his alleged misconduct arose from activities carried on while he was a director of Arbour. This would leave $110 000 of the investigation costs to be allocated among the remaining six Respondents.

[105] Sorenson argued that the investigation costs attributable to him should be less because he was not named in any investigation order and was only added to the proceeding as of the 10 September 2007 twice-amended notice of hearing. Staff contended that there was an extensive investigation, not constrained by any investigation order. We conclude that although Merendon and Sorenson were ultimately the subject of only one allegation, that allegation was the over-arching fraud allegation. Having heard the evidence during the Merits Hearing, we conclude that the fraud allegation logically commanded much of the investigation time in relation to all the Respondents. We also note that, compared to the fraud allegation, the non-fraud allegations against Arbour, Morice, Brost and IFFL were less complex, with Arbour's and Morice's overall lesser roles resulting in less time spent during the investigation stage on those aspects. Considering all the relevant factors, we will attribute more of the claimed investigation costs to Brost and IFFL, with a lesser amount to Sorenson and a further lesser amount to Arbour and Morice.

Hearing Costs

[106] Staff's claimed $400 000 in hearing costs includes a portion of pre-hearing costs. In our view, a portion of those pre-hearing costs should also be allocated to Wigmore and Weis because Staff would have incurred such costs in relation to those two former respondents, although they were not ultimately involved in the Merits Hearing. We conclude that $15 000 is an appropriate amount to allocate to each. This brings to $370 000 the total recoverable hearing costs against the six remaining Respondents.

[107] Sorenson argued that a significant part of the costs claimed by Staff related to multiple pre-hearing applications, and that Sorenson was successful in most of those applications. Sorenson also contended that he should not be penalized for opposing adjournment applications. In our view, the multiple pre-hearing applications led to mixed results for all parties. Having reviewed those applications, the majority were initiated by Arbour and Morice, with Brost and IFFL not involved, and with Merendon and Sorenson effectively compelled to participate. Many were unsuccessful. We attribute more of those costs to Arbour and Morice than to Merendon and Sorenson, and make a small deduction from Staff's claimed costs to account for Arbour's and Morice's successful applications.

[108] We do not consider that Arbour contributed to the efficiency of the Merits Hearing, although Arbour's apparently defunct status makes its non-participation understandable.

[109] We do not consider that Morice contributed to the efficiency of the Merits Hearing. It is true that we were able to glean useful evidence from Morice's investigative interview transcripts. However, Morice did not make any admissions, nor did he choose to testify so that the panel could hear his testimony or ask him questions. On the other hand, we do not consider that Morice hampered the efficiency of the Merits Hearing.

[110] Brost and IFFL did hamper the efficiency of the Merits Hearing by not participating.

[111] Merendon and Sorenson were represented by the same counsel throughout the Merits Hearing until after the Merits Decision was released. During the Merits Hearing, Merendon and Sorenson did not, in our view, contribute to the overall efficiency of the Merits Hearing. Sorenson testified for 10 days, with some of that testimony ultimately not helpful in determining the allegation against him. We also found that much of Sorenson's testimony before us was simply not believable. Sorenson justified not making any admissions on the basis that other of the Respondents had not participated in the Merits Hearing, so that Staff would still have had to prove certain facts, even if admitted by Sorenson. This was not persuasive. We believe it inefficient to refuse to consider admitting facts because others are not admitting facts. Had Sorenson admitted facts, such admissions would have increased the efficiency of the Merits Hearing, even if Staff ultimately needed to prove some of the same facts in relation to other Respondents. As well, certain facts were mainly within Sorenson's purview, and could have been admitted. For example, Sorenson could easily have admitted facts relating to his positions within Merendon, its subsidiaries, Eiger and SGD. A considerable amount of time at the Merits

Hearing was also taken up by evidence proving the fraud, with much of that evidence focusing on the intricacies and interconnectedness of Brost, Sorenson and the Brost/Sorenson Entities.

Total Costs Allocation

[112] We conservatively assess the total recoverable costs in this case against the six Respondents as $480 000. Staff sought no costs against Arbour; we make no costs order against it. Had we made such an order, we would have allocated $50 000 in costs to Arbour; accordingly, we reduce the total costs to be allocated among the other five Respondents by that amount. Having regard to the considerations discussed – including the need for certain deductions – we determine that of the total recoverable costs of the investigation and hearing:

- Morice pay $50 000;
- IFFL pay $85 000;
- Brost pay $85 000;
- Merendon pay $70 000; and
- Sorenson pay $70 000.

V. CONCLUSION AND ORDERS

[113] For the reasons expressed above, we find it is in the public interest to make the following sanction orders, which reflect the seriousness of the Respondents' non-compliance with Alberta securities laws and will deter the Respondents and others who may be tempted to engage in similar misconduct. We also consider the following costs orders appropriate in the circumstances. Accordingly, we order that:

Arbour

- under sections 198(1)(a), (b) and (c) of the Act, all trading in or purchasing of securities of Arbour cease, Arbour cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to Arbour, until such time, if ever, that the Executive Director issues a final receipt for a prospectus filed by Arbour;

Morice

- under sections 198(1)(b) and (c), Morice cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 27 September 2027, except that this order does not preclude Morice from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in registered retirement savings plans, registered retirement income funds, registered education savings plans or tax-free savings accounts (each as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of Morice, his spouse and his dependent children, if any;
- under sections 198(1)(d) and (e), Morice 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, permanently;
- under section 199, Morice pay an administrative penalty of $150 000; and

- under section 202, Morice pay $50 000 of the costs of the investigation and hearing;

Brost

- under sections 198(1)(b) and (c), Brost cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently;
- under sections 198(1)(d) and (e), Brost 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, permanently;
- under section 198(1)(e.1), Brost is prohibited from advising in securities, permanently;
- under section 199, Brost pay an administrative penalty of $3 million; and
- under section 202, Brost pay $85 000 of the costs of the investigation and hearing;

IFFL

- under sections 198(1)(b) and (c), IFFL cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to IFFL, permanently;
- under section 198(1)(e.1), IFFL is prohibited from advising in securities, permanently;
- under section 198(1)(i), IFFL pay to the Commission $10 million obtained as a result of its non-compliance with Alberta securities laws; and
- under section 202, IFFL pay $85 000 of the costs of the investigation and hearing;

Merendon

- under sections 198(1)(b) and (c), Merendon cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to Merendon, permanently;
- under section 198(1)(i), Merendon pay to the Commission $38.6 million obtained as a result of its non-compliance with Alberta securities laws; and
- under section 202, Merendon pay $70 000 of the costs of the investigation and hearing; and

Sorenson

- under sections 198(1)(b) and (c), Sorenson cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently;
- under sections 198(1)(d) and (e), Sorenson 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, permanently;
- under section 199, Sorenson pay an administrative penalty of $2 million; and
- under section 202, Sorenson pay $70 000 of the costs of the investigation and hearing.

VI. PROCEEDING CONCLUDED

[114] Pursuant to the Interim Order issued on 16 November 2005 and extended on 1 December 2005 (cited as *Re Arbour Energy Inc.*, 2005 ABASC 911 and *Re Arbour Energy Inc.*, 2005 ABASC 952, respectively), Arbour, Morice, Weis and Wigmore were prohibited from using all exemptions contained in Alberta securities laws until a decision was rendered following a hearing. The Interim Order expires, by its terms, with the issuance of this decision.

[115] Pursuant to the 2006 Arbour Cease Trade Order, issued on 5 May 2006 and extended by the Commission on 19 May 2006 (cited as *Re Arbour Energy Inc.*, 2006 ABASC 1327 and *Re Arbour Energy Inc.*, 2006 ABASC 1352, respectively), trading in Arbour securities was ordered to cease until further order of the Commission. The 2006 Arbour Cease Trade Order expires, by its terms, with the issuance of this decision.

[116] This proceeding is now concluded.

27 September 2012

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Neil W. Murphy

"original signed by"
Karen A. Prentice, QC