ALBERTA SECURITIES COMMISSION

DECISION

Citation: Gold-Quest International Corp., Re, 2010 ABASC 278 **Date: 20100618**

**Gold-Quest International Corp., David Michael Greene,
John Jenkins, Michael McGee and Delroy Atwood**

Panel:	Glenda A. Campbell, QC Roderick J. McKay, FCA Kenneth B. Potter, QC
Appearing:	Carla Murray for Commission Staff Michael McGee for himself Delroy Atwood for himself
Submissions Completed:	8 May 2010
Date of Decision:	18 June 2010

I. INTRODUCTION

[1] In a 14 January 2010 decision (the "Merits Decision", cited as *Re Gold-Quest International Corp.*, 2010 ABASC 18), this Alberta Securities Commission (the "Commission") panel found that Gold-Quest International Corp. ("Gold-Quest") illegally traded in and distributed its securities in Alberta in contravention of sections 75(1)(a) and 110(1) of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") and contrary to the public interest, and that David Michael Greene ("Greene"), John Jenkins ("Jenkins"), Michael McGee ("McGee") and Delroy Atwood ("Atwood") illegally distributed Gold-Quest securities in Alberta in contravention of section 110(1) and contrary to the public interest. (We refer to Gold-Quest, Greene, Jenkins, McGee and Atwood collectively as the "Respondents"). We also found that Gold-Quest and Greene made statements about the anticipated returns and the safety of investments in Gold-Quest that they knew were misleading and untrue contrary to section 92(4.1), and that Jenkins, McGee and Atwood authorized, permitted or acquiesced in Gold-Quest's contravention of that section.

[2] The Merits Decision forms part of, and should be read together with, this decision (and certain terms defined in the Merits Decision are used herein).

[3] In the Merits Decision, we found that Greene created Gold-Quest and the Gold-Quest Offering. Greene and Jenkins ran Gold-Quest's operations, with some assistance from McGee. Gold-Quest and Greene lured investors by touting investments in the Gold-Quest Offering as safe and secure or guaranteed and by promising 87.5% annual returns. These statements about the investments were misrepresentations. The Gold-Quest Offering, purportedly involving investment in foreign currency trading, was in fact a sham. On the evidence, we were satisfied that, during the relevant period, Gold-Quest itself did not open any foreign currency trading account, receive income from any currency trading, have an active currency trading program or any actual currency traders in its employ, or place investors' money with external foreign currency traders. Rather, the evidence was that any foreign currency trading had been done through foreign currency trading accounts opened in the names of Greene and Jenkins, had been minimal and had resulted in heavy losses. Further, the evidence did not disclose that this foreign currency trading was done for the benefit of Gold-Quest or its investors.

[4] Gold-Quest raised approximately US$29 million from approximately 2940 investors, including more than US$2 million from approximately 412 Alberta investors. Investors who became "Administrative Managers" were encouraged to bring in new investors. When they did so, they received 10% of the amount invested as well as a monthly payment for the one-year term of the new investment. "Managing Directors" and "Supervisory Managing Directors" – the individuals respectively responsible for Administrative Managers' and Managing Directors' investments – also received monthly payments for the new investment's term. Under this multi-level marketing scheme, 88% of the amount invested by the new investor was to be paid out in commissions over the new investment's term. Money invested in the Gold-Quest Offering was used to pay the mentioned commissions; transferred to Greene's, Jenkins' and McGee's personal and trading accounts (some of which was received by Atwood, via Greene's personal account); or used to make payments promised to earlier investors. In short, we found the Gold-Quest

Offering to be a sham investment scheme, a classic Ponzi scheme and a classic pyramid scheme. Many, if not most, investors have received nothing back in principal or interest from Gold-Quest.

[5] The issuance of the Merits Decision concluded the first phase of the hearing (the "Merits Phase"), at which we considered the merits of allegations made by Staff against the Respondents in an amended notice of hearing dated 19 May 2009. We now consider in this second phase of the hearing (the "Sanction Phase") what, if any, orders for sanction and costs we ought to make against the Respondents.

[6] We received written submissions from Staff (through counsel) and from McGee and from Atwood (on their own behalf). McGee and Atwood included documents with their submissions that had not been introduced into evidence by either during the Merits Phase but which they requested be considered during the Sanction Phase. On 3 May 2010 the panel heard oral submissions from Staff, McGee (who participated by telephone) and Atwood (who attended in person). On 8 May 2010 we received from McGee additional written submissions, including documents, which McGee had undertaken to provide when making his oral submissions. In his 8 May 2010 written submissions, McGee requested that he be allowed "a few days" to retrieve and send additional documentation to us, but we have received nothing further from McGee. None of the other Respondents – Gold-Quest, Greene or Jenkins – participated in any way in the Sanction Phase.

[7] For the reasons that follow, we find it is in the public interest to order that:

- all trading in securities of Gold-Quest cease, permanently;
- each of Gold-Quest, Greene and Jenkins cease trading in securities, and each is denied the use of all exemptions under Alberta securities laws, permanently;
- McGee cease trading in securities and is denied the use of all exemptions under Alberta securities laws, for ten years;
- each of Greene and Jenkins is prohibited from acting as a director or officer of any issuer, permanently;
- McGee is prohibited from acting as a director or officer of any issuer, for ten years;
- Atwood is prohibited from acting as a director or officer of any issuer, for five years;
- each of Greene and Jenkins is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently;

- McGee is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, for ten years;

- Atwood is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, for five years;

- each of Greene and Jenkins pay an administrative penalty of $2 million; and

- McGee pay an administrative penalty of $100 000.

[8] We also consider it appropriate that Greene pay $18 100, Jenkins pay $18 100, McGee pay $9000 and Atwood pay $4500, all towards the costs of the investigation and hearing.

II. PRELIMINARY MATTERS

[9] As noted, McGee and Atwood participated – providing written and oral submissions – in the Sanction Phase. Their participation focused on contesting the findings made against them in the Merits Decision rather than in addressing the issues of sanction and costs. This was not, we note, the appropriate forum to contest the findings made against them in the Merits Decision. Nor was this the appropriate time to proffer evidence directed at the merits of Staff's allegations. Although McGee indicated to Staff that he would be participating by telephone in the Merits Phase, he did not do so. Despite residing in close proximity to the hearing location, Atwood chose to participate – and then only by telephone – in the latter portion of the Merits Phase, cross-examining one investor witness (DT) and making submissions but presenting no evidence. That said, nothing in McGee's and Atwood's submissions to us in the Sanction Phase would justify findings against them different from those we made in the Merits Decision; indeed, we find in these submissions support for our findings against them in the Merits Decision, as we discuss below.

A. McGee

[10] McGee's written submissions, some of which included documents, were transmitted by e-mail and dated 16 January, 20 January, 21 January, 16 February and 8 May 2010. McGee also made oral submissions. In his submissions, McGee claimed that he should never have been named as one of the Respondents, proclaimed his "innocence" and disputed that he was a trader of securities or an owner or director of Gold-Quest. McGee said that his company, in the "domain registering business", "built the software for GQ-I [Gold-Quest] and that's all we did".

[11] However, McGee also said:

> . . . I was an employee only and was paid a salary to assist GQ-I [Gold-Quest] in running the day to day business operations and nothing more than that. . . . I was nothing more than an employee. I had daily tasks and banking responsibilities and that's it. I did my job and I believe I did it well.

and he elaborated:

> After completing the work we were hired to build for GQ-I [Gold-Quest], I was asked to oversee the new software systems and was asked to assist in training and over see [sic] making changes or

> altering the systems that were communicating with the members [the term that, we note, McGee used for investors] of the company and so forth. After several months I was asked to run the daily operations as John [Jenkins] was in need of traveling with David's [sic – Greene] or traveling to Costa Rica. I explained to John [Jenkins] and David [Greene] that I could do so but would need to bring two of my employees of my companies in order to handle the load the growth of the company was experiencing due to the new software being more member [investor] friendly and working well in all requirements of the systems we were asked to build. . . .
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> . . . I was only at anytime [sic] a paid employee or sub contractor [sic] for the company GQ-I [Gold-Quest]. The other issue is that I was made a signer on the bank account before David Greene left for Europe to close a big investment that David Greene (the owner of Gold-Quest International) was involved with and therefore it was necessary that someone they could trust that has experience running the daily operations of large companies be made a signer on the bank account in order to make payroll every Friday mostly and to handle the moving of [investor] monies to the eBullion [sic] account and then transferring money to make payroll every Friday. . . .

[12] Concerning the action commenced by the Securities and Exchange Commission of the United States (the "SEC") against Gold-Quest, Greene, Jenkins and McGee (the "SEC Action") – it and documentation relating thereto having been considered in the Merits Phase and referenced in the Merits Decision – McGee asserted that it had been dismissed against him. McGee stated that "I have represented myself in the courts of the US SEC and those hearings have now been dismissed against me". He also stated that "after the fact these accusations were found to be false and now I find that Canada is basically just taking the same documentation and listing me as a defendant which should have never happened to begin with". In alleged support of this asserted dismissal, McGee provided two documents relating to the SEC Action: a 14 October 2009 "Consent of Defendant Michael McGee" signed by him (the "Consent"); and an undated, unexecuted "Final Judgment as to Defendant Michael McGee", which (based on another document provided by McGee) we accept was entered by the United States District Court, District of Nevada (the "Nevada Court") on 8 December 2009 (the "Final Judgment"). McGee also undertook to send to the panel within "a few days" of 8 May 2010 – but has not provided – what he described as "[t]he fax obtained from the SEC stating dismissal of my case".

[13] The Final Judgment – its preamble indicating that McGee "consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction)" – ordered, adjudged and decreed that McGee is "permanently restrained and enjoined" from violating provisions of certain United States securities laws and that:

> [McGee] is liable for disgorgement of $8,357,107, representing profits gained as a result of the conduct alleged in the Complaint, together with pre-judgment interest thereon in the amount of $228,855, for a total of $8,585,962. Based on [McGee's] sworn representations in his Statement of Financial Condition dated April 1, 2009, and other documents and information submitted to the Commission, however, the Court is not ordering [McGee] to pay a civil penalty and the disgorgement and pre-judgment interest thereon is waived. The determination not to impose a civil penalty and to waive payment of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of [McGee's] Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that [McGee's] representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior

> notice to [McGee], petition the Court for an order requiring [McGee] to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by [McGee] was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering [McGee] to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. [McGee] may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

[14] In the Consent, McGee consented to the entry of the Final Judgment (which, among other things, "permanently restrains and enjoins" McGee from violating provisions of certain United States securities laws) and acknowledged that "the Court is not imposing a civil penalty or requiring payment of $8,585,962 of disgorgement and pre-judgment interest based on [McGee's] sworn representations in [McGee's] Statement of Financial Condition dated April 1, 2009 and other documents and information submitted to the Commission".

[15] Thus, contrary to McGee's characterization of the Consent and Final Judgment, it is clear from their content that they do not constitute a dismissal of the SEC Action against McGee. Nor do they exonerate McGee of any of the securities-related wrongdoing alleged against him in the SEC Action. Rather, they document that McGee is liable for disgorgement of $8 357 107, representing profits gained as a result of the securities-related wrongdoing alleged against him in the SEC Action, together with pre-judgment interest thereon in the amount of $228 855, for a total of $8 585 962, but that, having regard to McGee's financial circumstances, the Nevada Court was not requiring payment of the disgorgement amount plus pre-judgment interest or imposing a civil penalty. Presumably, McGee similarly mischaracterized the "fax . . . from the SEC stating dismissal of my case" that he undertook, but failed, to provide to us.

[16] In the Merits Decision, while we noted that SEC documentation referred to McGee as an owner of Gold-Quest, we did not find that he was such an owner. However, we did find, on the evidence before us, that McGee was a de facto director of Gold-Quest, that is, "an individual performing a similar function or occupying a similar position for [such] company" within the meaning of section 1(o) of the Act. We also found that, in relation to investments in the Gold-Quest Offering, McGee engaged in trades – acts of actual trading or acts in furtherance of such trades – and that these trades were distributions made illegally without a prospectus or an applicable exemption. We ruled (at paras. 10, 80):

> McGee resides in the United States, apparently in Las Vegas, Nevada during the relevant period. While the Panama Registry did not identify McGee as a director or officer of Gold-Quest, he, according to SEC documentation, apparently "identified himself as an owner and director of Gold-Quest" and was "listed as the administrative, technical and registrant contact for the [Gold-Quest] website www.gold-questinternational.com". Indeed, on the evidence before us, we find that McGee was a de facto director of Gold-Quest, that is, "an individual performing a similar function

> or occupying a similar position for [such] company" within the meaning of section 1(o) of the Act. The evidence indicates that McGee operated out of the Gold-Quest Office and answered investor telephone inquiries. McGee met with one investor in Las Vegas about Gold-Quest, and McGee may have met with others. Investor sign-up documentation was also sent to the attention of McGee. . . .
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> McGee apparently identified himself, according to SEC documentation, as an owner and director of Gold-Quest and was the administrative, technical and registrant contact for one of the Gold-Quest websites. Indeed, as noted, we found that McGee was a de facto director of Gold-Quest. McGee, for Gold-Quest, accepted Gold-Quest Subscription Documentation for the Investments. As a result of advice provided to SB via telephone, McGee indirectly solicited the Investments of some of the investors brought into the Gold-Quest Offering by SB. McGee also used the Tri-Fund Account, an account for which during a portion of the relevant period he was a signatory authority, to collect money from Gold-Quest investors, and some of the investors' money transferred from the Gold-Quest e-Bullion Account was received by McGee. These activities of McGee were, we find, acts of actual trading in the Investments or acts in furtherance of such trades.

[17] In our view, McGee's submissions to us in the Sanction Phase do not call into question these findings against him. Rather, his submissions – referring, for example, to his eventual running of Gold-Quest's daily operations, his banking responsibilities and his interactions with "members" (Gold-Quest investors) – are consistent with, and supportive of, these findings.

B. Atwood

[18] In his 10 February 2010 written submissions and his oral submissions, Atwood proclaimed his innocence – "I was not involved with Gold-Quest" – and stated his belief that Staff's investigations would not "implicate" him "in any way". According to Atwood, he moved back to Canada in December 2005 and has been residing in Alberta ever since, and he provided documentation supportive of his Alberta residency. Atwood claimed that his involvement with investor witness GP was solely in relation to personal loans provided by GP, over which GP sued Atwood. Atwood also provided a 20 January 2010 letter from BB, which Atwood asserted was indicative of his "not being part of Gold Quest, in any capacity". Atwood said that in June 2007 he accepted a loan of about $7000 from Greene, and Atwood noted that in March 2008 he invested US$500 in the Gold-Quest Offering. Atwood acknowledged that in July 2004 "we" incorporated a Panamanian company called "Gold Quest International" "for future use", and he did not dispute that he was its president. However, Atwood claimed that "[w]hen Gold Quest started in Las Vegas in April or May [2006] it was not the [c]orporation from Panama", which, he said, was in January or February 2006 "cancelled", "non-existent" or "redundant" due to non-payment of annual or other fees; he further claimed that the "cancelled" corporation "became a shelf company, and somebody else purchased it and shortened the name . . . to GoldQuest one word". He also provided documentation allegedly supportive of these claims. Atwood further asserted that, when he left the United States, his "name was purged from all documents pertaining to Tri-Fund"; and he pointed to documentation allegedly supportive of this assertion.

[19] In the Merits Decision, we noted Atwood's status as the president and a director of Gold-Quest during the relevant period and his status as the president of Tri-Fund in the early months of Gold-Quest's money-raising activities. We found that Atwood, as a director and the president

of Gold-Quest, authorized, permitted or acquiesced in Gold-Quest's trades in Alberta of investments in the Gold-Quest Offering, trades that we found to be illegal. We also found that, in relation to investments in the Gold-Quest Offering, Atwood engaged in trades – acts of actual trading or acts in furtherance of such trades – and that these trades were distributions made illegally without a prospectus or an applicable exemption. We ruled (at paras. 11, 82-83):

> Atwood resides in Alberta but had previously resided in Las Vegas, Nevada until 2006. As noted, the Panama Registry identified Atwood as the president and a director of Gold-Quest. Atwood was, in the early months of Gold-Quest's money-raising activities, also the president of Tri-Fund. . . .
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> . . .
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> As noted, Atwood contended that he had no involvement with the Gold-Quest Offering. That contention, however, is belied by the direct, circumstantial and Hearsay Evidence before us. We note that Atwood had the opportunity to testify at the hearing to explain the case against him. He chose not to testify or to challenge either the reliability or content of any specific evidence before us.
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> We are satisfied, having regard to the totality of the evidence, that Atwood was involved with the Gold-Quest Offering, albeit perhaps not throughout the entire period of the Gold-Quest Offering. Consistent with the testimony of GP as to Atwood's role with Gold-Quest, Atwood was, according to the Panama Registry, a director and the president of Gold-Quest. We find that Atwood, as a director and the president, authorized, permitted or acquiesced in Gold-Quest's trades of the Investments in Alberta. There is also sufficiently persuasive evidence before us – the testimony of GP and the Hearsay Evidence – of Atwood's involvement in the direct and indirect solicitation of Investments. According to Nevada Registry records, Atwood was, during the initial portion of the relevant period, Tri-Fund's president, and we note that Atwood received some Gold-Quest investors' money, which are also suggestive of his involvement with the Gold-Quest Offering. These activities of Atwood were, we find, acts of actual trading in the Investments or acts in furtherance of such trades. Thus, we find that Atwood also "traded" in the Investments in Alberta.

[20] In our view, Atwood's submissions to us in the Sanction Phase do not call into question these findings against him. Rather, his submissions are supportive of, or not inconsistent with, these findings. To this end, we note that Atwood need not have been living in Las Vegas in order to be involved with the Gold-Quest Offering, an Internet-based operation. The information provided by Atwood concerning investor witness GP and BB does not suffice to displace – adequately challenge the reliability or content of – the testimony of GP heard by us or the 9 August 2008 e-mail from BB to a Staff investigator received by us in the Merits Phase. Nor did we receive any information from Atwood addressing the 13 February 2008 e-mail from Atwood to "Amin" received by us in the Merits Phase. Assuming, without accepting, that Atwood received a "loan" of about $7000 from Greene in June 2007, that in and of itself would not sufficiently address – negate the suggestive quality of – Atwood's receipt of some Gold-Quest investors' money through Greene. Nothing in the documentation provided by Atwood – which refers to Gold-Quest's supposed cancellation or dissolution, notably without dates – compels us to identify Gold-Quest or its directors and officers other than as we did in the Merits Decision (at para. 6): "Gold-Quest is a Panamanian company registered in the Public Registry of Panama ('Panama Registry') since 26 July 2004. According to the Panama Registry, the directors of Gold-Quest are Atwood (President), Greene (Secretary) and Calvin Cheong or Andres Rodriguez Johnson (Treasurer)." Finally, the documentation provided by Atwood concerning

Tri-Fund and its directors and officers – including the revocation date "12/1/2006" which was misread by Atwood as 12 January 2006 – was before us in the Merits Phase and led us to conclude in the Merits Decision (at para. 7):

> Tri-Fund, Inc. ("Tri-Fund") was a Nevada corporation registered on 10 November 2003 until its status was revoked on 1 December 2006, during which time Nevada corporate registry (the "Nevada Registry") records listed Atwood as Tri-Fund's president and Greene as its secretary and treasurer. Tri-Fund was reinstated with the Nevada Registry as a Nevada corporation on 20 February 2007, with Greene (misspelled "Green") recorded as its president and treasurer and a director and Jenkins recorded as its secretary until it was dissolved on 15 April 2008.

III. SANCTIONS

A. Parties' Submissions

1. Staff

[21] Staff contended that the public interest would be served by permanently banning Gold-Quest from trading in securities and exchange contracts and from using exemptions and by ordering Gold-Quest to pay an administrative penalty of $2 million. Staff also contended that the public interest would be served by permanently banning each of Greene, Jenkins, McGee and Atwood from trading in securities and exchange contracts, using exemptions, acting as a director or officer of any issuer and acting in a management or consultative capacity in connection with securities market activities. Staff further contended that it would be in the public interest to order that each of Greene and Jenkins pay an administrative penalty of $850 000 and that each of McGee and Atwood pay an administrative penalty of at least $200 000.

[22] In so contending, Staff submitted that the Respondents' misconduct "was of the most egregious kind" – investors were persuaded to invest in the Gold-Quest Offering, both a classic Ponzi scheme and a classic pyramid scheme, "through lies and deceit". Noting that Greene was the central individual in and the guiding mind of Gold-Quest and that Gold-Quest's misrepresentations, which "drove the scheme", were as much Greene's as Gold-Quest's, Staff argued that, of the individual Respondents, Greene was the "most culpable". However, Staff pointed out that Jenkins was "also central to the Gold-Quest scheme" – playing "a significant role in administering the sham investment and luring in investors". Also, according to Staff, McGee and Atwood "may have played a lesser but still significant role in the sham investment", but McGee (as a de facto director of Gold-Quest) and Atwood (as the president and a director of Gold-Quest) were responsible for Gold-Quest's "deceit and the harm it caused".

[23] Staff noted that, while Gold-Quest investors "lost money and confidence in investing", the individual Respondents "benefited personally" through their receipt of over US$9.3 million of investors' money. Staff argued that, because of the nature of the Gold-Quest Offering and the Respondents' "total disregard for Alberta securities laws", they pose a "significant future risk" to Alberta investors and the Alberta capital market, warranting "[s]ignificant" specific deterrence. Staff also argued that the sanctions ordered in this case must be "weighty enough" to dissuade others from similar misconduct. Staff submitted that, while other decisions are not often of direct assistance, the sanctions ordered here should at a minimum reflect those ordered in *Re Capital Alternatives Inc.*, 2007 ABASC 482 and *Re Workum and Hennig*, 2008 ABASC 719.

[24] Finally, Staff argued that the administrative penalties sought are in the public interest and appropriate. In seeking an administrative penalty of $2 million from Gold-Quest, Staff also argued that such a penalty would not be perceived as a mere cost of doing business and noted that the Commission may only impose sanctions for the Respondents' breaches of Alberta securities laws, which resulted in more than US$2 million being raised from Alberta investors.

2. McGee

[25] We infer from McGee's submissions (discussed above) that he does not believe any sanctions against him are warranted.

3. Atwood

[26] Similarly, we infer from Atwood's submissions (discussed above) that he does not believe any sanctions against him are warranted.

4. Gold-Quest, Greene and Jenkins

[27] We received no submissions from or on behalf of Gold-Quest, Greene or Jenkins.

B. Sanctioning Principles and Factors

[28] The Commission, which is responsible for the administration of Alberta securities laws, has jurisdiction in the public interest over the trading and distributing of securities in Alberta. The protection of Alberta investors and the Alberta capital market from misconduct by capital market participants is an integral aspect of the Commission's public interest jurisdiction. In exercising our authority to order sanctions in the public interest under sections 198 and 199 of the Act, we act prospectively to protect against and prevent future harm in our capital market; we do not punish or remedy capital market misconduct (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). An important consideration in making protective and preventative orders is the need for specific and general deterrence (*Re Cartaway Resources Corp*., 2004 SCC 26 at paras. 52-62).

[29] Several factors may be relevant in determining whether, or what, sanctions are in the public interest in the circumstances of a particular case. In our analysis, we are guided by a consideration of the factors identified in *Re Lamoureux*, [2002] A.S.C.D. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253), as refined by the Commission in *Workum* 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.

C. Sanctioning Considerations

[30] In applying the sanctioning principles and factors to the circumstances of this case, we are of the view that, for the following reasons, the public interest requires that all of the Respondents be sanctioned, and, in the case of Gold-Quest, Greene, Jenkins and McGee, significantly so.

Seriousness of Misconduct and Recognition of Seriousness

[31] The Gold-Quest Offering was both a classic Ponzi scheme and a classic pyramid scheme which denied Gold-Quest investors – including approximately 412 Alberta investors who invested more than US$2 million – the very protections mandated by the fundamental registration and prospectus requirements of the Act. As we found in the Merits Decision, the Gold-Quest Offering as a whole constituted "an egregious flouting of Alberta securities laws". The associated capital market activities of Gold-Quest, Greene and Jenkins (being the central players in the Gold-Quest Offering) and McGee (who played a lesser but still considerable role) were serious misconduct, calling for significant sanction. As for Atwood, his very limited role in the Gold-Quest Offering – misconduct of less seriousness – argues for sanction.

[32] Gold-Quest, Greene and Jenkins did not participate in either the Merits Phase or the Sanction Phase. This lack of response to the allegations made against them, the central players in the Gold-Quest Offering, suggests no recognition by them of the seriousness of their misconduct. While we acknowledge that McGee, in his submissions, expressed regret for "being involved" and for "any harm that came to anyone", his submissions were primarily directed at disclaiming his responsibility for the illegal distributions of investments in the Gold-Quest Offering. Thus, we cannot find that McGee fully recognizes the seriousness of, or truly accepts responsibility for, his misconduct, namely, the role (a lesser but still considerable one) that he played in the illegal distributions. Accordingly, for Gold-Quest, Greene, Jenkins and McGee, their failure to recognize (or, in the case of McGee, fully recognize) the seriousness of their misconduct also calls for significant sanction, but more so against Gold-Quest, Greene and Jenkins. Given that disclaiming responsibility for the illegal distributions of investments in the Gold-Quest Offering was the focus of Atwood's submissions, we similarly cannot find that Atwood recognizes the seriousness of, or accepts responsibility for, his role in the illegal distributions; this, in isolation, calls for significant sanction against him.

Capital Market Experience and Activity

[33] The evidence before us in the Merits Phase was that Greene and Atwood had been active in the capital markets prior to their involvement with the Gold-Quest Offering. That being the case, neither could claim to be unaware of the existence of regulatory requirements, such as securities laws, nor the necessity for strict compliance therewith. Their failure to observe such requirements in relation to the Gold-Quest Offering argues for sanction against each of them.

Harm to Investors or the Capital Market and Benefits to the Respondents

[34] Gold-Quest raised approximately US$29 million from approximately 2940 investors, including more than US$2 million from approximately 412 Alberta investors. It seems that a few investors – those (including perhaps Alberta investors) who invested in the early days of the Gold-Quest Offering – received all the payments they expected, but that beginning in February

2008 Gold-Quest began to experience difficulties in making payments to its investors. Some investors (including Alberta investors) received their monthly commissions for a time until these payments ceased in early 2008. Many, if not most, investors received nothing back in principal or interest from Gold-Quest.

[35] The harm caused by the Respondents' misconduct is not limited to that directly suffered by the Alberta investors. The Respondents' misconduct also harmed the integrity of the Alberta capital market generally. The Alberta investors in Gold-Quest are likely to be wary about pursuing other investments in future, and any prospective investor learning of their experience with the Gold-Quest Offering is likely to suffer a similar loss of confidence in our capital market.

[36] The evidence before us in the Merits Phase showed that millions of dollars of Gold-Quest investors' (including Alberta investors') money, in total, were transferred to Greene's, Jenkins' and McGee's personal and trading accounts (some of which was received by Atwood, via Greene's personal account). Specifically, according to documentation prepared for purposes of the SEC Action, at least US$5.1 million in investors' money was received by Greene, at least US$4.16 million in investors' money was received by Jenkins, at least US$125 280 in investors' money was received by McGee, and Greene used approximately US$1.3 million in investors' money in his personal account to make payments (not quantified) to several individuals and companies including Atwood. According to SEC documentation, the investors' money received by Greene, Jenkins and McGee was apparently used by them to pay for their personal expenses, including purchases at stores, hotels, restaurants, golf clubs and an automobile dealership.

[37] Mindful of the respective roles played by the Respondents in the Gold-Quest Offering, we conclude that these considerations call for sanction against Atwood and militate in favour of significant sanction against Gold-Quest, Greene, Jenkins and McGee (but more so against Gold-Quest, Greene and Jenkins).

Other Decisions

[38] Because the facts of *Capital Alternatives* and *Workum* are not sufficiently similar, we do not find those decisions to be of much assistance in determining the sanctions appropriate here.

Mitigating Factors

[39] We note that none of the Respondents has been previously sanctioned by the Commission. All else considered, we accord no weight to this factor in our sanctioning of Gold-Quest, Greene, Jenkins and McGee but perceive this factor as arguing for some mitigation in sanction against Atwood.

Future Risk to Investors and the Capital Market – Need for Deterrence

[40] The seriousness of the misconduct in this case, the amount of money raised thereby, the harm to which the misconduct exposed the Alberta investors and the Alberta capital market generally and the Respondents' enjoyment of associated financial benefit convince us that specific and general deterrent measures are necessary.

[41] We also note that, in McGee's submissions, he referred favourably to Greene's involvement in what appeared to be a prime bank investment scam and seemed to attribute what transpired with the Gold-Quest Offering to Greene himself being "victimized":

> . . . Every member [investor] we spoke with at the office was excited and happy with the results of what they were receiving and believed like so many others that Mr. Greene had everything under control while he was in Europe. There were no signs of wrong doing [sic] whatsoever. Mr. Greene informed the members [investors] and us employees at the office that he was closing investment agreements with the Federal Reserve and billions of dollars were being released in what he called the China and Federal Reserve tranche or tranches or tranching [sic] bank funds were being secured . . . and that commissions of hundreds of millions of dollars would be released and deposited in the eBullion [sic] accounts of the company and distribution deposits would then need to be made. Mr. Greene also talked of the other projects that would then be financed, the mining project and a large investment project in Costa Rica and so on and on. No one anticipated what happened next. . . .
>
> . . .
>
> And now that so much information has been released about what happened, Mr. Greene as it turns out was victimized by a lawyer in New Zealand that took . . . Mr. Greene for a fool and transferred millions into his own accounts as he led Mr. Greene on a complete scandal. Had the investment actually been successful, there would have been no tragedy whatsoever.

[42] McGee failed to recognize that these supposed activities by Greene did not involve foreign currency trading, the business activity investors were told was being conducted by Gold-Quest and purportedly responsible for generating the returns being promised to them. Further, McGee's suggestion that Greene was about to generate "hundreds of millions of dollars" in commissions from investing with the United States Federal Reserve and China should have raised red flags about the legitimacy of such claims, if indeed made, by Greene. Given McGee's access to banking information, the Gold-Quest e-Bullion Account and his work on Gold-Quest websites, McGee also should have realized that what Gold-Quest represented to investors on the websites was not true – Gold-Quest was not a foreign currency trader, it received no income from any currency trading and it depended on the influx of new investors' money to make payments to existing investors. McGee's continuing optimism about the legitimacy of the Gold-Quest Offering indicates to us that McGee, despite his recent interactions with the SEC and the Commission, does not (or does not want to) understand or appreciate that the Gold-Quest Offering was a sham investment scheme that has harmed investors and has cast a shadow on the integrity of, and has shaken investor confidence in, the Alberta capital market.

[43] Having regard to these submissions by McGee and all other circumstances, we have grave concerns that, unless we restrain Gold-Quest's, Greene's, Jenkins' and McGee's future access to the Alberta capital market through significant sanction, they would pose a serious, continuing threat to the financial well-being of Alberta investors and the integrity of our capital market. Substantial specific deterrence is therefore warranted.

[44] While we accept that Atwood had little involvement in the Gold-Quest Offering, he, knowing that Gold-Quest was soliciting money from investors, carelessly made no, or no effective, efforts to amend Panama Registry and Nevada Registry records that he knew or ought

to have known identified him as the president and a director of Gold-Quest and the president of Tri-Fund throughout or at some point in the relevant period. It was incumbent on Atwood to take whatever steps were necessary to ensure that he was not so associated with Gold-Quest and Tri-Fund while Gold-Quest was engaged it its money-raising activities or risk being implicated, as he was, in those activities during the period he was held out as being in a position of authority with each of those entities. In the circumstances, we have concerns about Atwood's appreciation of the significance of, and the duties associated with, holding positions of authority with issuers, and of the importance of observing those duties in order to maintain public confidence in the integrity of the Alberta capital market. We thus are persuaded that he is not presently fit to hold such positions, or to act in management or consultative capacities in connection with securities market activities. Specific deterrence to this end, then, is warranted.

[45] Moreover, any measures directed at general deterrence must suffice to dissuade others from similar capital market misconduct.

D. Sanctions Ordered

[46] For the foregoing reasons, with emphasis on the circumstances of Gold-Quest and its misconduct, we are of the view that, in order to protect Alberta investors and the integrity of the Alberta capital market, Gold-Quest should never again be allowed to issue securities in Alberta, nor should it ever again be allowed to trade in securities in Alberta. We will not order an administrative penalty against Gold-Quest because its money raised through the Gold-Quest Offering is in the hands of a receiver appointed in the SEC Action (the "Receiver"), presumably for the benefit of Gold-Quest investors, and the public interest will be, in our view, amply served by the market-access bans mentioned.

[47] Further, for the foregoing reasons, with emphasis on the central roles Greene and Jenkins played in the Gold-Quest Offering, the amount of money raised thereby and the financial benefits they reaped, we find it is in the public interest to order that Greene and Jenkins be permanently removed from the Alberta capital market and from positions of authority with any issuers and be permanently prohibited from acting in management or consultative capacities connected with securities market activities and that, in addition, each be required to pay a substantial monetary penalty.

[48] In assessing the quantum of administrative penalty appropriate for Greene and Jenkins – section 199 of the Act contemplates an administrative penalty of up to $1 million per contravention or per contravention authorized, permitted or acquiesced in by a director or officer – we are mindful that the Gold-Quest Offering was a sham investment scheme, a classic Ponzi scheme and a classic pyramid scheme; that Greene created Gold-Quest and the Gold-Quest Offering; that he and Jenkins ran Gold-Quest's operations; and that Gold-Quest and Greene made statements about the anticipated returns and the safety of investments in Gold-Quest that they knew were misleading and untrue contrary to section 92(4.1), and that Jenkins authorized, permitted or acquiesced in such contravention by Gold-Quest. The transgressions of Greene and Jenkins harmed Alberta investors and the integrity of the Alberta capital market. They so transgressed to enrich themselves and were successful in so doing. We conclude that, in order to provide the protection and specific and general deterrence necessary in the circumstances, the

appropriate quantum of administrative penalty (in conjunction with the market-access bans indicated) must be substantial, and an amount that exceeds that sought by Staff. Thus, to provide the necessary protection and deterrence, we find it in the public interest to require that each of Greene and Jenkins pay an administrative penalty of $2 million.

[49] Finally, we are mindful of the roles played in the Gold-Quest Offering by McGee (a lesser but still considerable role) and Atwood (a very limited role, tied primarily to his positions as president or director, or both, of Gold-Quest and Tri-Fund). Having regard to the foregoing reasons and these roles, we find it is in the public interest to order that: for a relatively significant period, McGee be removed from the Alberta capital market and from positions of authority with any issuers and be prohibited from acting in management or consultative capacities connected with securities market activities; and, for a lesser period, Atwood be removed from positions of authority with any issuers and be prohibited from acting in management or consultative capacities connected with securities market activities. We further find it is in the public interest to order that, for his contraventions of the Act, McGee be required to pay a monetary penalty of $100 000. In our view, the three administrative penalties assessed, in aggregate, sufficiently exceed the total amount of money raised from Alberta investors in the Gold-Quest Offering to provide, in the circumstances, the requisite protection and specific and general deterrence.

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

- under section 198(1)(a) of the Act, all trading in securities of Gold-Quest cease, permanently;

- under sections 198(1)(b) and (c):

    - each of Gold-Quest, Greene and Jenkins cease trading in securities, and all of the exemptions contained in Alberta securities laws do not apply to each of them, permanently; and

    - McGee cease trading in securities, and all of the exemptions contained in Alberta securities laws do not apply to him, for ten years from the date of this decision;

- under sections 198(1)(d) and (e):

    - each of Greene and Jenkins resign all positions he holds as a director or officer of any issuer, and each is prohibited from becoming or acting as a director or officer (or both) of any issuer, permanently;

    - McGee 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, for ten years from the date of this decision; and

- Atwood 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, for five years from the date of this decision;

- under section 198(1)(e.3):

  - each of Greene and Jenkins is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently;

  - McGee is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, for ten years from the date of this decision; and

  - Atwood is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, for five years from the date of this decision; and

- under section 199:

  - each of Greene and Jenkins pay an administrative penalty of $2 million; and

  - McGee pay an administrative penalty of $100 000.

IV. COSTS

[51] In addition to sanctions, Staff sought an order under section 202 of the Act that the Respondents be jointly and severally liable to pay all costs of the investigation and hearing totalling $62 762.19.

[52] To that end, Staff tendered a two-page itemization of investigation costs (totalling $20 395.42) and hearing costs (totalling $42 366.77), in addition to a binder of supporting documentation. Staff submitted that the costs order sought against the Respondents is warranted because "[t]he manner in which the sham investment was carried out, the number of people involved and the lack of cooperation by the Respondents necessitated an extensive investigation and the expenditure of substantial time by Staff counsel in order to prove the allegations" and "[n]one of the Respondents made an effort to simplify or accelerate the investigation or the hearing".

[53] We infer from McGee's and Atwood's submissions that they do not believe costs orders against them are warranted. We received no submissions from or on behalf of Gold-Quest, Greene or Jenkins.

[54] An order for payment of costs under section 202 of the Act – which is not a sanction – is directed at the recovery of costs incurred by the Commission in conducting enforcement

proceedings related to a market participant's contravention of Alberta securities laws or conduct contrary to the public interest. A costs order is also a mechanism by which the Commission can promote procedural efficiency in the conduct of enforcement proceedings. It is generally appropriate that, when a respondent has been found to have contravened Alberta securities laws or acted contrary to the public interest, the respondent be required to pay at least a portion of the costs of the investigation and hearing that led to such a finding or findings. One of the factors we consider when determining the amount of the costs incurred that ought to be paid by the respondent is the extent to which the respondent facilitated or impeded an efficient investigation and hearing process. An order or orders resulting in full recovery of costs, within the parameters set by the *Alberta Securities Commission Rules (General)*, might be appropriate where, for example, the conduct of the respondent or respondents in no way contributed to the efficient resolution of an enforcement proceeding. Furthermore, ordering joint and several responsibility for costs might be appropriate where, for example, the conduct of multiple respondents relevant to an investigation and hearing was sufficiently similar.

[55] The types of costs itemized by Staff are the types for which we can make costs orders under section 202 of the Act. Further, the total amount of costs does not appear unreasonable for the investigation and hearing that occurred here. However, we must reduce the hearing administration costs to $7500 to account for charges in excess of the daily maximum prescribed for each day or partial day of hearing. Accordingly, we accept that $49 700 (rounded downward) is potentially recoverable under costs orders against the Respondents.

[56] There is nothing before us indicating that any of the Respondents facilitated Staff's investigation by cooperating with Staff. We also note that none of the Respondents made any efforts contributing to the efficiency of the hearing process. Full recovery of the potentially recoverable $49 700 is, therefore, warranted. That full recovery will be achieved through the making of costs orders against all of the Respondents but Gold-Quest, in that way leaving any money in the hands of the Receiver for the benefit of Gold-Quest investors. We will allocate costs among Greene, Jenkins, McGee and Atwood having regard to the roles they played in the Gold-Quest Offering because we consider it reasonable to conclude that the costs incurred in investigating and proving these roles varied in proportion to their significance. Further, there being nothing before us indicating that any of the Respondents acted in concert in the course of the investigation or hearing, we will not impose joint and several responsibility for costs.

[57] In the circumstances, considering it reasonable and appropriate to do so, we order under section 202 of the Act that Greene pay $18 100, Jenkins pay $18 100, McGee pay $9000 and Atwood pay $4500 in costs of the investigation and hearing.

V. PROCEEDING CONCLUDED

[58] On 13 March 2008 the Commission issued a temporary pre-hearing order that trading in Gold-Quest securities cease, that Gold-Quest cease trading in all securities and that all exemptions under Alberta securities laws do not apply to Gold-Quest. On 27 March 2008 the Commission extended the temporary order until a hearing is concluded and a decision rendered. The extended temporary order expires, by its terms, with the issuance of this decision.

[59] This proceeding is now concluded.

18 June 2010

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Roderick J. McKay, FCA

"original signed by"
Kenneth B. Potter, QC