ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Platinum Equities Inc., 2014 ABASC 376 **Date: 20140926**

Platinum Equities Inc.,
Deerfoot Court Real Estate Investment Fund Limited Partnership,
Glenmore & Centre Retail Limited Partnership,
Platinum 5 Acres and a Mule Limited Partnership,
PMIC II Investments Ltd.,
Qualia Real Estate Investment Fund VI Limited Partnership,
Shariff Chandran and Chitra Chandran

Panel:	Stephen Murison Daniel McKinley, FCA Fred Snell, FCA
Representation:	Tom McCartney Peter Verschoote for Commission Staff Clive Llewellyn (and formerly Jakub Ksiazek Daniel Johnson) for the Respondents
Submissions Completed:	22 August 2014
Decision:	26 September 2014

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I. INTRODUCTION

[1] Shariff Chandran (**Shariff**), Chitra Chandran (**Chitra**), Platinum Equities Inc. (**Platinum**) and five entities linked to Platinum (each, a **Platinum Issuer**) each engaged in capital-market misconduct, as found in this Alberta Securities Commission (**ASC**) panel's 25 February 2014 decision (the **Merits Decision**, cited as *Re Platinum Equities Inc.*, 2014 ABASC 71).

[2] Following issuance of the Merits Decision, the parties provided additional evidence and made submissions on the issue of appropriate orders. This is our decision on that issue. Stated briefly, for the reasons set out below, we are ordering significant sanctions against all but one of the respondents, and the recovery of a portion of the investigation and hearing costs from three of them.

II. BACKGROUND

[3] For convenience, we summarize here some factual background and key findings from the Merits Decision.

A. The Respondents

[4] Shariff was the guiding mind of Platinum, the five Platinum Issuers, and numerous other Platinum-linked entities (together, **Platinum Group**). He made the most important business decisions and bore ultimate responsibility for all that went on within the group.

[5] Chitra, Shariff's sister, held official titles with various Platinum Group entities. Her role was more limited than Shariff's, but included responsibility for recruiting, training and managing Platinum salespeople.

[6] Platinum was involved in what were referred to as "syndications", selling (mainly to Alberta residents) interests in the Platinum Issuers and other Platinum-linked entities that typically owned or acquired real estate.

B. The Impugned Syndications

[7] Five syndications, for which the Platinum Issuers were the respective vehicles, were the subject of allegations in this proceeding. Outcomes for investors were unfavourable at the time of the Merits Decision and, so far as we know, remain so today:

- $3.925 million was raised from investors through the sale of units of Glenmore & Centre Retail Limited Partnership (**Glenmore LP**).

  No distributions had been made to Glenmore LP investors since March 2011; some had received nothing since December 2009, and most had none of their invested principal returned. In 2013 a nominee of the investors replaced a Platinum Group entity as general partner of Glenmore LP, and that operation continued as a going concern.

- $10.3 million was raised from investors through the sale of units of Deerfoot Court Real Estate Investment Fund Limited Partnership (**Deerfoot LP**).

Deerfoot LP investors received some distributions but those ceased in late 2009 or early 2010, and most had none of their invested principal returned. Deerfoot LP went into bankruptcy and a court approved the sale of its real estate.

- $21 million was raised from investors through the sale of units of Platinum 5 Acres and a Mule Limited Partnership (**P5 LP**).

  P5 LP made no distributions to its investors, most did not have their invested principal returned, and P5 LP real estate was foreclosed on.

- Almost $7.176 million was raised from investors through the sale of shares of PMIC II Investments Ltd. (**PMIC**).

  PMIC made no distributions to its investors since December 2009, most did not have their invested principal returned, and PMIC went into receivership.

- Some $16 million was raised from investors through the sale of units of Qualia Real Estate Investment Fund VI Limited Partnership (**Qualia LP**).

  Qualia LP real estate was sold, with some Qualia LP investors receiving a partial return of their invested principal.

C. The Misconduct

1. Illegal Trades and Distributions

[8] The sale of units and shares of the Platinum Issuers involved "trades" and "distributions" of "securities" (within the meaning of the *Securities Act* (Alberta) (the **Act**)) by Platinum and the Platinum Issuers. Certain of these trades and distributions by each contravened section 75(1)(a) (the registration requirement) and section 110(1) (the prospectus requirement). Shariff and Chitra both authorized, permitted or acquiesced in such contraventions – he in respect of Platinum and all five Platinum Issuers, she in respect of Platinum, Glenmore LP and P5 LP.

2. Misrepresentation

[9] Glenmore LP and P5 LP investors were given materially misleading information, such that section 92(4.1) of the Act was contravened by Glenmore LP and Platinum in respect of the Glenmore LP syndication, and by P5 LP in respect of its syndication. Shariff and Chitra each authorized, permitted or acquiesced in such contraventions by Glenmore LP and P5 LP.

3. Fraud

[10] P5 LP real estate was mortgaged, and P5 LP investors' money was used, to support other Platinum syndications, without disclosure to P5 LP investors and contrary to P5 LP's disclosed business purposes. This was a course of conduct by P5 LP and Platinum that perpetrated a fraud on P5 LP investors in contravention of section 93(b) of the Act, and Shariff authorized, permitted or acquiesced in such contravention by P5 LP.

4. Conduct Contrary to the Public Interest

[11] The respective respondents' conduct that contravened the Act, and Shariff's and Chitra's corresponding authorization, permitting or acquiescence, were contrary to the public interest. Shariff and Chitra also acted contrary to the public interest by failing to provide appropriate oversight of Platinum salespeople.

III. APPROPRIATE ORDERS

A. Sanctions and Cost-Recovery Orders – Purposes and Principles

[12] Our task in this phase of the proceeding is to determine what, if any, orders ought to be made.

[13] The Act contemplates two categories of order in a proceeding such as this: sanctions (market-access bans and monetary orders) under sections 198 and 199; and orders for the recovery of investigation and hearing costs under section 202.

[14] The purpose of sanctions was described as follows in *Re TransCap Corporation*, 2013 ABASC 326 (at para. 14):

> . . . sanctions . . . are to be preventive and protective, not punitive or remedial (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). The objective is to protect investors and the capital market by deterring future misconduct, whether by a particular respondent (specific deterrence) or by others who might emulate them (general deterrence) – see *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62.

[15] The following factors are potentially relevant to the determination of appropriate sanctions (*Re Hagerty*, 2014 ABASC 348 at para. 11, derived in turn from earlier decisions):

- the seriousness of the respondent's misconduct and the respondent's recognition of that;
- the respondent's characteristics and history, such as capital-market experience and any prior sanctions;
- any benefit sought or obtained by the respondent, and any harm to which the capital market generally or investors were exposed by the misconduct;
- the risk to investors and the capital market if the respondent were to go unsanctioned or if others were to emulate the respondent's misconduct; and
- any mitigating considerations.

[16] Cost-recovery orders serve a different purpose, and therefore prompt a different analysis. As stated in *Re Marcotte*, 2011 ABASC 287 (at para. 20):

> A costs order is . . . 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 [ASC'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.

B. Sanctions

1. Positions of the Parties

(a) Staff

[17] ASC staff (**Staff**) seek significant sanctions against each of Shariff, Chitra, Platinum and all but one of the Platinum Issuers:

- against Shariff, permanent trading, use-of-exemptions, director-and-officer, advising, and securities-market management-and-consultation bans, and (jointly and severally with Platinum) a $1.5 million administrative penalty;

- against Chitra, a largely similar array of market-access bans (excepting only a ban on advising) for 15 years, and a $250,000 (or, at one point in Staff's submissions, $300,000) administrative penalty; and

- against each of Platinum, Deerfoot LP, P5 LP, PMIC and Qualia LP, permanent trading, use-of-exemptions, securities-market management-and-consultation, and registrant, investment fund manager and promoter bans, as well as the mentioned $1.5 million administrative penalty against Platinum (jointly and severally with Shariff).

[18] Staff's submissions also, in respect of Shariff and Chitra, make reference to section 198(1)(e.2) of the Act – bans on acting as any of several types of entity including a "promoter". However, this appears to have been a mistaken reference, given that the submissions focus on director-and-officer bans under section 198(1)(e) in connection with various types of entity other than promoters. In our analysis we therefore disregard the section 198(1)(e.2) and "promoter" references in respect of the individual respondents.

[19] No sanctions are sought against Glenmore LP.

(b) The Respondents

[20] The respondents do not generally contest the types of sanction sought by Staff, but argue for smaller administrative penalties, for bans against Chitra shorter (3 years) than sought by Staff, and for broad exceptions – "carve-outs" – from the bans sought by Staff against Shariff and Chitra.

[21] More specifically, Shariff argues for an administrative penalty (joint and several against him and Platinum) of $500,000, while Chitra argues for one of $100,000 (joint and several against her and Platinum). We infer the respondents' position, in respect of administrative penalties, to be that only those just mentioned would apply to Platinum (that is, a total of $600,000, jointly and severally with Shariff (in part) and with Chitra (in part)).

[22] Shariff and Chitra argue for carve-outs from the bans sought by Staff, to enable them (i) to engage in a variety of roles (reference was made to the roles of trustee, asset manager and consultant) in connection with a family trust "whose beneficiaries are minor children", and with companies owned by that trust (and perhaps also in respect of unspecified other assets owned by

Shariff and Chitra), and (ii) "to be the sole officers, director[s], and shareholders of their private companies where there were no other shareholders". Shariff tendered an affidavit (the **Shariff Affidavit**) in which he stated in effect that, without such carve-outs (for convenience, we refer to them respectively as the **Family Trust Carve-out** and the **Family Company Carve-out**), he and Chitra would be "prevent[ed] . . . from employment or generating an income or making a living that will assist in any restitution or to pay the monetary sanction proposed".

[23] Shariff also argues for a further carve-out (we refer to this as the **Litigation Carve-out**) "allowing me to remain as an officer and director of all existing Platinum entities, and [of] the Leben REIT entities, to permit me to continue to prosecute the actions and the defences for the investors". Shariff spoke to this in testimony and in the Shariff Affidavit, and tendered affidavits of several individuals who therein identified themselves as investors in various Platinum Group entities (specified or unspecified) and, in some cases, in "Leben REIT". Some of these investor affidavits were unsigned; these we declined to accept into evidence. Those that were signed and sworn (we refer to them collectively as the **Investor Affidavits**) we accepted into evidence. The Investor Affidavits are largely similar in content. In each, the deponent swore to his or her belief that, in essence, the Litigation Carve-out for Shariff is necessary to protect and further investors' interests in various litigation that the deponents professed to understand to be under way.

2. Analysis on Sanction

(a) No Sanctions Against Glenmore LP

[24] We begin our analysis of appropriate sanctions with the special case of Glenmore LP.

[25] Although Glenmore LP engaged in misconduct, Staff seek no sanctions against it, on the ground that it is now controlled by a company acting for the investors. We agree with Staff. We discern no public interest in imposing market-access restrictions or a monetary sanction on an entity that is now operating for the benefit of the investors who were most directly aggrieved by its misconduct.

(b) Application of Relevant Sanctioning Factors

(i) Seriousness of Misconduct

[26] There is no dispute that the misconduct of each respondent, as discussed in the Merits Decision, was serious. Trades and distributions were effected without the requisite registration or a prospectus, or exemptions from those requirements. We found a "broad – so broad as clearly to have been systemic – failure to satisfy basic conditions of the relevant registration and prospectus exemptions", attributable in part to Shariff's and Chitra's failure to provide appropriate oversight of Platinum salespeople. The misrepresentations to investors were "incompatible with the basic objectives of securities regulation", while a "course of conduct that perpetrates a fraud on investors is self-evidently inconsistent with investor protection and capital-market fairness and efficiency". Directors and officers who, as found here, "facilitate or allow capital-market misconduct . . . thereby expose the capital market and investors to harm".

[27] That Shariff did not set out to harm P5 LP investors, that Shariff did not necessarily anticipate a direct financial benefit from the fraudulent conduct relating to P5 LP, or that Shariff and Chitra ascribe some blame to third parties, does not diminish the seriousness of the respondents' misconduct.

[28] In short, the seriousness of the respondents' misconduct argues for significant sanction against all of them (other than Glenmore LP, for the reason given).

(ii) Recognition of Seriousness of Their Misconduct

[29] Shariff and Chitra each expressly acknowledge the seriousness of their misconduct.

[30] They submit (and Staff to some extent concur) that their recognition of the seriousness of what transpired was also demonstrated by their having furnished a statement of admissions in the first phase of this proceeding (the **Merits Hearing**). However, while we are of the view that this warrants consideration as a mitigating element (discussed below), we do not perceive it as particularly pertinent to our assessment of recognition of seriousness.

[31] The submissions of Shariff and Chitra also seem to suggest that their recognition of seriousness is further demonstrated by their acceptance that an array of sanctions against them – including, in Shariff's case, permanent market-access bans – is warranted. We tend to agree. However, the effect is significantly offset by the breadth of the carve-outs they seek and, in Chitra's case, her submission that bans against her (even with broad carve-outs) be limited to 3 years in duration.

[32] Further tending somewhat to offset the extent of recognition of seriousness in Chitra's case are indications in her submissions that reinforce an impression she conveyed in the Merits Hearing: that she did not at the time of the misconduct, and perhaps still does not today, fully appreciate the important responsibilities she assumed (but failed to fulfil) when she accepted, and held herself out as exercising, senior offices with several Platinum Group entities.

[33] Staff suggest that Shariff's attribution in the Merits Hearing of much responsibility to the principal of what we referred to in the Merits Decision as "RM Group", and his and Chitra's having also blamed lawyers and (in her case) accountants, diminish their respective recognition of the seriousness of their misconduct. However, while Shariff and Chitra may still ascribe some blame to others for what happened, this does not necessarily preclude their recognizing the seriousness of their own misconduct.

[34] Staff also point critically to what they refer to as Shariff's "attitude and demeanour" in his testimony, and to "tweets" (at the time of the Merits Hearing) in which he commented unfavourably about some Staff conduct and (it appears) the prospectus-exempt capital market. Staff similarly point critically to Chitra's having declined to testify in the current phase of this proceeding. In all the circumstances, we are not persuaded that any of these matters tell us anything useful about Shariff's or Chitra's recognition of the seriousness of their misconduct, or about what orders might be appropriate.

[35] In all, we are satisfied that Shariff and Chitra largely recognize the seriousness of the misconduct found. This, to an extent, diminishes the need for specific deterrence in respect of those respondents, and thus argues for a degree of moderation in sanction against them.

(iii) Respondents' Characteristics and History

[36] None of the respondents has a history of prior sanction by the ASC. Neither Shariff nor Chitra appears to have been experienced in the capital market before their association with Platinum Group. (Because the respondents other than Shariff and Chitra operated through their guiding mind, Shariff, it is to him that we primarily look in applying this factor to those respondents.)

[37] On its face, this might argue for moderation in sanction. However, we agree with Staff that, on closer analysis, this factor does not assist the respondents.

[38] Shariff had several years of real estate experience when he cofounded Platinum, and he obtained an MBA in 2007. Chitra joined Platinum after (as Glenmore LP told its investors) having "worked in the finance industry for over ten years with various national banks and finance companies underwriting mortgages [and] loans". As Staff rightly argue, the misrepresentations found "dovetail with the skills and knowledge Shariff and Chitra acquired before Platinum". Moreover, as Staff aptly put it, "no capital market experience is required to appreciate that deceiving investors by making misrepresentations or perpetrating a fraud is wrongful conduct".

[39] This factor does not argue for moderation in sanction against any of the respondents.

(iv) Benefit Sought and Harm Done

[40] All of the respondents intended to benefit financially from their respective involvement in the capital market, which we found included illegal trades and distributions, failure to provide appropriate oversight of Platinum salespeople and (in the cases of the Glenmore LP and P5 LP syndications) misrepresentations to investors. In respect of the fraud relating to P5 LP, while none of P5 LP, Platinum and Shariff necessarily anticipated a direct financial benefit, Platinum and Shariff sought at minimum to avoid an embarrassing project failure and thereby at least to maintain or enhance their business reputations.

[41] The respondents enjoyed real financial benefits. The Platinum Issuers, as noted, all raised large sums from investors but apparently have returned little. Chitra testified to having been "paid well" for her efforts with Platinum Group. While Shariff testified to having funded some Platinum Group outlays and distributions to investors and (as we understood him) to having bought out some investors' limited partnership units, he acknowledged that he or Platinum received $2.7 million from RM Group in connection with various Platinum syndications and testified to having personally netted about $2 million over 10 years with Platinum. Although the evidence does not enable us to quantify the financial benefits sought or obtained, it is clear that Shariff and Chitra did well from the Platinum Group enterprise before things fell apart.

[42] As recounted above, at the time of the Merits Decision the Platinum Issuers had either made no distributions or ceased distributions to investors some years ago, some of the syndicated real estate was gone, and most of the investors (Qualia LP appears to have been something of an exception) had none of their millions of dollars of invested principal returned. Financial harm to Platinum Issuer investors is thus clear, and apparently extensive.

[43] Less direct but still significant harm can be posited in the ripples likely to have emanated from the unhappy experience of Platinum Issuer investors. We think it probable that they themselves, and others aware of what happened to them, have had their confidence in our capital market shaken. Impaired investor confidence can foreseeably manifest itself in a future reluctance to risk savings in the prospectus-exempt capital market where Platinum and the Platinum Issuers operated – or in the broader capital market generally. That adversely affects the ability of legitimate businesses to raise capital.

(v) Mitigating Elements

Cooperation with Staff

[44] The respondents (through Shariff and Chitra) cooperated with Staff in the Merits Hearing, as Staff acknowledge, by entering into an agreement as to exhibits and providing a statement of admissions. This did not and does not directly ameliorate the harm suffered by Platinum Issuer investors, but it was conducive to the efficient conduct and resolution of this proceeding and thus in the public interest. While perhaps more obviously relevant to the topic of cost-recovery orders (discussed below), we also regard these cooperative efforts as an element of mitigation.

[45] Shariff and Chitra submit that they also cooperated in the investigation. A similar proposition appeared in the mentioned statement of admissions, to which Staff were a signatory. We accept this and regard this cooperation also as an element of mitigation.

Personal Conduct with Investors

[46] The Investor Affidavits (and the Shariff Affidavit) were tendered by the respondents largely, as we understand it, to persuade us of the appropriateness of the Litigation Carve-out sought by Shariff (a topic we discuss below). Content of the Investor Affidavits (notably in two of them) also presents what might be viewed as an element of mitigation of the misconduct found.

[47] All deponents of the Investor Affidavits swore to the effect that Shariff advised them of his willingness "to work with investors" and to compensate them (or try) for his "mistakes". One deponent attested to having invested in several entities under investigation (some seemingly unrelated to this proceeding) but described Shariff as "the only individual that has returned phone calls, maintained . . . contact, apologized for his actions and promised to make good on the investments as best as he possibly can". Shariff himself testified to having made such apologies to investors. The deponent of another of the Investor Affidavits stated that he has known Shariff and Chitra for over 15 years, that he has invested with Shariff in the past (we infer that he here referred to investments outside Platinum Group), and that the deponent:

> believe[s] that the events that have taken place [here we infer that he referred to the subject of the current proceeding] are out of character for both [Shariff and Chitra] and my communication[s] with [them] show sincere regret to what has taken place. Unlike other investments I have made in real estate syndications that failed, [Shariff] has cooperated and been eager and willing to work towards a positive resolution that is beneficial to all investors.

[48] Although these quoted affidavit statements are untested, their import is not contested. Moreover, unlike certain content of the Investor Affidavits, these statements address personal experience of which the deponents would have had direct knowledge. While (as discussed below) we do not find the Investor Affidavits persuasive in all respects, we accept these quoted statements as true depictions of the deponent investors' experiences with one or both of the individual respondents. We consider that these statements stand in Shariff's and Chitra's favour, as evidence of some mitigation of their misconduct.

Other Aspects of Behaviour

[49] We noted above Staff's criticism of "tweets" by Shariff, and of unspecified aspects of his "attitude and demeanour" in his testimony. In all the circumstances, we do not regard these as pertinent to determining appropriate sanctions in this matter.

[50] In his testimony in the current phase of this proceeding, Shariff apologized for the misconduct found. As just discussed, two of the Investor Affidavits also spoke of contrition to investors by Shariff (and, in one them, also by Chitra). We accept that his (and her) contrition is genuine, and consider this a mitigating element.

Willingness to Work Toward a Favourable Outcome for Investors

[51] Another topic common to the Investor Affidavits is Shariff's purported willingness to work for investors through litigation. Shariff himself, in the Shariff Affidavit, stated that he and Chitra "are both currently involved in existing litigation also involving the various Platinum entities . . . as well as against the Leben REIT". We leave aside the latter; it is not a party to this proceeding, it is not the subject of any Merits Decision findings, and we know little about it. Concerning Platinum Group entities – certainly far more relevant – we have insufficient evidence as to precisely what is being done or proposed by way of litigation or otherwise, the extent (if any) to which Shariff and Chitra are in any event involuntarily entangled in the litigation as defendants, or how and to what extent the litigation (or other efforts) are reasonably expected to assist investors (and in what relative proportion to any concurrent benefit to the respondents).

[52] That said, we are prepared to accept that Shariff has demonstrated a willingness to pursue or assist in litigation that he hopes could assist investors. We accept this as a mitigating element, although (given the uncertainties just mentioned) to only a limited degree.

Effect of Mitigating Elements

[53] We consider that the identified mitigating elements diminish somewhat the need for specific deterrence in respect of, and therefore argue for moderation in the sanction required against, Shariff and Chitra.

(vi) Risks Posed

[54] Given the protective and deterrent purposes of sanctioning, an assessment of the risk posed by a respondent can be a compelling factor in determining appropriate sanction.

[55] Here, we discern a significant risk of future harm from all respondents but Glenmore LP (we except it because it is now under investor control).

[56] Over $58 million was raised from investors in the Platinum Issuer syndications, a significant portion of that through illegal trades and distributions. We share with Staff a concern that the apparent ease with which the respondents raised vast sums from investors, in part through serious and, in one aspect, systemic misconduct (as found in the Merits Decision), could tempt any of the respondents – or observers – to attempt something similar in the absence of firm sanctions here. We view this as a real and profound risk to the investing public and to the integrity of our capital market.

[57] Even moderating the degree of sanction here required for purposes of specific deterrence (in light of the mentioned mitigating elements), we conclude that this case demands firm measures of specific deterrence against all respondents other than Glenmore LP, as well as strong general deterrence.

(vii) Conclusion on Relevant Factors

[58] In short, we conclude that this is a case warranting significant sanction that will deliver stern messages of specific and general deterrence.

(c) Appropriate Types and Extent of Sanction

[59] There is generally no dispute that appropriate sanctions against each respondent other than Glenmore LP would include an array of market-access restrictions: bans on trades or purchases of securities of the entities, director-and-officer bans against Shariff and Chitra, an advising ban against Shariff, bans against the entities acting as a registrant, investment fund manager or promoter, and (against all respondents other than Glenmore LP) bans on their trading or purchasing any securities, using exemptions and acting in a securities-market management or consultative capacity. That the bans against the entities ought to be permanent is also not generally disputed. (We say "generally" because the respondents' submissions omitted mention of any position of Qualia LP on these matters. Even so, we discern no reason to infer that Qualia LP's position differs.) Nor is there dispute that appropriate sanctions would include significant administrative penalties against Shariff, Chitra and Platinum.

[60] With all of this we agree.

[61] The public interest requires that investors and the capital market be protected, permanently, from the risk of future harm from Platinum and the Platinum Issuers (other than Glenmore LP). We are satisfied that the types of market-access restriction proposed against them, and their proposed permanent duration, would serve this purpose appropriately.

[62] We are also satisfied that the types of ban proposed against Shariff and Chitra would similarly serve the public interest.

[63] We also agree that the proposed market-access bans must be accompanied by direct monetary orders to deliver the requisite protection and deterrence in respect of Shariff, Chitra and Platinum. We do not extend this view to any of the Platinum Issuers, because a direct financial order against them could impair whatever prospects investors have of recovering their invested money.

[64] There remain, however, divergences – some significant – between the positions of Staff and certain of the respondents.

[65] One divergence is reflected in Chitra's proposal that any administrative penalty against her be joint and several with Platinum, just as Staff propose against Shariff. The effect of a joint-and-several order is that satisfaction may be obtained from one affected party to the extent that the other does not pay; it might also accommodate some sharing of the burden if both affected parties are willing. In the circumstances – Platinum being the entity through which the syndication selling efforts were effected, and it having acted through Shariff and Chitra – we are satisfied that it is in the public interest that Platinum be jointly and severally liable for the administrative penalties ordered against both Shariff and Chitra. We are further satisfied that the public interest does not require that Platinum be subject to any administrative penalty additional to those.

[66] Two key areas of disagreement involve the appropriate terms of market-access bans against Shariff and Chitra – their duration, and carve-outs. Because our conclusion on one may affect our views on the other, we consider these two issues together.

[67] As noted, Staff seek permanent bans against Shariff, with no carve-outs. He does not challenge Staff's proposed ban duration, but seeks the broad Family Trust, Family Company and Litigation Carve-outs.

[68] We reject the Family Trust and Family Company Carve-outs as incompatible with the public interest in the circumstances here. Apart from the key question of whether Shariff's continued involvement in the capital market in any capacity would be appropriate, there is no clarity as to what activity would be permitted by these carve-outs. We are told that the beneficiaries of the trust named in the Shariff Affidavit are "minor children" but we know little else about those beneficiaries, and we do not know what the trust does or is empowered to do, or through whom it acts. We know nothing at all of the companies (owned privately, or owned or operated for the benefit of the named trust) with which Shariff wishes to serve: not their identities, their characteristics, or their purposes, and not what specifically Shariff (or Chitra) wishes to do in association with those companies. We similarly know nothing at all concerning the unspecified other assets "owned by . . . ourselves" in respect of which Shariff (and Chitra) may also seek the ability to act as "asset manager". In the circumstances, we are not persuaded that these two types of carve-out would be consistent with the public interest.

[69] To the contrary, we believe that, after what took place with Platinum Group, permitting Shariff continued market access in the various capacities mentioned would seriously undermine the protection and deterrence essential here. Limiting such activities to family-owned companies would be no answer; many of the Platinum Group entities involved in the misconduct were also family companies.

[70] Access to the Alberta capital market is a privilege, not a right. Shariff abused that privilege. We consider it imperative, for purposes of both specific and general deterrence, that his access to this privilege be greatly restricted. In any event, there is no evidence that persuades

us that this necessary consequence of his misconduct would preclude Shariff from finding employment through which he could support a family, pay obligations and, perhaps, help Platinum Issuer investors.

[71] The Litigation Carve-out is presented by Shariff (in submissions, and in the Shariff Affidavit and Investor Affidavits he tendered) as essential to assisting investors in recouping something from their failed investments, including investments in some of the impugned syndications. On the surface, this might appear helpful in the public interest. However, there is a lack of clarity and specificity. We are not told enough about what litigation is, or what director or officer positions are, in issue. Even were that sort of information presented, a more basic issue would remain: how does a director-and-officer ban preclude Shariff from assisting with or advancing any litigation? Shariff's submissions and the affidavits offer only bare assertions or statements of belief, with their sources and foundations unexplained. This is unhelpful. A compelling reason would be needed to justify the sort of carve-out here sought, because of the likelihood of it undermining the objectives of specific and general deterrence. In the absence of a compelling reason, we are not persuaded that the Litigation Carve-out would be appropriate.

[72] In short, based on the evidence and submissions before us, we reject the Family Trust, Family Company and Litigation Carve-outs sought by Shariff as incompatible with the public interest.

[73] We recognize that the types of market-access ban sought by Staff against Shariff are broad-ranging. This is as it should be, for the protective and deterrent purposes necessary here. That said, we are not convinced in the circumstances (including our rejection of the carve-outs Shariff seeks) that these broad-ranging bans must be of permanent duration. Having regard to the factors and moderating elements canvassed above, we conclude that appropriate specific and general deterrence requires that these bans be of relatively long duration, and certainly a good deal longer than those against Chitra (given her overall lesser role in Platinum Group, as acknowledged by Shariff). Taking into account the common position that bans would be accompanied by a significant administrative penalty, we consider it to be in the public interest that the market-access bans against Shariff remain in place for a duration ranging from 25 years to permanent, with the precise duration dependent on satisfaction of the monetary sanction against him. In other words, we consider it appropriate that the bans against Shariff endure until the later of (i) 25 years and (ii) the date on which his administrative penalty has been paid.

[74] Chitra, too, seeks the Family Trust and Family Company Carve-outs from the proposed market-access bans against her. Our comments above on these carve-outs in respect of Shariff apply also to Chitra. For the same reasons, therefore, we reject such carve-outs from bans against her as incompatible with the public interest.

[75] Turning to the duration of the proposed market-access bans against her, as noted, Staff seek bans of 15 years while she proposes 3 years. We concur with neither party. Bans of 3 years (even without carve-outs) would in our view amount to mere temporary interruptions of market access for a respondent who engaged in serious misconduct that did serious harm. We do not consider that this would deliver meaningful deterrence, specific or general. On the other hand, having regard to the factors and moderating elements canvassed above, our rejection of the

carve-outs sought, and the prospect that the corresponding bans against Shariff (whose overall role was much greater than hers) could end in 25 years, we consider the duration sought by Staff to be more than necessary, particularly when coupled with a significant administrative penalty. We conclude that market-access bans against Chitra with a duration of not less than 10 years would appropriately serve the public interest – with the precise duration dependent on satisfaction of the monetary sanction against her.

[76] It is, of course, open to any respondent in any proceeding to apply for the variation of any ban at such time, if any, as that respondent is in a position to demonstrate that such variation would not (in the words of section 214(1) of the Act) be prejudicial to the public interest.

[77] We gave some thought to the possibility of limited carve-outs permitting personal securities trading by Shariff or Chitra through identified registrant accounts, as is sometimes done in sanctions decisions. No such limited carve-outs are sought, and we heard no argument on the point. That said, reiterating that capital-market access is a privilege that was seriously abused here, and presented with no compelling evidence of a public interest in preserving any part of such privilege here, we discern no basis for even such limited carve-outs.

[78] The topic of administrative penalties presents the final area of significant disagreement between Staff and certain of the respondents. As noted, Staff seek a $1.5 million administrative penalty against Shariff (and Platinum), while he argues for $500,000 (with Platinum); Staff seek a $250,000 (or $300,000) administrative penalty against Chitra (alone), while she argues for $100,000 (with Platinum).

[79] Mindful of the seriousness of the misconduct, and of the multi-million-dollar scale of the illegal distributions and investors' associated losses, we consider that administrative penalties in the quanta proposed by Shariff and Chitra would not deliver the appropriate and essential messages either of general or specific deterrence.

[80] We are not bound to accept the position of any or all of the parties. An administrative penalty in the circumstances presents another opportunity to respond to the moderating or mitigating elements canvassed above. Thus, and taking into account the array of significant market-access bans discussed, we are satisfied that administrative penalties considerably smaller than sought by Staff (yet still significant) would deliver the requisite protection and deterrence. We conclude that administrative penalties of $1 million against Shariff and $150,000 against Chitra (in each case jointly and severally with Platinum), coupled with the market-access bans discussed, would appropriately serve the public interest.

C. Cost Recovery

[81] The parties seem to be essentially in accord on the issue of cost-recovery orders. There appears to be no dispute that it is appropriate here that we order recovery of investigation and hearing costs totalling $221,082.74 – reflecting all claimed disbursements and 70% of Staff's recorded time charges. Nor is there apparent dispute that these costs should be recovered from Shariff, Chitra and Platinum, in specific portions: Shariff (65%), Platinum (10%), and Chitra (25% – her submissions match the dollar amount sought against her by Staff but misdescribe it as 10% of the total).

[82] For the reasons cited above from *Marcotte*, we agree that cost recovery is appropriate in this case. We are also of the view that ordering recovery of a significantly-reduced proportion of the total costs incurred would appropriately recognize the following factors conceded or acknowledged by Staff: (i) some of the investigation involved entities not ultimately named as respondents; (ii) some costs pertained to allegations resolved through a settlement; (iii) not all of the allegations against the respondents were proved; and (iv) the respondents contributed to the efficiency of the process by cooperating in the investigation and by entering into a statement of admissions and an agreement as to Merits Hearing exhibits.

[83] We would not order cost recovery against any of the Platinum Issuers because doing so might impair their investors' prospects of recovering their invested money.

[84] We deduct from the potentially recoverable costs some $1,380 in charges that appear from their descriptions to pertain to unrelated proceedings. For simplicity, we would then round the potentially recoverable total downward. Apart from these adjustments, we discern no reason to depart from the parties' apparently common position as to the quantum of costs to be recovered and the proportionate allocation among three respondents. We therefore conclude that it is appropriate to make orders under section 202 for the recovery of a total of $210,000 in investigation and hearing costs, allocated 65%-25%-10% respectively among Shariff, Chitra and Platinum.

IV. CONCLUSION

[85] For the reasons given, we make the following orders.

Platinum

[86] Against Platinum we order that:

- under section 199 of the Act, Platinum must pay administrative penalties of $1 million (jointly and severally with Shariff) and $150,000 (jointly and severally with Chitra);
- under section 198(1)(a), all trading in or purchasing of its securities must cease, permanently;
- under sections 198(1)(b) and (c), it must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to it, permanently;
- under sections 198(1)(e.2) and (e.3), it is prohibited from becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market, permanently; and
- under section 202, it must pay $21,000 of the costs of the investigation and hearing.

Deerfoot LP

[87] Against Deerfoot LP we order that:

- under section 198(1)(a) of the Act, all trading in or purchasing of its securities must cease, permanently;
- under sections 198(1)(b) and (c), it must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to it, permanently; and
- under sections 198(1)(e.2) and (e.3), it is prohibited from becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market, permanently.

P5 LP

[88] Against P5 LP we order that:

- under section 198(1)(a) of the Act, all trading in or purchasing of its securities must cease, permanently;
- under sections 198(1)(b) and (c), it must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to it, permanently; and
- under sections 198(1)(e.2) and (e.3), it is prohibited from becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market, permanently.

PMIC

[89] Against PMIC we order that:

- under section 198(1)(a) of the Act, all trading in or purchasing of its securities must cease, permanently;
- under sections 198(1)(b) and (c), it must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to it, permanently; and
- under sections 198(1)(e.2) and (e.3), it is prohibited from becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market, permanently.

Qualia LP

[90] Against Qualia LP we order that:

- under section 198(1)(a) of the Act, all trading in or purchasing of its securities must cease, permanently;
- under sections 198(1)(b) and (c), it must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to it, permanently; and
- under sections 198(1)(e.2) and (e.3), it is prohibited from becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market, permanently.

Shariff

[91] Against Shariff we order that:

- under section 198(1)(d) of the Act, he must resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager;
- under section 199, he (jointly and severally with Platinum) must pay an administrative penalty of $1 million;
- until the later of (i) 26 September 2039 and (ii) the date on which the administrative penalty just specified has been paid:
  - under sections 198(1)(b) and (c), he must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him;
  - under section 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager;
  - under section 198(1)(e.1), he is prohibited from advising in securities or exchange contracts; and
  - under section 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- under section 202, he must pay $136,500 of the costs of the investigation and hearing.

Chitra

[92] Against Chitra we order that:

- under section 198(1)(d) of the Act, she must resign all positions she holds as a director or officer of any issuer, registrant or investment fund manager;
- under section 199, she (jointly and severally with Platinum) must pay an administrative penalty of $150,000;
- until the later of (i) 26 September 2024 and (ii) the date on which the administrative penalty just specified has been paid:
    - under sections 198(1)(b) and (c), she must cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to her;
    - under section 198(1)(e), she is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager; and
    - under section 198(1)(e.3), she is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- under section 202, she must pay $52,500 of the costs of the investigation and hearing.

[93] This proceeding is concluded.

26 September 2014

For the Commission:

"original signed by"
Stephen Murison

"original signed by"
Daniel McKinley, FCA

"original signed by"
Fred Snell, FCA