Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Solar Income Fund Inc. (Re)*, 2023 ONCMT 3
Date: 2023-01-11
File No. 2019-35

IN THE MATTER OF
SOLAR INCOME FUND INC., ALLAN GROSSMAN,
CHARLES MAZZACATO and KENNETH KADONOFF

REASONS AND DECISION

(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators: Timothy Moseley (chair of the panel)
William J. Furlong
Dale R. Ponder

Hearing: By videoconference, September 13, 2022; final written submissions received October 31, 2022

Appearances:

Andrew Faith Ryan Lapensée	For Staff of the Ontario Securities Commission
James W.E. Doris Sean R. Campbell	For Solar Income Fund Inc. and Allan Grossman
Chantelle Cseh Alisa McMaster	For Charles Mazzacato
Brian Kolenda Eli Lederman Madison Robins	For Kenneth Kadonoff

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REASONS AND DECISION

1. OVERVIEW

[1] In a decision on the merits dated March 28, 2022 (the **Merits Decision**),[1] this Tribunal found that:

a. the respondent Solar Income Fund Inc. (**SIF Inc.**) was a small private company set up to develop and manage solar photovoltaic power generation installations;

b. each of the respondents Allan Grossman, Charles Mazzacato and Kenneth Kadonoff was a principal of SIF Inc. for part or all of the relevant time;

c. the respondents established various funds, which paid SIF Inc. to provide consulting, development and management services;

d. one such fund was SIF Solar Energy Income & Growth Fund (**SIF #1**), which raised money from the public by way of an offering memorandum;

e. contrary to the allegations made by Staff of the Ontario Securities Commission, the respondents did not contravene s. 44(2) of the *Securities Act*[2] (the **Act**) by making prohibited representations relevant to a trading or advising relationship;

f. however, the respondents did engage in fraudulent conduct relating to securities, and thereby contravened s. 126.1(1)(b) of the Act, by causing SIF #1 to divert $234,864.04 for two purposes unauthorized by the offering memorandum:

   i. to pay distributions to investors in Solar Income and Growth Fund #2 (**SIF #2**), another fund managed by SIF Inc.; and

   ii. to pay fees to SIF #2's exempt market dealers;

g. Grossman and Mazzacato shared responsibility with SIF Inc. for the full amount of $234,864.04 that was diverted; and

[1] 2022 ONSEC 2

[2] RSO 1990, c S.5

h. of that $234,864.04, Kadonoff shared responsibility for $51,721.34 (a figure we correct to $51,361.34 at paragraph [104] below).

[2] Staff asks that we impose sanctions against the respondents under s. 127(1) of the Act, and that we order the respondents to pay a portion of the Commission's costs of the investigation and this proceeding, under s. 127.1 of the Act.

[3] For the reasons we set out below, we conclude that it would be in the public interest to order that:

a. SIF Inc. and Grossman be jointly and severally liable to disgorge to the Commission $234,864.04, and that Kadonoff have joint and several liability for $51,361.34 of that amount;

b. SIF Inc., Grossman, Kadonoff and Mazzacato pay administrative penalties of $175,000, $175,000, $125,000 and $1,000, respectively;

c. SIF Inc., Grossman and Kadonoff each pay $37,500 of the Commission's costs connected with the investigation and this proceeding, and that Grossman and Kadonoff be jointly and severally liable for SIF Inc.'s portion;

d. the respondents cease trading in or acquiring any securities or derivatives permanently, except that the individual respondents may, upon satisfaction of their financial obligations resulting from our order, conduct limited personal trading as specified below;

e. the individual respondents resign as directors and officers of any issuer or registrant, and be prohibited permanently from acting in any such capacity, except that:

i. Kadonoff (upon satisfaction of his financial obligations resulting from our order) and Mazzacato may hold director and officer positions for the private issuers specified below; and

ii. the effective date of this prohibition for Kadonoff, in respect of the private issuers specified below, is deferred for thirty days, to February 10, 2023;

f. any exemptions contained in Ontario securities law do not apply to any of the respondents, permanently; and

g. the respondents be prohibited permanently from becoming or acting as a registrant or as a promoter.

[4] We begin our analysis by reviewing the legal framework for sanctions and how the facts of this case lead us to the sanctions that we have decided would be appropriate. We then consider Staff's request for costs.

2. ANALYSIS – SANCTIONS

2.1 Introduction

[5] The Tribunal may impose sanctions under s. 127(1) of the Act where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the Act's purposes, which include the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets.[3]

[6] The sanctions listed in s. 127(1) of the Act are protective and preventative, and are intended to be exercised to prevent future harm to Ontario's capital markets.[4]

[7] Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[5] Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case. We refer below to decisions of the Tribunal in other cases, which are helpful but of limited precedential value when determining the appropriate length of a market ban or the amount of an administrative penalty.[6]

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[3] *Securities Act*, s. 1.1

[4] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

[5] *Bradon Technologies Ltd. (Re),* 2016 ONSEC 19 at para 28; and at para 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60

[6] *Quadrexx Hedge Capital Management Ltd. (Re),* 2018 ONSEC 3 (***Quadrexx***) at para 20

[8] We break our sanctions analysis down into four sections:

a. a confirmation of the scope of conduct on which we should rely in determining appropriate sanctions;

b. a consideration of factors applicable to sanctions generally;

c. analysis of Staff's request for restrictions on participation in the capital markets (including prohibitions against trading, and against acting as directors and officers); and

d. analysis of Staff's request for financial sanctions, being disgorgement orders and administrative penalties.

2.2 Scope of conduct that can be relied upon

[9] We begin by addressing the scope of conduct that we can appropriately consider on this hearing.

[10] Staff submits that when we determine the appropriate sanctions, we must consider not just the specific fraud as found by the merits panel (*i.e.*, in the amount of $234,864.04), but we must also consider the context of broader conduct involving millions of dollars of loans made from SIF #1 to SIF #2. When pressed, Staff asserted that it was not seeking a sanction in respect of those additional transactions; rather, it submits that we should not consider the fraud in isolation from the other evidence. Staff notes the merits panel's conclusion in paragraph 163 of the merits decision that the offering memorandum did not permit lending. Staff suggests that in light of this broad conclusion, it is proper for us to look beyond the loans that made up the fraud and to look also at other loans that SIF #1 made.

[11] We decline that invitation. At the merits hearing, including in Staff's closing submissions in that hearing, Staff explicitly limited its fraud allegations to two impugned purposes – the payment of distributions to SIF #2 investors, and the payment of dealer fees. As a result, the merits panel's finding that the offering memorandum did not permit lending was entirely in the context of those specific transactions. The merits panel made no finding about the propriety of any other transaction.

[12] Having deliberately compartmentalized its case at the merits stage, Staff cannot now seek to reframe its case. It would be unfair to the respondents for us to take any other transactions into account when considering appropriate sanctions.

2.3 Factors relevant to sanctions

2.3.1 Introduction

[13] We turn now to review the factors applicable to the determination of appropriate sanctions. In previous decisions, the Tribunal has identified a non-exhaustive list of factors, which include:

a. the respondents' level of activity in the marketplace, or in other words, the "size" of the contravention;

b. the seriousness of the misconduct;

c. the profit made or loss avoided from the misconduct;

d. whether the misconduct was isolated or recurrent;

e. the respondents' experience in the marketplace;

f. any mitigating factors; and

g. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[7]

[14] The Tribunal has also previously discussed the extent to which a respondent's inability to pay is relevant when determining appropriate financial sanctions. We return to this factor below in our analysis of the financial sanctions requested in this case. We first address in turn each of the above seven factors applicable to sanctions generally.

2.3.2 The respondents' level of activity in the marketplace, or, the size of the contravention

[15] The first of the seven factors listed above is often referred to as "the respondents' level of activity in the marketplace". More precisely, it is a collection of characteristics about the activity that made up the contravention.

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[7] *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746

Such characteristics typically include one or more of: the dollar amount, the number of investors affected, the number of individual breaches, and the duration of the misconduct.[8]

[16] The amount of the fraud in this case, $234,864.04, could of course be significant for a particular investor if that were the loss suffered by the investor. However, it is not significant compared to the amounts at issue in the authorities cited to us.

[17] It is also a small portion of the approximately $60 million that SIF #1 raised from investors. In that regard, we reject Staff's position that if we cannot consider allegedly improper transactions outside the scope of the merits decision (as we have found above), equally we cannot consider the overall size of the fund when assessing materiality of the fraud. There is no logical connection between the two concepts. As we have discussed, fairness dictates that the sanctions be based only on that conduct found to have been improper (*i.e.*, in the amount of $234,864.04), and not on a significantly larger amount, in the millions of dollars, that Staff submitted was contrary to the offering memorandum. The limitation on the scope of misconduct does not preclude our reference to the overall context (*i.e.*, $60 million raised) when assessing the respondents' misconduct. Having said that, we do not attach significant weight to the overall size of the fund, since that number does not relate directly to the respondents' contravention.

[18] In terms of duration and number of individual transactions, again the fraud in this case was at the lower end of the spectrum. The transactions fell within a relatively short time (approximately 10 months), and although there were 22 transactions, almost all of them were monthly repetitions of the same kind of transaction (*i.e.*, a distribution to unitholders) as opposed to fully independent transactions.

[8] *North American Financial Group Inc (Re)*, 2014 ONSEC 28 (***North American Financial***) at para 40

2.3.3 Seriousness of the misconduct

2.3.3.a Introduction

[19] In considering the seriousness of the respondents' misconduct, we focus on three characteristics that are particularly relevant in this case:

a. the nature of the contravention, *i.e.*, fraud;

b. the fact that the contravention was not part of a larger fraudulent scheme; and

c. the respondents' mental state at the time of the contravention.

2.3.3.b The nature of the contravention

[20] Fraud is one of the most egregious violations of securities laws. It can cause direct harm to investors, and it undermines confidence in the capital markets.[9]

[21] The respondents acknowledge the seriousness of a finding of fraud. Initially, the respondents characterized their fraud as "highly technical in nature", although in closing submissions they retreated from that description, one we would not have accepted in any event. Despite that softening of the submission, we think it important to address the point.

[22] We agree with Staff that if anything, it was the respondents' defence of their use of funds that was highly technical. As the merits panel concluded, the language in the offering memorandum overwhelmingly supported the conclusion that the offering memorandum did not authorize the lending that SIF #1 did for the two impugned purposes. The respondents offered a technical defence, by focusing on one instance of the word "financing". There should be no suggestion that the respondents were caught by a technicality. Their fraud was serious.

2.3.3.c The contravention was not part of a larger fraudulent scheme

[23] The second characteristic we consider in assessing the seriousness of the misconduct is whether it was part of a larger fraudulent scheme.

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[9] *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate***) at para 14

[24] Here, it was not. The respondents are correct to distinguish this case, with its legitimate underlying business, from other cases in which the entire schemes perpetrated by respondents were fraudulent.

2.3.3.d The respondents' mental state at the time of the contravention

[25] The final characteristic we consider in assessing the seriousness of the misconduct is the respondents' mental state at the relevant time.

[26] Grossman admitted that he authorized the use of SIF #1 funds to pay SIF #2's dealer fees and distributions, and that he did so to maintain the confidence of SIF #2's investors and exempt market dealers. Grossman's misconduct was deliberate.

[27] That by itself would heighten the seriousness of the misconduct. However, Grossman explained that he believed at the time that this was an authorized use of the funds. There is no evidence to the contrary, and we accept his assertion as to his belief. However, we give Grossman little credit for that, since his belief was a product of what the merits panel found to be his reckless conduct. For an individual with Grossman's position in the business, his professional qualifications, and his lengthy experience, including in the capital markets, such recklessness undermines the mitigating effect of an honest belief.

[28] Mazzacato and Kadonoff are similarly situated. They were both directing minds and they knew the purposes of the transfers. Mazzacato largely deferred to others about the propriety of those transfers, and like Kadonoff he attempted to distance himself from the responsibilities that were part of his role as a senior officer. As the merits panel found, both Mazzacato and Kadonoff were at least reckless with respect to the fraud.

[29] Accordingly, we cannot give the respondents credit for the fact that, as they put it, they repeatedly sought and obtained legal advice. They did not seek legal advice about the issue that led to the fraud contravention, *i.e.*, whether the offering memorandum permitted the impugned transactions.

2.3.3.e Conclusion about the seriousness of the fraud

[30] Staff suggests that we should take an additional factor into account when assessing the seriousness of the fraud. Staff submits that it should be an

aggravating factor that the respondents would have continued their fraudulent conduct had SIF Inc. not been removed as manager in late 2017. We decline Staff's invitation to reach that conclusion, because it would be excessively speculative.

[31] We therefore find that the respondents' misconduct was serious in nature, as are all frauds. On the other hand, their misconduct arose in the context of a legitimate business, it was not part of a larger scheme, and the respondents did not deliberately set out to commit a fraud. We describe the fraud in this case as somewhat or moderately serious, when compared to other frauds that come before the Tribunal.

2.3.4 Did the respondents benefit (*e.g.*, make a profit or avoid a loss) from the fraud?

[32] The third of the seven factors listed above asks whether the respondents made a profit, or avoided a loss, as a result of their misconduct. We conclude that they did benefit, although indirectly.

[33] The respondents submit that their fraud did not involve investor funds being appropriated for personal use. This is true in a direct sense, and Staff did not attempt to demonstrate that the respondents directly made a profit, or directly avoided a loss, from the misconduct.

[34] However, as Staff submits, SIF Inc.'s primary reason for existence was to earn management and development fees for its services to various entities, including SIF #1 and SIF #2. As Grossman admitted, he authorized the use of SIF #1 funds to pay SIF #2's dealer fees and distributions, in order to maintain the confidence of SIF #2's investors and exempt market dealers. SIF Inc. thus benefited directly from the fraud.

[35] As for the individual respondents, each of them owned, directly or indirectly (and, in the case of Mazzacato, jointly with his then partner), approximately one third of SIF Inc., and would therefore benefit personally if SIF Inc. and the funds it managed performed better. We do not adopt the respondents' contention that because Staff did not attempt to prove a flow of funds to the individual respondents, we are precluded from finding that the individual respondents benefited indirectly from the fraud. It is a natural and logical consequence of the

respondents' ownership that they would benefit, absent evidence to the contrary, of which there was none.

[36] With respect to Kadonoff in particular, we cannot accept his submission that he was no longer involved from the beginning of September 2015 and therefore that we should put little if any weight on the idea of a personal benefit to him. It is true that Kadonoff resigned as an officer and director of SIF Inc. at that time, but he continued to work as a consultant to the company until February 2016, and he continued to hold his shares in SIF Inc. beyond that time. He had a continuing interest in the overall financial health of the group of companies and funds.

2.3.5 Was the fraud isolated or recurring?

[37] The fourth of the seven factors asks whether the misconduct was an isolated instance or a recurring series of events.

[38] Staff emphasizes the recurring nature of the fraud. SIF Inc. effected 22 impugned transfers of funds from July 2015 to April 2016, representing ten monthly pairs of transactions paying distributions to investors, and two transactions paying exempt market dealer fees. The time period over which the transfers took place is neutral, in our view. It is neither as limited as the respondents describe nor as extensive as this Tribunal sees in other instances.

[39] Kadonoff correctly notes that his involvement in the matters giving rise to the fraud was limited to two monthly pairs of the transfers, occurring in August and September of 2015.

2.3.6 The individual respondents' experience in the marketplace

[40] The fifth of the seven factors refers to the respondents' experience in the marketplace.

[41] All three individual respondents are experienced businesspeople. However, each individual's experience varies in the extent to which it relates to the issues present in this case.

[42] Grossman has more than 50 years' experience as a Chartered Professional Accountant. He had previously founded a firm that was registered with the Commission (then known as a limited market dealer, now an exempt market

dealer) and that sold real estate. His relevant experience is at the high end of the range, when compared to other respondents in other cases.

[43] Mazzacato is a sophisticated businessperson who had run his own business, had held senior roles in various businesses, and had considerable experience in the solar industry. However, he had no experience in the exempt market before joining SIF Inc. We describe his relevant experience as moderate.

[44] Kadonoff is a lawyer who had practiced corporate law, among other things, but who had no experience with respect to public issuers of securities. We describe his relevant experience as moderate.

[45] Individuals like the respondents, who have considerable experience in senior positions, should know better and must be more responsible. In viewing the appropriateness of sanctions in this case through an investor protection lens, we must ensure that the sanctions make clear that there are serious consequences for this kind of misconduct.

2.3.7 Mitigating Factors

[46] We turn now to identify any mitigating factors.

[47] The respondents emphasize, and Staff agrees, that the respondents co-operated fully throughout the investigation of this matter.

[48] The individual respondents also submit that none of them has previously been involved in any proceedings before this Tribunal, nor does any of them have any other record of misconduct in connection with Ontario's capital markets. For us, this acts both in their favour and against them. Individuals with lengthy and senior business experience should know better and should act more responsibly. However, a long period without any misconduct related to the capital markets does suggest that the misconduct here was an aberration. On balance, we consider this to be a mitigating factor, although not a significant one.

[49] The individual respondents also note that none of them is currently working in any role in Ontario's capital markets, and that none of them intends to work in such a role in the future. We are not persuaded that we should see this as a mitigating factor. People change their mind all the time, and it is important that

the sanctions reflect the conduct, not respondents' stated and non-binding intentions.

[50] As for the respondents' asking for and obtaining legal advice, we repeat what we set out above. We agree with Staff that it is not a mitigating factor that the respondents relied on legal advice that did not address the central issue in the fraud contravention. We do not, however, accept Staff's submission that the respondents deliberately and intentionally chose not to seek advice about the conduct that has been found to have been fraudulent. The evidence does not support that submission.

[51] We have no basis to conclude that the respondents are remorseful. Staff submits to the contrary, that the respondents did not recognize the seriousness of their conduct, as is reflected in the merits panel's finding that each respondent attempted to limit his own responsibility. We repeat the general rule that respondents are entitled to assert defences in response to Staff's allegations, and that their choice to do so must not be seen as an aggravating factor when the Tribunal determines appropriate sanctions. However, we agree with Staff that no mitigation credit is due to the respondents in this case.

[52] Similarly, we cannot give effect to Kadonoff's submission that we should treat as a mitigating factor the fact that he raised concerns about the impugned payments. As the merits panel found, he first raised a concern on September 1, 2015, that he was not comfortable having SIF #2 borrow funds from SIF #1 for the identified purposes, because SIF #2 did not have cash to pay distributions. However, soon after communicating that concern, and even after he had resigned (but still retained signing authority), Kadonoff signed a cheque to facilitate the August distributions, a transaction that the merits panel found to be fraudulent. That action precludes any mitigation credit, because his signing of the cheque rendered meaningless the fact that he had previously expressed a concern.

[53] Similarly, concerns that Kadonoff raised in October 2015, well after he had already signed the cheque, cannot operate in his favour, given that it had been within his power either to block the fraudulent transaction in the first place, or at least not to be complicit in it.

[54] Finally, Kadonoff is correct in his submission that there is no evidence that the respondents actively misled investors once those investors had supplied funds. However, we cannot give significant weight to the distinction between misleading investors after the investment on the one hand, and departing from the promised use of funds on the other. Investors are entitled to make their investment decision based on disclosure that exists at the time of investment, and they are entitled to assume that their funds will be used in a manner consistent with that disclosure. It would not be consistent with our mandate of investor protection and confidence in the capital markets to hold that silence about an unauthorized diversion is a mitigating factor, compared to active deceit about that same diversion.

2.3.8 Specific and general deterrence

[55] We address now the last item in our list of relevant factors, *i.e.*, specific and general deterrence.

[56] As we concluded above, recklessness has no place in the conduct of a senior officer and/or director who is engaged in the public solicitation and deployment of investors' funds. The sanctions we impose must specifically deter all the respondents from engaging in similar conduct.

[57] There is also a need to deter each of the individual respondents from asserting, while they are an officer, that the responsibility for discharging some of the obligations of the office belong to others and not to themselves. As the merits panel found, that is an inappropriate approach to governance for a public issuer. It undermines investor protection and the integrity of the capital markets.

[58] We note again the respondents' stated intention not to take on similar roles in the capital markets, but that current intention cannot be determinative. It is important that our order ensure sufficient protection to the market.

[59] The respondents submit that specific deterrence has already been achieved. They say that this proceeding has brought shame and embarrassment to them. That may be so, but shame and embarrassment are natural and common consequences of misconduct that is identified and that becomes the subject of an enforcement proceeding. The prospect of shame and embarrassment is not a

sufficient deterrent, and in most cases, including this one, sanctions are needed to provide effective protection to the capital markets.

[60] The sanctions we order must also deter others. Many individuals are in positions similar to those that were occupied by the individual respondents, with control over how investors' funds are used. It is often tempting for such individuals to use investor funds not for the specific purposes that were promised to the investors, but for broader purposes in an effort to prop up a business that is facing difficulties. Absent the required notice to and consent from investors, individuals in positions of responsibility do not have the discretion to choose other uses for the funds. The sanctions in this case must make that clear.

[61] Having said that, the respondents correctly submit that the important objective of general deterrence does not justify sanctions that are punitive rather than protective.[10] We are mindful of this principle as we formulate sanctions that are proportionate and in the public interest.

[62] Specifically, the respondents argue that since they accept that a general market ban is appropriate given the merits panel's findings, and since the respondents have no intention of working in the capital markets again, there would be no additional value in an administrative penalty, which would be unnecessary to achieve specific deterrence and would therefore be punitive. We cannot accept that argument, which would effectively eliminate general deterrence as a relevant factor, even where the sanction would not be punitive.

2.3.9 Conclusion about factors to be considered

[63] We have reviewed the factors to be considered on sanctions (other than ability to pay, discussed below) and concluded that:

a. the size of the fraud in this case was at the lower end of the spectrum;

b. however, fraud is one of the most serious contraventions of Ontario securities law, and this fraud was perpetrated by experienced businesspeople who ought to have been more attentive to whether the

[10] *Quadrexx* at para 58

way in which they used investor funds conformed to the promises made to those investors;

c. the fraud in this case was not part of a larger scheme, but rather was an element of an otherwise legitimate business;

d. the fraud was not designed to, and did not, provide any direct benefit to the individual respondents, although they did benefit indirectly;

e. the fraud was recurring, although of a small amount, particularly in the case of Kadonoff;

f. the respondents co-operated fully with the investigation;

g. all respondents are experienced businesspeople, although with varying experience in the capital markets;

h. none has previously been involved in any proceedings before this Tribunal, nor does any of them have any other record of misconduct in connection with Ontario's capital markets; and

i. the respondents are all in their late 60s or 70s, do not currently have a role in the capital markets, and state that they have no intention of taking on any such role.

[64] We now apply these conclusions to the specific sanctions that Staff seeks, beginning with restrictions on participation in the capital markets.

2.4 Restrictions on participation in the capital markets

[65] Staff seeks permanent market restrictions against SIF Inc., including with respect to trading and acquiring securities, and becoming or acting as a registrant or promoter. Staff also asks that SIF Inc. be denied the benefit of any exemptions contained in Ontario securities law. SIF Inc. does not oppose Staff's request. We consider the requested sanctions to be appropriate, and we make the necessary order, which we set out in detail in our conclusion below.

[66] As against the individual respondents, Staff seeks similar sanctions, as well as prohibitions on their becoming or acting as directors or officers of any issuer or registrant. The individual respondents accept that a permanent and general ban is appropriate given the merits panel's findings, but they seek two limitations

("carve-outs") on that general ban. First, they wish to be able to conduct limited trading in personal accounts. Second, they wish to be able to remain as directors and/or officers of personal or family-owned corporations. Because Staff asks us to make satisfaction of financial obligations (*i.e.*, administrative penalty, disgorgement, costs) a condition to the effectiveness of any carve-outs we order, we will return to the request for carve-outs after our analysis about appropriate sanctions.

2.5 Financial Sanctions

2.5.1 Introduction

[67] Staff seeks an administrative penalty of $500,000 against each of SIF Inc., Grossman and Mazzacato, and of $400,000 against Kadonoff. In addition, Staff seeks, from each respondent, disgorgement of the amount for which that respondent is responsible as set out above, *i.e.*, $234,864.04 in respect of SIF Inc., Grossman and Mazzacato, and $51,721.34 (the merits panel's figure, which we correct below) in respect of Kadonoff.

[68] We begin our analysis of Staff's requested sanctions by reviewing the one sanctioning factor that we mentioned above but have not yet addressed, *i.e.*, ability to pay. We conclude that Mazzacato has satisfactorily demonstrated his inability to pay financial sanctions. The nature and extent of that inability are such that it should factor significantly into our decision about the appropriate sanctions. We draw no similar conclusion about any of the other respondents.

[69] With those conclusions in mind, we then consider appropriate disgorgement orders and administrative penalties. We determine that it would be in the public interest to order:

a. disgorgement from SIF Inc. and Grossman to the full extent of the fraud (*i.e.*, $234,864.04), and from Kadonoff to the extent of his time-limited involvement in the fraud (*i.e.*, $51,361.34); and

b. an administrative penalty of $175,000 for each of SIF Inc. and Grossman, $125,000 for Kadonoff, and $1,000 for Mazzacato.

2.5.2 Ability to pay financial sanctions

2.5.2.a Introduction

[70] Ability to pay is a relevant factor to be considered in determining financial sanctions, although it is generally not the predominant or determining factor.[11]

[71] The respondents submit that they have no, or limited, ability to pay the financial sanctions that Staff seeks. The individual respondents assert that they are not employed or that they have limited employment, and that they do not have the necessary financial resources to pay Staff's requested sanctions.

[72] The respondents point to previous decisions of the Tribunal in which they say the Tribunal imposed small administrative penalties, or none at all, for similar reasons:

a. *Sino-Forest Corporation (Re)*,[12] in which the Tribunal imposed only a nominal administrative penalty on one respondent due specifically to that respondent's life-threatening medical issues and very limited financial means, and due to the fact that the respondent would not likely work again in his life.

b. *Gold-Quest International (Re)*,[13] in which the Tribunal ordered certain sanctions against the respondent Gale based on an agreed statement of facts she entered into with Staff. The Tribunal noted that general deterrence is an essential consideration, but chose not to impose financial sanctions against Gale, because: (i) she was neither the designer nor the initiator of the impugned investment products; (ii) she did not know that the subject scheme was fraudulent, and genuinely believed in the investment opportunity; (iii) she was remorseful; (iv) she avoided the need for a hearing on the merits; (v) she was 71 years old; and (vi) she had no assets to her name, lived on government pension, and had debts totalling more than $220,000. The Tribunal concluded that adding financial sanctions would not achieve any meaningful general deterrence.

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[11] *Rezwealth Financial Services Inc. (Re)*, 2014 ONSEC 18 at para 69

[12] 2018 ONSEC 37 at paras 165-166

[13] 2014 ONSEC 29

c. *Clayton Smith (Re)*,[14] in which the Tribunal approved a settlement agreement that included a $250,000 administrative penalty. The Tribunal held that a greater penalty would otherwise be called for, but a receiver had already been appointed over all the relevant assets, and those assets were being recovered to the extent possible for the benefit of harmed investors.

[73] We now review the circumstances with respect to each respondent separately.

2.5.2.b SIF Inc.

[74] We have no evidence about SIF Inc.'s ability to pay. We were advised by counsel at the hearing that all its business was transferred in 2017, and that it has not been carrying on active business since then.

[75] Even if it has no assets or income, we would not consider those as mitigating factors in this case. We are mindful of the fact that in some cases, this Tribunal has taken into account the Commission's likely inability to recover financial sanctions ordered. In our view, in the circumstances of this case, the need for general deterrence and the possibility that SIF Inc. might currently have, might generate or might acquire assets in the future, all combine to overcome any concern about an inability to collect at this time.[15]

2.5.2.c Grossman and Kadonoff

[76] In the case of Grossman and Kadonoff, they simply assert in submissions that they are unable to pay. Those assertions are not sufficiently supported to warrant any reduction in financial sanctions.

[77] Grossman provided no evidence about his income or assets.

[78] Kadonoff did provide an affidavit in which he states that he is retired and has no "active" source of income, apart from some casual work as a business coach and mediator. He gives no information about his assets, about the amount of income he receives from his casual work, or about income that he might derive from his assets.

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[14] 2018 ONSEC 33 (***Smith***)

[15] *Gold-Quest International (Re)*, 2010 ONSEC 30 at paras 98-99

[79] Without sufficient evidence, we cannot give effect to their submissions on this point.

2.5.2.d Mazzacato

[80] In contrast, Mazzacato filed a comprehensive affidavit, the contents of which were unchallenged by Staff. At Mazzacato's request, we ordered[16] that certain portions of his affidavit be kept confidential, under s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*[17] and Rule 22(4) of the Capital Markets Tribunal *Rules of Procedure and Forms*. We made that order for reasons to follow, and we now give our reasons here.

[81] The portions we ordered be kept confidential contain intimate financial and personal matters relating to the identity and circumstances of a dependent of Mazzacato's. In the course of explaining our reasons for decision on sanctions and costs, we do not need to disclose those details. The details support the broad description of the circumstances that is in the unredacted version of the affidavit, and that we have set out below. That broad description is sufficient to explain our decision.

[82] In this case, the legitimate interests of Mazzacato and of his dependent in preserving the confidentiality of that information outweigh the desirability of adhering to the important principle that adjudicative records be available to the public.

[83] In the public portion of his affidavit, Mazzacato states that:

a. he is 69 years old;

b. he currently works on contract as a consultant, and has been unemployed for significant periods of time since he left SIF Inc.;

c. he is the sole caretaker for, and provides significant financial support to, a dependent who lives with him and who has severe addiction and mental health challenges;

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[16] *Solar Income Fund Inc (Re)*, (2022) 45 OSCB 8005

[17] SO 2019, c 7, Sch 60

d. all of his income is used to provide for basic, reasonable costs of living for himself, his ex-wife, and his dependent;

e. he has made withdrawals from his RRSP to pay for reasonable living expenses for him and his dependent; and

f. he lives largely paycheque to paycheque.

[84] Staff agrees that the circumstances that Mazzacato describes are compelling. In our view, these circumstances, the detail that Mazzacato provides, and the fact that none of Mazzacato's evidence was challenged, combine to support a conclusion that Mazzacato's is an exceptional case that justifies making his inability to pay financial sanctions a significant factor for our consideration.

[85] It is well established that an inability to pay is generally not a determinative factor. The burden remains very high for a respondent to demonstrate circumstances that are sufficient to relieve the respondent, partially or wholly, of what would otherwise be their financial sanctions. Mazzacato met that burden.

2.5.3 Disgorgement

2.5.3.a Introduction

[86] We now turn to our analysis of Staff's request that we order disgorgement of:

a. $51,721.34, jointly and severally, against all respondents including Kadonoff; and

b. $183,142.70 (being $234,864.04, the total amount of the fraud, less the $51,721.34 for which the merits panel held that all four respondents share responsibility), jointly and severally, against all respondents except Kadonoff.

[87] The respondents submit that no disgorgement order would be appropriate, since there was no finding by the merits panel that any of the respondents personally profited, or even obtained a benefit, from the fraudulent conduct.

2.5.3.b Analysis

2.5.3.b.i Legal framework

[88] Paragraph 10 of s. 127(1) of the Act authorizes the Tribunal to order that a respondent who has not complied with Ontario securities law disgorge to the Commission "any amounts obtained as a result of the non-compliance".

[89] As the Divisional Court has held, because the purpose of a disgorgement order is to restore confidence in the capital markets, the focus should be not on "whether the fraudsters pocketed the money for themselves", but rather on the fact that the money was improperly diverted at all.[18] A disgorgement order ensures that respondents do not benefit in any way from their contraventions of Ontario securities law, and it deters them and others from similar misconduct.[19]

[90] The Tribunal has stated that when considering whether a disgorgement order is appropriate, and if so in what amount, the following non-exhaustive list of factors applies:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.[20]

[91] We will address each of these in turn.

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[18] *North American Financial Group Inc v Ontario Securities Commission*, 2018 ONSC 136 at para 218

[19] *Al-Tar Energy Corp. (Re)*, 2011 ONSEC 1 at para 71

[20] *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 (***PFAM***) at para 56

2.5.3.b.ii Did the respondents obtain an amount as a result of the non-compliance with Ontario securities law?

[92] This Tribunal has consistently held that the word "obtained" in s. 127(1)10 of the Act should be given its plain meaning, and that it is not confined to profit. Staff is correct in rejecting the respondents' submission to the contrary.[21]

[93] For there to be a disgorgement order against a particular respondent, there is no requirement to show that the amounts obtained as a result of the non-compliance flowed directly to that respondent. Even though a central purpose of disgorgement orders is to deprive wrongdoers of ill-gotten gains,[22] a respondent wrongdoer who benefits only indirectly rather than directly cannot raise the indirect nature of the benefit as a shield to a disgorgement order.

[94] Further, even though a particular individual respondent does not obtain funds directly, if that individual respondent is a directing mind of a corporate (or similar) respondent that does, then the individual respondent who is a directing mind of the corporate respondent should be jointly and severally liable for a disgorgement order made against the corporate respondent.[23] In this case, the three individual respondents were directing minds of SIF Inc. and should be jointly responsible for any disgorgement order made against SIF Inc., except to a more limited extent for Kadonoff, because of his limited (in time and amount) role in SIF Inc.'s fraud.

[95] The respondents also submit that they did not personally benefit from the amounts improperly transferred from SIF #1 to SIF #2, because all those amounts were used to pay exempt market dealer fees and investor distributions, and the risk to the investors was extremely limited. The respondents point to two previous decisions:

a. In *Peter Sabourin (Re)*,[24] no disgorgement order was made against Irwin, an individual respondent. The Tribunal found that Irwin had a primarily administrative role and acted at the direction of Sabourin. Irwin had

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[21] *North American Financial* at paras 31, 65

[22] *Limelight Entertainment (Re)*, 2008 ONSEC 28 at para 47

[23] *PFAM* at para 60

[24] 2010 ONSEC 10 (***Sabourin***)

neither sold the investment schemes at issue, nor received any commissions. The panel said it was not prepared to conclude that Irwin had obtained any amounts as a result of his contraventions of the Act, being trading in securities without being registered, and distributing securities without a prospectus. The panel emphasized, however, that "we should not be taken to have concluded that a person paid a salary can never be held to have obtained, for purposes of subsection 127(1)10 of the Act, such amounts as a result of their non-compliance with the Act."[25]

b. In *M P Global Financial Ltd (Re)*,[26] the panel confirmed that ordinarily, all funds obtained as a result of non-compliance with Ontario securities law should be disgorged. However, because the case did not involve an allegation of fraud, the panel chose to reduce the amount ordered to be disgorged to $2.2 million, being the amount obtained by the respondents and used for their personal benefit.

[96] Neither of these decisions supports our limiting any disgorgement order to the amount that was diverted for the respondents' personal benefit. Indeed, such a conclusion would be contrary to judicial and Tribunal authority, as discussed above. As the Divisional Court has held, the "issue of whether disgorgement orders should be limited to the amount that the fraudsters obtained personally, either directly or indirectly, has been litigated and lost."[27]

[97] Further, the fact that in this case approximately 95% of the diverted amount was moved from one fund (SIF #1) to another (SIF #2) should not prompt a reduction in the amount of disgorgement we order. SIF Inc. obtained that amount at the expense of the SIF #1 unitholders, whose fund was deprived of money it rightfully should have had. The fact that the respondents chose to have SIF Inc. use the money to help SIF #2, as opposed to using the money for direct personal benefit, does not change that fact.[28]

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[25] *Sabourin* at para 73

[26] 2012 ONSEC 35

[27] *North American Financial Group Inc v Ontario Securities Commission*, 2018 ONSC 136 at para 217

[28] *North American Financial* at para 59

[98] The respondents' choice for SIF Inc. to use the money in that way makes the contravention less egregious, but their choice is of no assistance to SIF #1 unitholders. From the perspective of investor protection and confidence in the capital markets, our disgorgement order must make it clear that individuals in situations like that of the respondents in this case must be meticulous in ensuring that investor funds are used as promised and as the reasonable investor would expect.

[99] Accordingly, we conclude that the manner in which the funds were used does not warrant a reduction in the amount of any disgorgement order.

2.5.3.b.iii Seriousness of the misconduct and whether the misconduct caused serious harm

[100] We explained above, beginning at paragraph [19], why we view the misconduct in this case as moderately serious. As we have stated, fraud is one of the most serious contraventions of Ontario securities law, and it was perpetrated by experienced businesspeople. However, the fraud in this case was not part of a larger scheme; rather, it was an element of an otherwise legitimate business, and it was of moderate magnitude.

[101] As for whether the misconduct caused serious harm, the respondents correctly submit that Staff did not attempt to show direct harm to investors. However, diverting investor funds to uses other than those promised exposes those investors to risks they did not bargain for. That in itself is harmful.

[102] A disgorgement order can be appropriate even where there is no provable or direct loss to investors. The Divisional Court, in *Pushka v Ontario Securities Commission*, cited the Supreme Court of Canada speaking about disgorgement orders in general, holding that if provable direct loss were required, "this would encourage [fiduciaries] to in effect gamble with other people's money, knowing that if they are discovered they will be no worse off than when they started."[29]

[29] 2016 ONSC 3041 at para 251, quoting *Hodgkinson v Simms*, 1994 CanLII 70 at para 93

2.5.3.b.iv Is the amount obtained as a result of the non-compliance reasonably ascertainable?

[103] In this case, the parties agreed that there is no uncertainty about the amount that is the subject of the fraud. The merits panel found that the total amount is $234,864.04.

[104] The merits panel concluded that the portion of that for which Kadonoff shares responsibility with the other respondents is $51,721.34. However, in the course of our deliberation following the receipt of all submissions, we noted a typographical error in the merits decision that resulted in a slight overstatement of that total. In paragraph 308 of the merits decision, the panel correctly refers to monthly payments of $25,680.67. The panel concluded that Kadonoff shared responsibility for two such payments. However, in calculating the total in paragraph 309 of the merits decision, the panel transposed two digits and used the incorrect figure of $25,860.67 instead of the correct figure of $25,680.67. Accordingly, the extent of Kadonoff's liability should be $51,361.34, not $51,721.34.

[105] Subject to that correction, the amounts involved are reasonably ascertainable and are precise.

2.5.3.b.v Are those who suffered losses likely to be able to obtain redress?

[106] We noted above that there was no evidence of direct losses by investors. Accordingly, this factor is neutral in our analysis of the appropriate disgorgement order.

2.5.3.b.vi Deterrent effect on the respondents and others

[107] As we have discussed in the context of the foregoing factors, it is essential both for the protection of investors and for the promotion of confidence in the capital markets that those entrusted with investor funds faithfully and diligently carry out the obligations that arise in connection with that trust.

2.5.3.c Conclusion about disgorgement

[108] Applying the above factors and analysis, we conclude that is in the public interest to order disgorgement of $234,864.04, jointly and severally by SIF Inc.

and Grossman, with Kadonoff sharing joint and several liability for $51,361.34 of that amount.

[109] In view of Mazzacato's exceptional circumstances, we exercise our discretion not to order disgorgement from him.

2.5.4 Administrative penalties

2.5.4.a Introduction

[110] We will now review Staff's request for administrative penalties. Staff seeks $500,000 against each of SIF Inc., Grossman and Mazzacato, and $400,000 against Kadonoff. The respondents propose that any administrative penalty should not exceed $100,000 for Grossman and $20,000 for Kadonoff, and that Mazzacato should not be subject to an administrative penalty, but if one is ordered, it should not exceed $100,000.

[111] We begin by reviewing administrative penalties imposed in the cases that Staff cited to us. We then analyze what administrative penalties would be appropriate in this case. For reasons we explain below, we find that the circumstances before us are not as serious as those present in the precedents. We conclude that it is in the public interest to order an administrative penalty of $175,000 against each of SIF Inc. and Grossman, a penalty of $125,000 against Kadonoff, and a penalty of $1,000 against Mazzacato (in view of his inability to pay).

2.5.4.b Review of administrative penalties imposed in other cases

[112] Determining the amount of an administrative penalty is not a science. The parties provided us with precedent decisions to guide us in determining appropriate sanctions, but those precedents reflect a wide range of sanctions that vary according to the circumstances, The sanctions imposed in other cases, and the reasons for those sanctions, largely serve to suggest a possible range of penalties and a principled approach to determining appropriate penalties in this case.

[113] As the respondents correctly point out, the merits panel found that they contravened only one provision of Ontario securities law, *i.e.*, fraud, in the amount of $234,864.04. When we review any previous Tribunal decision to assist

in determining appropriate sanctions in this case, we must keep in mind whether the previous decision involved contraventions of multiple provisions.

[114] Staff cited a number of previous decisions for our assistance in determining appropriate sanctions. For the sake of completeness, and to explain our conclusion that this case falls at the low end of the spectrum, we have summarized all of them here, and we have identified the important differences between the precedent and the present case.

[115] In *Natural Bee Works Apiaries Inc (Re)*,[30] the respondents committed fraud by misusing $267,203 of investor funds. Some of those funds were used for personal purposes; other funds were used in a manner inconsistent with what had been disclosed to investors. The Tribunal imposed a $500,000 administrative penalty (the amount that Staff seeks here against three of the respondents) against Landucci, the individual respondent who was the architect of the fraudulent scheme, and a $150,000 penalty against another individual who played a lesser role. The amount of the fraud was similar to this case, but the case featured a number of significant characteristics that distinguish it from this case:

a. the investors lost their funds;

b. the merits panel found "extravagant deceit" in the respondents' misrepresentations that the corporate respondent was a very substantial enterprise, with a multi-million dollar line of credit, preparing to list on NASDAQ;

c. the individual respondents used some of the investor funds for their personal benefit;

d. Landucci not only committed fraud but also violated the prospectus requirement in the Act; and

e. there were no mitigating factors.

[30] 2019 ONSEC 31 (***Natural Bee Works***)

[116] In *Sandy Winick (Re)*,[31] Winick raised $450,000 from 32 investors through three fraudulent schemes. The Tribunal imposed a $750,000 administrative penalty against Winick. The following significant characteristics distinguish that case from this one:

a. there were no legitimate businesses involved in any of the three schemes;

b. Winick engaged in an ongoing course of deceitful and fraudulent conduct designed to personally enrich himself at the expense of innocent investors;

c. in addition to the fraud, Winick breached the registration and prospectus requirements in the Act; and

d. Winick did not appear at the hearing.

[117] *Rezwealth Financial Services Inc*[32] involved a Ponzi scheme orchestrated by the respondent Blackett. Through the scheme, the respondents raised approximately $5.9 million from 101 investors. The Tribunal imposed a $500,000 administrative penalty on Blackett. In that case:

a. Blackett created the fraudulent scheme and operated it over a long period of time;

b. investors lost substantial funds;

c. Blackett not only committed fraud but violated the registration and prospectus requirements in the Act;

d. Blackett obtained a net amount of almost $1.5 million from investors, more than $1 million of which he used for personal purposes; and

e. Blackett did not participate in the proceeding.

[118] The respondents in *Quadrexx Hedge Capital Management Ltd*[33] committed three frauds. The Tribunal imposed an administrative penalty of $600,000 against each

[31] 2013 ONSEC 51
[32] 2014 ONSEC 18
[33] 2018 ONSEC 3

individual respondent. The following significant characteristics distinguish that case from this one:

a. the individual respondents committed three separate frauds, by:

   i. manipulating a valuation process relating to shares they held, resulting in a benefit to them of more than $800,000;

   ii. paying distributions totaling approximately $259,000 to prior investors with funds raised from new investors, contrary to the offering memorandum; and

   iii. misappropriating approximately $185,000 of raised funds, for working capital;

b. investors directly lost substantial funds as a result of the second and third frauds, in addition to any loss caused by the first;

c. the respondents also committed the following contraventions of Ontario securities law:

   i. they failed to report a working capital deficiency as required;

   ii. they failed to deal fairly, honestly and good faith with clients; and

   iii. they breached their obligations as Ultimate Designated Person and Chief Compliance Officer;

d. the respondents' conduct in the first fraud was particularly egregious and was motivated only by their personal profit, and the second fraud also featured aggravating factors; and

e. the amount of the administrative penalty was reduced to reflect the significant deterrent effect of a $2.3 million disgorgement order.

[119] In *Money Gate Mortgage Investment Corporation Ltd*,[34] the individual respondents, father and son, perpetrated fraud on investors by diverting approximately $1.5 million contrary to representations in the offering

[34] 2021 ONSEC 10

memoranda. The Tribunal imposed an administrative penalty of $750,000 on the father and $600,000 on the son. In that case:

a. the misconduct occurred over more than three years, involving approximately $11 million raised from more than 150 investors;

b. in addition to committing fraud, the respondents also violated the registration and prospectus requirements of the Act;

c. more than $1 million was diverted to the father for his benefit;

d. a further $435,000 was diverted to various entities owned or controlled by the father, the son, or individuals associated with them;

e. there were no mitigating factors with respect to the father; and

f. the Tribunal ordered disgorgement of more than $8.7 million.

[120] The respondents in *Maple Leaf Investment Fund Corp*[35] perpetrated a fraud on 80 investors, raising approximately $4.5 million over 19 months. The Tribunal imposed an administrative penalty of $450,000 on the principal individual respondent. That case featured the following significant characteristics that distinguish it from this case:

a. the panel found that the respondent's behaviour was egregious, including because he knowingly perpetrated the fraud by providing false and incomplete information to investors;

b. the respondent was at the centre of the fraud, and was primarily responsible for the marketing and sales of the securities, as well as communication with investors;

c. the respondent preyed on vulnerable investors; and

d. the respondent not only committed fraud but also breached the registration and prospectus requirements in the Act, and made prohibited representations about future listing on a stock exchange.

[35] 2012 ONSEC 8

[121] The respondents in *Richvale Resource Corp*[36] raised more than $750,000 from 27 investors in a fraudulent scheme that included misrepresentations about the use of investor funds, as well as the compensation and the business experience of the company's directors and officers. The Tribunal imposed an administrative penalty of $300,000 against the individual respondent who was the directing mind of the scheme. That case is distinct from this one in that:

a. investors were told that their funds would be used primarily in connection with exploration, when in fact most funds were paid to the company's directors;

b. the respondent not only committed fraud, but violated the registration and prospectus requirements of the Act, and made prohibited representations about future listing on a stock exchange;

c. the respondent personally benefited from some of the funds; and

d. the respondent did not appear at the hearing.

[122] In *North American Financial Group Inc*,[37] the Tribunal imposed an administrative penalty of $600,000 on each of the two individual respondents, in respect of a financing scheme in which approximately $4 million was raised from investors. The respondents committed fraud in that they did not advise the investors that their funds would be used to pay interest, dividends or principal to other investors. The following significant characteristics distinguish that case from this one:

a. the individual respondents not only committed fraud, they:

   i. violated the registration requirement in the Act;

   ii. failed to deal with clients fairly, honestly and in good faith; and

   iii. violated suitability requirements;

b. no mitigating factors were cited;

c. the individual respondents prepared the misleading marketing materials;

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[36] 2012 ONSEC 40

[37] 2014 ONSEC 28

d. the respondents' actions caused significant harm to investors;

e. the respondents moved their assets out of the reach of investors; and

f. the respondents were former registrants and were therefore subject to a higher standard.

[123] In *Portfolio Capital Inc*,[38] the Tribunal imposed an administrative penalty of $500,000 on the primary individual respondent, who was an active participant in a fraudulent scheme through which more than $1.5 million was raised from over 200 investors. That case featured a number of significant characteristics that distinguish it from this case:

a. the respondent had over 25 years of experience in the capital markets, and created an elaborate web of deceit through various update letters to shareholders;

b. the respondent not only committed fraud, but violated the registration and prospectus requirements in the Act, as well as the prohibition against making statements relating to future listing on a stock exchange;

c. only one investor was repaid, and the others lost their money; and

d. there were no mitigating factors.

[124] The respondents in *Lyndz Pharmaceuticals Inc*[39] engaged in two fraudulent schemes, through which they raised approximately $2.1 million from more than 70 investors. The Tribunal imposed administrative penalties of $600,000 and $500,000 respectively against the two individual respondents, McKenzie and Eatch. As with many of the cases cited above, this one resulted in administrative penalties similar to what Staff seeks here, but in circumstances that were markedly different from this case. In that case:

a. McKenzie and Eatch misused $700,000 and $655,000 respectively for their personal expenses;

[38] 2015 ONSEC 27

[39] 2012 ONSEC 25 (***Lyndz***)

b. investors were told that their funds were to be used to bring affordable pharmaceuticals to the third world as a humanitarian project, when in fact there was no legitimate underlying business;

c. the fraud took place over five years and in multiple jurisdictions, and included providing misleading documents to investors;

d. the respondents not only committed fraud, they violated the registration and prospectus requirements in the Act; and

e. McKenzie did not appear at the hearing, and the Tribunal found that Eatch did not recognize the seriousness of his misconduct.

[125] In *2196768 Ontario Ltd (Rare Investments)*,[40] the Tribunal imposed an administrative penalty of $250,000 against the principal of a fraudulent scheme. The respondents solicited approximately $1.3 million from 16 investors, purportedly to engage in trading of foreign currencies. The respondents did not inform investors about trading losses or that their investments would be used to make payments and loans to third parties. That case is distinct from this case in that:

a. the individual respondent was a registrant, and therefore held to a higher standard;

b. the respondent's conduct was egregious, and caused significant harm to investors by way of financial loss of their entire investment;

c. the respondent not only committed fraud, but violated the registration and prospectus requirements in the Act; and

d. there were no mitigating factors.

[126] We agree with the respondents' submission in this case that the circumstances before us are less serious than all of the precedents cited to us. This case does not feature breaches of multiple provisions of Ontario securities law; rather, it was an isolated series of unauthorized diversions of funds from one fund to another, in the context of a legitimate underlying business. The respondents were reckless but not deliberately deceitful. There was no direct personal benefit

[40] 2015 ONSEC 9

to the respondents, and no investor loss approaching that found in the precedent cases. Finally, the respondents co-operated fully with Staff throughout the investigation of this matter, a factor that deserves significant weight.

2.5.4.c Analysis and conclusion

[127] In determining what an appropriate administrative penalty would be, we must take a global view of all the sanctions we impose on each respondent individually, taking into account the disgorgement we order and the fact that subject to limited exceptions, the respondents will be prohibited from participating in the capital markets. We must consider both specific and general deterrence, and the extent to which those objectives are achieved by the other sanctions we impose.[41]

[128] Staff submits that even though Kadonoff shared responsibility for only one-fifth of the total amount of the fraud, we should apply no corresponding discount to any administrative penalty compared to the other individual respondents. Staff says that Kadonoff's responsibility was limited only because he ended his time as a directing mind of SIF Inc. partway through the material period. Staff suggests that Kadonoff is as culpable as the other individual respondents because he participated in the fraud while a director of SIF Inc., and he knew of the diversion of funds. Staff says that Kadonoff's lesser involvement warrants an administrative penalty of $400,000, compared to $500,000 for Grossman and Mazzacato.

[129] We find that the fraud in this case warrants an administrative penalty of $175,000 for SIF Inc., an amount that is proportionate to the size of the fraud, that reflects the various factors set out in paragraph [127] above, and that falls slightly below the lower end of the overall range seen in the precedents we have summarized above.

[130] It is appropriate to impose the same penalty of $175,000 for Grossman. He had more than 50 years' experience as a Chartered Professional Accountant and had capital markets experience, including as a founder of a limited market dealer firm. He was a founder of SIF Inc., he became a director of the company in

[41] *Quadrexx* at para 58

November 2013, and he held various senior officer roles throughout the relevant time. He was the only person who was a director and/or officer of SIF Inc. for the entire period of March 2013 to December 2016. He played a primary role among the three individual respondents, as is evident from various of the merits panel's findings. By his own admission, he directed that the unauthorized transfers be made for the impugned purposes. His level of responsibility should correspond to that of SIF Inc.

[131] An administrative penalty of $125,000 is in order for Kadonoff. He played a less central role than Grossman, and his involvement was time-limited. While we apply a reduction to Kadonoff's administrative penalty in view of the time-limited nature of his involvement, that reduction is not mathematically proportional in the way that we reduced the amount we ordered him to disgorge. Unlike our disgorgement order, the administrative penalty reflects the nature of the misconduct itself. It also reflects the fact that Kadonoff was a lawyer. While he had no specific training or previous experience in matters related to the capital markets, he was a corporate lawyer who was well situated to be alert to the fundamental question that should have been asked of SIF Inc.'s external lawyers, *i.e.*, whether the offering memorandum authorized the transfer of funds for the impugned purposes.

[132] As for Mazzacato, we would impose an administrative penalty of $100,000, if it were not for his inability to pay. While he was involved in the fraud for a longer time period than was Kadonoff, Mazzacato had no accounting, capital markets, or legal expertise. Experience in any of those areas would expose him to a greater penalty in the circumstances of this case, as was the case with Grossman and Kadonoff. Instead, Mazzacato's experience and focus were more operational. While that does not relieve him of responsibility, in our view he is less culpable than his fellow individual respondents.

[133] Taking Mazzacato's inability to pay into account, we substitute a nominal administrative penalty of $1,000. That penalty reflects our denunciation of his misconduct but avoids having a punitive effect.

2.6 Carve-outs

2.6.1 Introduction

[134] Having determined the appropriate financial sanctions, we return to the market bans discussed above. We now address the question of whether there should be any carve-outs from those bans, as the respondents request.

[135] Staff submits that any bans we impose should be total, and that we should not allow for any carve-outs. Alternatively, submits Staff, if we decide to grant carve-outs, those carve-outs should become effective only once all financial sanctions and costs have been paid by the respondents.

[136] We received two different draft orders to effect the requested carve-outs, one draft from Staff (without prejudice to its main submission that we should not order any carve-outs) and one draft from the respondents. In our analysis below, we identify each of the meaningful differences between the two versions and we indicate how we resolve those differences.

[137] In submitting that no carve-outs should apply at all, Staff contends that the respondents have demonstrated from extensive activities related to SIF Inc. that they are not capable of fulfilling basic obligations that come with raising funds from the public. We disagree. That proposed conclusion about the respondents' abilities, stated as broadly as it is, does not follow from the merits panel's findings. Even if we were to accept that conclusion, the requested carve-outs would not be inconsistent with it. The carve-outs the respondents seek have no connection with raising public funds, and nothing in the merits panel's findings raises any concern that would lead us to conclude that the proposed carve-outs would pose a danger to the capital markets.

[138] As for deferring the effective date of the carve-outs until the particular respondent has satisfied his any financial sanctions and costs that we order, the parties' draft orders reflected their different positions on this question, but neither Staff nor the respondents made detailed submissions about the appropriateness of such a condition. As the Tribunal has previously held, though, where a trading ban is imposed, but an ability to trade in personal accounts is

allowed only after the satisfaction of financial sanctions and costs orders, that term provides an incentive to the respondent to make those payments.[42]

[139] We adopt that reasoning for this case, except as it relates to Mazzacato. Given his impecuniosity, the incentive to pay any financial order does not operate. Accordingly, we do not attach a deferral to the carve-outs we order in respect of Mazzacato.

[140] We now examine each of the two requested carve-outs.

2.6.2 Carve-out to permit limited personal trading

[141] Staff submits that we should treat the respondents in this case similarly to those in *Lyndz Pharmaceuticals Inc. (Re)*, in which the Tribunal commented that the respondents could not be trusted to participate in the capital markets in any way.[43] We disagree.

[142] The merits panel in this case found that the respondents sought to avoid their responsibility as members of senior management of an entity that raises funds from the public. The merits panel concluded that neither Mazzacato nor Kadonoff appeared to appreciate the obligations that come with such positions. We have no indication that anything has changed in that regard, and so for protection of the capital markets we must impose sanctions that specifically deter the individual respondents from engaging in similar conduct.

[143] In contrast, in *Lyndz*, the Tribunal found that investors were told that their funds were to be used to bring affordable pharmaceuticals to the third world as a humanitarian project, when in fact there was no legitimate underlying business. The respondents in that case knowingly perpetrated a $2.1 million fraud that took place over five years and in multiple jurisdictions, that included providing misleading documents to investors, and that involved the diversion of funds for personal purposes.[44] None of those important facts aligns with the circumstances in this case.

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[42] *Simba (Re)*, 2018 ONSEC 56 at para 22; *Money Gate* at para 38; *Morgan Dragon Development Corp (Re)*, 2014 ONSEC 26 at para 39

[43] *Lyndz* at para 80

[44] *Lyndz* at paras 61, 62, 80

[144] Despite the seriousness of the respondents' misconduct in this case, we do not accept that the respondents cannot be trusted to participate in the capital markets in any way. That is a description that should be used to describe only the most culpable of wrongdoers that come before the Tribunal. Using that description too indiscriminately risks depriving it of meaning.

[145] The carve-out that the individual respondents seek would enable them to conduct trading in registered accounts of which they, their spouse or children are the owners.

[146] Other than the potential deferral until satisfaction of financial sanctions and costs, the two draft orders that we received have no meaningful differences between them on this point. There are inconsequential differences in wording about ownership of the exempted accounts, but both Staff's draft and the respondents' draft contemplate registered accounts owned by the individual respondent, his spouse or his children.

[147] We will therefore include in our order the requested carve-out. In the case of Grossman and Kadonoff, that carve-out is subject to satisfaction of financial obligations to the Commission.

2.6.3 Carve-out to permit a respondent to be an officer or director

[148] We turn to the individual respondents' request that despite the market bans, they be permitted to continue as directors and officers of certain specified private entities.

[149] We acknowledge Staff's observation that it is unaware of any Tribunal case in which fraud was found against an individual who then benefited from a carve-out permitting the individual to act as an officer or director of an issuer. On the other hand, we are unaware of any authority that engages in a discussion of the propriety of that kind of carve-out in such a situation. It is often the case that the nature of the fraud suggests strongly that no carve-out should be made available, and the respondent does not contest the point. Here, the conduct does not mandate the denial of a carve-out, and the respondents have pushed strongly for the limited carve-outs, partially to avoid problematic consequences for their family members. In this exceptional case, and despite the finding of

fraud, we are prepared in principle to grant the requested carve-out, subject to there being satisfactory information from each respondent.

[150] Mazzacato asks for a carve-out for his personal corporation 2740753 Ontario Ltd., of which he testifies that he is the sole director, officer and shareholder. He uses the corporation to deposit fees received for consulting work. The corporation retains a negligible amount of earnings and cash. Staff did not challenge Mazzacato's evidence regarding this corporation.

[151] Kadonoff lists two corporations in respect of which he wants exemptions:

a. Mika Holdings Limited, in which the two shareholders are Kadonoff's ex-wife and his current wife, with Kadonoff as the sole director; and

b. 2741797 Ontario Inc., of which Kadonoff is the sole officer, director and shareholder, and which is the corporate trustee for Mika Holdings Trust.

[152] We received no information about Mika Holdings Trust, other than that 2741797 Ontario Inc. is the corporate trustee. We know nothing about its activities or holdings.

[153] Kadonoff does state in his affidavit filed on this hearing that neither Mika Holdings Limited nor 2741797 Ontario Inc. solicits outside business or conducts any business on behalf of anyone other than Kadonoff's immediate family. Kadonoff asserts that no one else is willing and able to act as a director of the two companies specified above, and that his family would be greatly prejudiced if he were required to resign as an officer and director of those companies. He does not specify the nature of that prejudice, but Staff did not challenge Kadonoff's evidence on the point.

[154] As Staff observes, Grossman's request is limited to identifying the corporation (J9 Investments Ltd.) in the proposed draft order but is unsupported by evidence that would offer any comfort about the scope of the carve-out as it applies to him. The respondents' joint submissions refer variously to "family-owned corporations", "family companies" and "family holding companies". In our view, Grossman's request is insufficiently specific and insufficiently supported. We cannot accede to his request over Staff's objection.

[155] We will therefore include in our order carve-outs for:

a. Mazzacato as requested, without any deferral pending payment of his financial obligations under our order; and

b. Kadonoff as requested, but only on satisfaction of his financial obligations under our order.

[156] Given our conclusion about Kadonoff, and his assertion of prejudice that would result from his no longer being a director or officer, we are ordering that the market bans against him, in respect of the two private issuers he identified, be effective thirty days after the date of our order, to give Kadonoff time to either make payment or necessary arrangements regarding the governance of those entities.

2.7 Reprimand

[157] Staff also seeks a reprimand against each of the respondents, under s. 127(1)6 of the Act. We decline to make that order.

[158] Authority to issue a reprimand was granted in 1994 to make available a sanction to be used where other sanctions would be too severe.[45] Staff now routinely asks for a reprimand, and its persistence in doing so continues to risk making the reprimand a token sanction, which undermines the effect of reprimands generally.[46]

[159] We conclude that it is neither necessary nor in the public interest to issue a reprimand where the reasons for decision inherently denounce the misconduct (as is the case here), and other sanctions are imposed.

3. ANALYSIS – COSTS

3.1 Introduction

[160] We turn now to Staff's request that the respondents pay a portion of the costs incurred by the Commission in this proceeding and in the investigation of this matter. Section 127.1 of the Act authorizes the Tribunal to order a respondent to

[45] *Smith* at para 26

[46] *Money Gate* at para 39

pay the costs of an investigation and of the proceeding that follows it, if the respondent has been found to have contravened Ontario securities law.

[161] Reimbursement of the Commission's costs by a respondent who contravenes Ontario securities law is reasonable, because the Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and others. A costs order is discretionary and is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[47]

[162] Staff seeks costs of $367,246.60 to be apportioned equally among the respondents (*i.e.*, $91,811.65 each), with the three individual respondents being jointly and severally responsible for SIF Inc.'s portion of the costs. The respondents submit that the costs claimed are excessive, and that they should not be required to pay any costs, in particular because they were successful on most of the issues in the proceeding.

[163] For reasons we explain below, we conclude that it would be appropriate to order that:

a. $37,500.00 be paid by SIF Inc., for which amount Grossman and Kadonoff shall be jointly and severally liable; and

b. $37,500.00 for each of Grossman and Kadonoff.

3.2 Analysis

[164] Staff has provided an affidavit regarding costs and disbursements, which shows Staff's costs of the investigation, pre-hearing activities and merits hearing. The affidavit lists members of Staff (including outside counsel) who participated in each phase, the hourly rates approved by the Tribunal for their positions, and the time spent by them. The costs incurred, including disbursements for which receipts were included, totalled $1,973,250.45. Members of Staff spent more than 7,700 hours, a figure that does not include time spent by outside counsel.

[165] Staff has reduced these costs by $1,606,003.85, primarily by:

[47] *Quadrexx* at para 118; *PFAM* at para 111

a. reducing outside counsel's hourly rate to the rate normally applied for Staff counsel;

b. excluding time spent by all members of Staff other than the principal investigator (for the investigation stage) and the principal investigator and one Staff litigator (for the litigation phase);

c. excluding some of the time spent by Staff's litigator regarding an expert witness, whose testimony was ruled inadmissible before the merits hearing began;[48] and

d. by applying a further 50% deduction to reflect Staff's partial success.

[166] Although a respondent found to have contravened Ontario securities law should expect to pay costs, a large costs award can reasonably be viewed as punitive. The potential for such an award may adversely affect a respondent's willingness, and ability, to pursue a full defence. Further, as is the case with an administrative penalty, determining the amount of a costs award is not a science. The Tribunal should apply a balanced approach that takes into account various factors.

[167] In this case, we begin with Staff's starting number of almost $2 million. We do not question the factual basis behind that total, but even before applying a reduction to reflect Staff's mixed success, we consider that number to be at the high end of what we would expect for a case of this nature.

[168] For us, though, the most influential factor is Staff's degree of success in establishing its allegations.[49] Staff can never be certain about which allegations it will succeed in proving, and it should not be held to an unreasonable standard. However, from the point of view of the respondents, they should not be held responsible for investigation and hearing costs related to allegations that are not proven. Not only are the Commission's costs in that regard unconnected to any misconduct that has been established against the respondents, but the respondents can reasonably be expected to have incurred significant unrecoverable costs of their own in defending against those allegations.

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[48] *Solar Income Fund Inc (Re)*, 2021 ONSEC 2

[49] *Quadrexx* at para 120

[169] In this case, the merits panel upheld Staff's relatively narrow fraud allegations but dismissed other allegations that the respondents had contravened s. 44(2) of the Act, which prohibits false or misleading representations relevant to a trading or advising relationship. The finding of a fraud in the amount of $234,864.04 related to transactions for two discrete purposes, *i.e.*, distributions to SIF #2 unitholders, and exempt market dealer fees. In contrast, the s. 44(2) allegations were wide-ranging, they consumed a significantly greater portion of the Statement of Allegations and of the affidavit evidence of Staff's investigator witness, they involved numerous loans by SIF #1 to related entities, and they were associated with approximately $20 million that SIF #1 raised from investors.[50] It is impossible to put a precise number on the degree of Staff's success, but we can safely say that Staff proved only a small part of its case.

[170] Further, and aside from the s. 44(2) point, we agree with the respondents' submission that on occasion throughout the proceeding, Staff adopted an approach that was overly broad, *i.e.*, by going beyond the scope of the Statement of Allegations during the merits hearing, and by going beyond the findings of the merits panel during the sanctions and costs hearing. This approach persisted during the examination of witnesses in the merits hearing, it appeared in Staff's closing submissions (as itemized by the respondents in theirs), and it reappeared in Staff's submissions at the sanctions and costs stage. Such an approach imposes an unnecessary burden on respondents, who even though they take the position that the matters are beyond the appropriate scope, reasonably feel compelled to defend against them.

[171] That feature of this proceeding is counterbalanced somewhat by the respondents' unsuccessful assertion of the defence of reasonable reliance on legal advice. The respondents are perfectly entitled to raise such a defence. The fact is, though, that the testimony and submissions associated with that defence consumed a significant portion of the merits hearing. It is appropriate to take that fact into account in determining costs.

[172] Overall, the balance between these two features weighs more heavily against Staff when it comes to assessing the extent to which the parties' conduct

[50] Merits Decision at para 6

contributed to Staff's costs. We are also mindful that the costs implications of the unsuccessful assertion of a s. 44(2) violation reach back into the investigation stage.

[173] In this regard, we do not accept Staff's reply submission that the difference between what Staff alleged and what Staff proved is simply a question of degree, as might have been the case if the difference had simply been about the dollar amount of the fraud. This was not a case with only one core allegation of misconduct, with only small increments of resources required on both sides to define the extent of that misconduct. Staff's wide-ranging s. 44(2) allegations were different in character from the tightly-focused fraud allegations, and the s. 44(2) allegations consumed significantly more resources, as we have explained.

[174] In addition, the respondents correctly submit that as the merits panel found, Staff attempted to have s. 44(2) apply in circumstances where it had not been applied before (*i.e.*, against a non-registrant who was not engaged in conduct that required registration).[51] We have some sympathy for the respondents' submission that they should not bear the burden of that.

[175] The last factor we consider with respect to all respondents is the seriousness of the fraud contravention. We differ with what Staff's submission appears to imply about the weight we should attach to this factor. This Tribunal has indeed identified the seriousness of the misconduct as a relevant factor,[52] and serious misconduct such as the fraud in this case warrants a regulatory response.[53] However, when it comes to determining the appropriate amount of costs to be awarded, then the primary relevance of the seriousness of the allegations is as an indirect driver of complexity, which itself is a driver of the length of, and resources required in, investigations and proceedings.

[176] Finally, with respect to Kadonoff specifically, he submits that he should be responsible for no more than 20% of any costs award, given the time-limited nature of his involvement. We do not accept that submission. There is no linear

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[51] Merits Decision at para 56

[52] *YBM Magnex International Inc (Re)*, (2003) 26 OSCB 5285 at para 608

[53] *Natural Bee Works* at para 94

relationship between what Staff's costs would be and the number of months for which any particular respondent was involved. To put it another way, once the fraud formed part of the investigation and proceeding, adding some months to the regular schedule of payments would have only an immaterial incremental effect on the costs.

3.3 Conclusion about costs

[177] Considering the length of the hearing, the complexity of the issues, Staff's degree of success in establishing its allegations, the time spent by Staff, the financial sanctions imposed on the respondents, and our finding with respect to Mazzacato's impecuniosity, we have determined that the overall costs number for which the respondents should be liable is $150,000. That amount differs from Staff's claim primarily because of our greater discount to reflect Staff's limited success.

[178] Subject to our findings about Mazzacato's inability to pay, we accept Staff's request to apportion the costs equally among the respondents, with the individual respondents being jointly and severally liable for SIF Inc.'s portion. We will relieve Mazzacato of any obligation to pay costs, but we will not apply a corresponding increase to the amount to be borne by his fellow respondents. Accordingly, we will order that the respondents be liable for costs as follows:

a. $37,500.00 to be paid by SIF Inc., for which amount Grossman and Kadonoff shall be jointly and severally liable; and

b. $37,500.00 for each of Grossman and Kadonoff.

4. CONCLUSION

[179] The sanctions we have specified above are proportionate to the misconduct in this case, and are appropriate when viewed globally in the context of each respondent. The combination of sanctions for a particular respondent:

a. ensures that none of them profited, directly or indirectly, from their misconduct;

b. takes account of the mitigating factors, including in particular the respondents' co-operation with Staff throughout the investigation

c. differentiates based on degree of culpability;

d. effects both general and specific deterrence, thereby protecting investors and promoting confidence in the capital markets; and

e. in Mazzacato's case, reflects his inability to pay significant financial sanctions or costs.

[180] For the reasons set out above, we shall issue an order that provides as follows:

a. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the Act:

i. SIF Inc. shall cease trading in any securities or derivatives, or acquiring any securities, permanently;

ii. each of Grossman and Kadonoff is permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that after he has fully paid the amounts in subparagraphs (e), (f) and (g) below, he may trade securities or derivatives, and acquire securities in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*[54]) of which only he, his spouse or his children are the sole or joint legal and beneficial owners, through a registered dealer in Canada to whom he has given both a copy of our order and a certificate from the Commission confirming that he has paid the required amounts; and

iii. Mazzacato is permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that he may trade securities or derivatives, and acquire securities in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*), of which only he, his spouse or his

[54] RSC, 1985, c 1 (5th Supp)

children are the sole or joint legal and beneficial owners, through a registered dealer in Canada to whom he has given a copy of our order;

b. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to any of the respondents, permanently;

c. pursuant to paragraphs 7, 8, 8.1 and 8.2 of s. 127(1) of the Act, Grossman, Mazzacato and Kadonoff shall resign any positions that they hold as directors or officers of any issuer or registrant, and are prohibited permanently from becoming or acting as directors or officers of any issuer or registrant, except that:

   i. Mazzacato may continue as a director and officer of 2740753 Ontario Ltd.;

   ii. in respect of Kadonoff's role as director and officer of Mika Holdings Limited and 2741797 Ontario Inc., and as the nominee trustee for Mika Holdings Trust, the requirement to resign, and the prohibition, take effect on February 10, 2023, being thirty days after the date of our order; and

   iii. Kadonoff may, after he has fully paid the amounts in paragraphs (e), (f) and (g) below, continue as a director and officer of Mika Holdings Limited and 2741797 Ontario Inc., and as the nominee trustee for Mika Holdings Trust;

d. pursuant to paragraph 8.5 of s. 127(1) of the Act, the respondents are prohibited from becoming or acting as a registrant or as a promoter;

e. pursuant to paragraph 9 of s. 127(1) of the Act:

   i. SIF Inc. shall pay to the Commission an administrative penalty of $175,000;

   ii. Grossman shall pay to the Commission an administrative penalty of $175,000;

iii. Kadonoff shall pay to the Commission an administrative penalty of $125,000;

iv. Mazzacato shall pay to the Commission an administrative penalty of $1,000: and

f. pursuant to paragraph 10 of s. 127(1) of the Act:

i. SIF Inc. and Grossman are jointly and severally liable to disgorge to the Commission $234,864.04; and

ii. Kadonoff is, jointly and severally with SIF Inc. and Grossman, liable to disgorge to the Commission $51,361.34, which amount forms part of the $234,864.04 referred to in subparagraph (f)(i) above; and

g. pursuant to s. 127.1 of the Act:

i. SIF Inc. shall pay costs to the Commission in the amount of $37,500.00, for which amount Grossman and Kadonoff shall be jointly and severally liable; and

ii. each of Grossman and Kadonoff shall pay costs to the Commission in the amount of $37,500.00.

Dated at Toronto this 11th day of January, 2023

"*Timothy Moseley*"

Timothy Moseley

"*William J. Furlong*"

William J. Furlong

"*Dale R. Ponder*"

Dale R. Ponder