Ontario

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: *Go-To Developments Holdings Inc (Re)*, 2026 ONCMT 12
Date: 2026-03-06
File No. 2022-8

IN THE MATTER OF
GO-TO DEVELOPMENTS HOLDINGS INC., GO-TO SPADINA ADELAIDE SQUARE INC., FURTADO HOLDINGS INC., and OSCAR FURTADO

REASONS AND DECISION

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

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton Cathy Singer	
Hearing:	December 10, 2025	
Appearances:	Erin Hoult Emma Seip	For the Ontario Securities Commission
	Ian Aversa Jeremy Nemers Calvin Horsten	For Go-To Developments Holdings Inc., Go-To Spadina Adelaide Square Inc., Furtado Holdings Inc., for the Receiver, KSV Restructuring Inc.
	Melissa MacKewn Dana Carson Maxim Tchoudnovski	For Oscar Furtado

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REASONS AND DECISION

1. OVERVIEW

[1] These are the reasons for the sanctions and costs we impose on Go-To Developments Holdings Inc., Go-To Spadina Adelaide Square Inc. (**Adelaide GP**), Furtado Holdings Inc., (collectively, the **Corporate Respondents**), and their sole director and officer Oscar Furtado. For the reasons set out below, we conclude it would be in the public interest to order that:

a. the respondents be subject to market participation bans for a period of 10 years, the details of which are more fully explained below;

b. the respondents jointly and severally disgorge to the Commission $22,200,000;

c. Furtado pay an administrative penalty of $750,000 with respect to his fraudulent misconduct and $250,000 with respect to his misleading the Commission;

d. each of the Corporate Respondents pay an administrative penalty of $200,000; and

e. the respondents jointly and severally pay $638,613.85 of the Commission's costs connected with the investigation and this proceeding.

2. BACKGROUND

[2] In our decision on the merits dated May 6, 2025[1] (the **Merits Decision**), we found that:

a. The Corporate Respondents and Oscar Furtado perpetrated a securities fraud in breach of the *Securities Act*[2] (the ***Act***) in five ways: three of those ways defrauded investors in the Go-To Spadina Adelaide Square LP (**Adelaide LP**), one defrauded investors in two other Go-To

[1] *Go-To Developments Holdings Inc (Re),* 2025 ONCMT 8

[2] RSO 1990, c S.5 (the ***Act***)

Developments Holdings' projects, and the final one was a fraud on the Adelaide LP itself; and

b. Furtado made misleading statements to the Commission during its investigation.

[3] We provide a brief recap of the facts from the Merits Decision that are relevant to our analysis of the appropriate sanctions and costs in this matter.

[4] The Corporate Respondents are related Ontario corporations. Go-To Developments Holdings is a real estate development company which operates through its corporate subsidiaries and project-specific limited partnerships (each, a limited partnership). The Adelaide GP is a wholly owned subsidiary of Go-To Developments Holdings incorporated to serve as the general partner of the Adelaide LP. Furtado Holdings owns Go-To Developments Holdings and is Furtado's personal and family holding company.

[5] One of the projects undertaken by Go-To Developments Holdings was the proposed acquisition and development of a land assembly of two properties in Toronto, 355 Adelaide Street West and 46 Charlotte Street (collectively the **Adelaide Properties**). The Adelaide LP was formed to pursue this project (the **Adelaide Project**), and the Adelaide GP was the general partner of this limited partnership.

[6] In the capitalization and operation of the Adelaide LP, Furtado worked with Alfredo Malanca. In addition to his role in other corporate entities, Malanca was the representative or agent of Adelaide Square Developments Inc. Furtado knew that Malanca or a company he represented held agreements to purchase the Adelaide Properties. Furtado and Malanca contemplated that the Adelaide LP would purchase the Adelaide Properties from Adelaide Square Developments for an amount that was significantly more than what was owed to the existing owners of the properties. That difference was referred to by Furtado and Malanca as the "lift".

[7] Hans Jain, an experienced real estate developer, became involved in discussions concerning the Adelaide Properties, including discussions with Furtado and Malanca about the "lift". Jain indirectly invested $2 million in the Adelaide LP.

[8] The purchase of the Adelaide Properties, as it finally occurred with the involvement of outside investors, included an assignment fee of $20.95 million paid to Adelaide Square Developments by Adelaide LP, representing the "lift" between the price paid by Adelaide Square Developments to the original owners and the price paid by the Adelaide LP to Adelaide Square Developments. Furtado failed to disclose to investors that he intended to receive, and did receive, a personal benefit (his share of the "lift").

[9] To secure the closing, Furtado and Malanca obtained an investment in the Adelaide LP of $16.8 million from Anthony Marek, who viewed his investment in units of the Adelaide LP as a "day loan". Because Marek required immediate payout of his investment with a large fee on closing of the purchase, the assignment fee to be paid by Adelaide LP to Adelaide Square Developments was, in the first instance, directed to Marek. The assignment fee payment owing to Adelaide Square Developments was replaced by a demand loan from the Adelaide LP to Adelaide Square Developments (the **Demand Loan**). In order to repay Marek's investment and fee, Furtado redeemed Marek's limited partnerships units contrary to representations made to investors. We concluded in the Merits Decision that this fraud against the Adelaide LP investors was also a fraud against the Adelaide LP itself.

[10] Shortly after the Adelaide LP's purchase of the properties, Adelaide Square Developments issued new shares to Furtado Holdings and one of Malanca's companies and paid each of them approximately $388,000 in the form of dividends. By October 2019, Furtado had secured a further $12 million investment from Marek. He did so by giving Marek materials that contained material misstatements concerning the capital structure of the investment.

[11] Furtado then caused the Adelaide LP to use Marek's further investment to pay out $12 million of the Adelaide Square Developments Demand Loan. Adelaide Square Developments then used that receipt to pay dividends, in the amount of $6 million each, to Furtado Holdings and Malanca's company. In the Merits Decision we concluded that Furtado misled the Commission during its investigation about the dividends paid to Furtado Holdings.

[12] During this same period, Furtado used the assets of two other Go-To Developments Holdings' limited partnerships, Elfrida LP and Eagle Valley LP, to secure obligations of the Adelaide Project and Adelaide LP, contrary to representations made to investors in those other limited partnerships.

3. ANALYSIS

3.1 Receiver and receivership

[13] As a preliminary matter in our analysis, we have some general comments about the role of the Receiver in the sanctions hearing and how we have decided to treat the Corporate Respondents, which are all in Receivership, in our sanctions and costs decisions.

[14] The Corporate Respondents and other Go-To Developments Holdings' entities are currently under Receivership. Various civil actions have been commenced involving the Receiver and the respondents. The Commission has filed a contingent claim related to this proceeding in the Receivership, to seek to enforce any monetary orders that may flow from this decision.

[15] The Receiver did not give evidence in this hearing. Nor, as has been done on occasion by other receivers in other matters before the Tribunal, has the Receiver taken a position about what impact any sanctions, including a disgorgement order, might have on the ability of investors who have suffered losses to recoup any amounts through the Receivership.

[16] The Receiver has not asked us to exclude the Corporate Respondents from any of the sanctions or costs the Commission is seeking. There is no evidence before us about the impact, if any, of sanctions or costs on the Receivership or on the ability of investors to recoup any losses through the Receivership. We therefore include the Corporate Respondents in our sanctions and costs orders without regard to the impact on the Receivership.

3.2 Law on sanctions

[17] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds it to be in the public interest to do so. The Tribunal's exercise of that jurisdiction must be consistent with the purposes of the *Act,* which include protecting investors

from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in them.

[18] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets.[3]

[19] The Commission seeks the following sanctions and costs against the respondents:

a. permanent market bans for all respondents, including director and officer bans for Furtado;

b. administrative penalties:

i. Furtado: $1.3 million;

ii. Go-To Developments Holdings: $750,000;

iii. Furtado Holdings: $750,000; and

iv. Adelaide GP: $750,000;

c. disgorgement to be paid by all respondents, jointly and severally, in the amount of $28,588,087.33; and

d. costs of the investigation and hearing to be paid by all respondents, jointly and severally, in the amount of $1,137,416.85.

[20] The Tribunal may consider a variety of factors in deciding the appropriate sanctions.[4] The applicability and importance of these factors will vary case-by-case.[5] The sanctioning factors most relevant in this case are, as discussed below, the seriousness of the misconduct, the size of the contravention, whether the misconduct was isolated, whether the respondents benefited from the misconduct, any mitigating factors and specific and general deterrence.

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

[4] *York Rio Resources Inc (Re),* 2014 ONSEC 9 at para 34

[5] *Feng (Re),* 2023 ONCMT 43 (***Feng***) at para 10

3.3 Sanctioning factors

3.3.1 Seriousness of the misconduct

[21] We consider first the seriousness of the fraudulent misconduct. The Tribunal has recognized that fraud is one of the most egregious violations of securities law, and sanctions must reflect that.[6] Fraud causes direct harm to investors and undermines confidence in the capital markets.[7]

[22] In assessing the seriousness of the respondents' misconduct, the Commission asks us to consider the following:

a. the respondents' dishonesty deprived investors of information needed to properly assess the risks and make fully informed decisions;

b. the respondents misled investors about the bargain that they would be entering, and/or acted contrary to the bargain promised in several ways, including:

i. failing to disclose to Adelaide LP investors, except for Jain, that Furtado stood to benefit from the acquisition of the Adelaide Properties and was in a conflict of interest as a fiduciary of the Adelaide LP;

ii. redeeming $16.8 million of Marek's units contrary to representations to other investors that the investments were illiquid and that all investors would receive a pro rata return on their investment;

iii. understating the Adelaide LP's debt and overstating its equity in promotional materials provided to Marek to solicit further investment; and

iv. registering charges on the Eagle Valley and Elfrida properties, contrary to representations to investors in those LPs; and

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[6] *Solar Income Fund (Re)*, 2023 ONCMT 3 (***Solar Income Fund***) at para 20, citing *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate***) at para 14

[7] *Money Gate* at para 14

c. the respondents' actions to ultimately obtain personal benefits from the acquisition of the Adelaide Properties amounted to fraud on the Adelaide LP itself.

[23] The Commission also asks us to consider Furtado's mental state at the relevant time.[8] Among other things, the Commission submits that Furtado intended to personally benefit from the purchase of the Adelaide Properties; he knowingly concealed that information from investors. Such intentional misleading of investors heightens the seriousness of his misconduct, the Commission submits.

[24] Furtado did not make specific submissions relating to each of the sanctioning factors. Furtado submits that the Tribunal regularly states in decisions that certain conduct may be less serious than other misconduct, but for the purposes of specific and general deterrence a message must still be sent through sanctions. The question that Furtado asks us to consider is where does the fraud at issue here lie on the spectrum of misconduct and what type of message is needed in response?

[25] In deciding what's necessary to advance the principles of sanctioning, Furtado asks the Tribunal to consider the full context of the respondents' conduct, including the following mitigating factors:

a. the Adelaide Project was real,

b. the capital raising conduct was not registrable,

c. the valuations of the Adelaide Properties supported the purchase price,

d. Furtado gave personal guarantees without receiving fees and at significant personal risk, and

e. Furtado did not abscond with a quick profit when faced with the Receivership but rather stayed and tried to find purchasers for the properties in the Receivership.

[26] Fraud is an egregious offence. The respondents were found to have committed five frauds. They misled the investing public, who invested in the Adelaide LP without the benefit of full disclosure (about Furtado's intended personal benefit,

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[88] *Solar Income Fund* at para 25

the early redemption of Marek's LP units, and the resulting change to the project's debt/equity ratio) that would have allowed them to fully assess the risks of the investment. Furtado also defrauded investors in the Eagle Valley and Elfrida LPs by leveraging their properties to secure obligations of the Adelaide LP. This is very serious misconduct warranting significant sanctions.

[27] It is, however, not the most egregious of frauds that have come before this Tribunal. The respondents were conducting a real business; the Adelaide Project was a real endeavour unlike other frauds where the entire operation is a scam. Unlike other frauds, the respondents did not breach other aspects of the *Act* while engaging in their capital raising for the Adelaide Project. There was no alleged breach of the *Act's* prospectus requirements. We concluded in the Merits Decision that their actions were not registrable. We take due note of these mitigating factors in our sanctions' decisions below.

[28] We do not give any consideration to the other factors Furtado raised. Regardless of what the purported value of the Adelaide Properties was, it does not detract from the conclusions that the respondents failed to disclose material information and misled investors about the nature of the bargain they were getting.

3.3.2 Level of activity in the marketplace

[29] To determine the level of activity in the marketplace, the Tribunal typically considers the duration of the misconduct, the number of individual breaches, the number of investors impacted, and the quantum of money involved.[9]

[30] There were five frauds. With respect to the Adelaide LP, $42 million was raised from 23 investors.[10] 20 investors invested $4.25 million in the Eagle Valley LP and 11 investors placed $10.6 million in the Elfrida LP.[11] The failure to disclose Furtado's benefit (the fact that he intended to receive it and subsequently that he had received it) lasted throughout the capital raising period for the Adelaide LP (namely between February 15, 2019 and June 18, 2020).

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[9] *Paramount Equity Financial Corporation (Re)*, 2023 ONCMT 20 (***Paramount***) at para 16

[10] Exhibit 132 (merits hearing), Affidavit of Andrew Gordon affirmed June 28, 2024 (**Gordon Affidavit**) at ex 22, vol 2, p 3

[11] Gordon Affidavit at ex 22, vol 3, p 3

3.3.3 Misconduct was recurrent

[31] As indicated above, no attempt was made by the respondents to disclose Furtado's personal benefit throughout the capital raising period. The Merits Decision concluded the respondents committed the additional fraudulent acts during the same period.

3.3.4 Respondents benefitted from the misconduct

[32] We agree with the Commission's submissions that the respondents benefitted, and/or stood to benefit from their misconduct. Among other things, the fraud contributed to the acquisition of the Adelaide Properties by the Adelaide LP, from which the Adelaide GP and Go-To Developments Holdings (as the Adelaide GP's parent company) stood to benefit. Furtado Holdings, as the parent of Go-To Developments Holdings, likewise stood to benefit from any success of the Adelaide LP, as did Furtado.

[33] In addition, Furtado Holdings directly received shares in Adelaide Square Developments, arising from the Adelaide LP's purchase of the Adelaide Properties. Those shares gave rise to the approximately $388,000.00 and $6 million in dividend payments to Furtado Holdings. Furtado used the funds received in a variety of ways, including for personal uses and to meet obligations for other Go-To LPs.

3.3.5 Furtado's experience

[34] The Commission submits that we should consider Furtado's experience as an aggravating factor. Furtado is a Chartered Accountant. He had over 30 years of professional experience, including with the Royal Bank of Canada and for a brief period with the Commission. The Commission also submits that Furtado specifically highlighted his experience in promotional materials for the Go-To projects; he touted his experience to gain investors' trust and then failed to uphold the high standards of conduct that would be expected of him.

[35] We conclude that Furtado's knowledge and experience do weigh against him. Rather than using his skill to benefit investors who placed their trust in him, he knowingly acted contrary to their best interests.

3.3.6 Mitigating factors

[36] The Commission submits that there are no mitigating factors for us to consider. As discussed above in our analysis of the seriousness of the misconduct, we do take into account several mitigating factors raised by Furtado.

3.3.7 Specific and general deterrence

[37] Significant sanctions are warranted in this instance as specific deterrence for Furtado who, in addition to abusing the trust of the investors in the Adelaide, Eagle Valley and Elfrida LPs, also misled the Commission during the investigation. In addition, significant sanctions will demonstrate to like-minded individuals that defrauding investors will not be tolerated.

3.4 Market participation bans and director and officer prohibitions

[38] The Commission seeks comprehensive and permanent market participation bans for all the respondents, including director and officer bans for Furtado. The only exceptions proposed by the Commission are, first, to accommodate trades by the Receiver of the Corporate Respondents. Second, in the case of the trading prohibition against Furtado, the Commission proposes a limited carve-out for registered plans, available only after the monetary sanctions and costs owing pursuant to this decision are fully paid.

[39] Furtado submits that a permanent ban is excessive in these circumstances and that a 10-year ban should be the maximum considered. Furtado also submits that the proposed conditional carve-out from his trading prohibition, in respect of registered savings, is meaningless in the context of the monetary sanctions and costs sought by the Commission.

[40] For the reasons that follow, we determine that comprehensive, 10-year market participation bans for all respondents are appropriate, with an exception to accommodate trades by the Receiver of the Corporate Respondents. We also determine that the trading ban for Furtado shall be subject to a carve-out for trading in registered plans, which is not conditional on prior payment of the monetary sanctions and costs owing pursuant to this decision.

3.4.1 The duration of market participation bans

[41] A finding of fraud typically calls for market participation bans.[12] However, the duration and nature of the prohibitions and restrictions depend on the particular facts of each case.[13] There are many cases of fraud for which permanent and comprehensive bans are appropriate,[14] and others where the Tribunal has concluded that less onerous bans will fulfil the sanctioning principles.[15]

[42] We have explained above our conclusion that the frauds in this case are very serious but are not the most egregious of the cases which come before the Tribunal. We accordingly examine where this case should fall on the spectrum of market participation bans.

[43] The nature of the fraud is a relevant sanctioning factor for that consideration. Although we found the respondents engaged in fraud in various ways, none of them were found to be in relation to trading in public capital markets. The respondents are not, and have never been, registrants under Ontario securities laws, and in the Merits Decision we found that they were not required to be registered to sell the limited partnership units in issue in this case.

[44] Put another way, it is not a necessary conclusion from the findings of fraud in this case, that the respondents could never again be trusted to participate in the capital markets in any way. We consider that in this case the respondents' blameworthy conduct was not in respect to trading in public capital markets. Therefore, shorter trading bans are warranted.

[45] In the context of the disgorgement and administrative monetary penalties which we are imposing elsewhere in these reasons, together with a costs order, we conclude that comprehensive market participation bans for a period of 10 years

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[12] *First Global Data (Re)*, 2023 ONCMT 25 (***First Global Data***) at paras 213-14; *Global Energy Group Ltd*, 2013 ONSEC 44 (***Global Energy Group***) at para 61

[13] *Solar Income Fund* at para 7; *Paramount* at para 12

[14] *First Global Data* at paras 213-14; *Global Energy Group* at para 61

[15] *Money Gate* at para 84(a)(iii); *Bridging Finance Inc (Re)*, 2025 ONCMT 10 (***Bridging***) at para 139(b)(i); *Feng* at para 100(a)(i)

are appropriate in this case. Those bans will be subject, in the case of the Corporate Respondents, to a limited exception for trades by the Receiver.

[46] We now turn to the proposed carve-out from the trading ban for Furtado.

3.4.2 The carve-out from Furtado's trading ban

[47] It is common to see carve-outs from trading bans imposed by the Tribunal, to permit a respondent to trade, through a registered dealer, in registered plans for themselves or immediate family. In earlier cases, such carve-outs were provided without any conditions related to payment of monetary penalties.[16]

[48] Over time, however, we have seen the practice change with no clear explanation of why it started and why it was being changed. The carve-outs have sometimes been permitted without conditions related to payment of monetary sanctions. In other cases, payment of outstanding monetary sanctions, and costs, has been required before any carve-outs become effective. In *Borealis International Inc (Re)*, for example, the Tribunal distinguished between several respondents based on its assessment of their respective risks to public markets and the nature of their misconduct to impose a payment condition on some carve-outs but not on others.[17]

[49] In recent years, the Commission has frequently sought to obtain, on any carve-out, the condition that all monetary amounts owing from sanctions and costs orders have been paid.[18]

[50] Such a condition is a tool which is available to the Tribunal in crafting appropriate sanctions. In certain recent cases, however, the Tribunal has also recognized that, depending on the circumstances of the case and the particular respondent, such a condition could be punitive, rather than remedial.[19]

[51] In those cases, the Tribunal provided the carve-out with the condition sought by the Commission but noted that the respondents had not objected to the condition. In *VRK Forex & Investments Inc (Re)*, the panel stated that, "we leave

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[16] *Limelight Entertainment Inc*, 2008 ONSEC 28 (***Limelight***) at para 87

[17] *Borealis International Inc (Re),* 2011 ONSEC 11 at paras 51-55, 59

[18] *Bridging* at para 139(b)(i); *Feng* at para 100(a)(i); *Money Gate* at para 84(a)(iii)

[19] *VRK Forex & Investments Inc (Re)*, 2022 ONCMT 28 (***VRK***) at para 39; *Kitmitto (Re)*, 2023 ONCMT 4 (***Kitmitto***) at para 23

it to panels in future cases to determine whether a similar term is in the public interest where it is requested by [the Commission] but contested by a respondent".[20]

[52] Furtado objected to the condition on the proposed carve-out to his trading ban. He submitted that it rendered "the purported carve-out" of "no value", in view of the monetary sanctions and costs sought by the Commission.

[53] To inform this determination, we must consider the purpose of the condition to the carve-out, and the purpose of the carve-out itself. Providing a carve-out, or a carve-out subject to a condition, is an exercise of the Tribunal's discretion under its general powers pursuant to s. 127(1) of the *Act* to make orders in the public interest.

[54] The parties did not direct us to any case which explains the rationale for the payment condition. The Commission submits that it was to create an incentive for Furtado to pay the amounts owing. On principle, the Commission submits that respondents should satisfy their obligations and comply with orders of the Tribunal before they are entitled to the benefits of the carve-out.

[55] The purpose of such a carve-out has been stated in cases, briefly, as addressing the public policy goal of allowing financial planning for retirement.[21] Put another way, allowing a limited carve-out may mitigate the risk of a respondent becoming "a charge on society".[22]

[56] These purposes for a carve-out, and for a condition on the carve-out, both require the panel to consider the totality of the circumstances of the case and the respondent before it. They must be weighed in the context of the other sanctions and costs ordered in these reasons.

[57] Furtado is 63 years of age, and has several medical issues, some of which have impacted the conduct of this proceeding. All the Go-To corporations, including the Corporate Respondents, are in receivership.

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[20] *VRK* at para 39

[21] *Kitmitto* at para 22

[22] *Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 31 at para 72

[58] As noted above, Furtado's misconduct did not involve trading securities on a marketplace, nor has he ever been a registrant. There is no evidence or submission that suggests that Furtado's registered savings arose in whole or part because of the misconduct we have found. However, subject to a trading ban and without an effective carve-out, Furtado would be unable to manage those registered savings.

[59] Furtado's misconduct was serious, and has resulted in serious monetary sanctions, and costs, in an aggregate amount of more than $23 million. The sanction amounts are appropriately large and send an important message of both specific and general deterrence.

[60] Realistically, however, requiring payment in full of those amounts, and costs, before allowing access to registered savings would not, in this case, be appropriate. In reaching this conclusion we have considered all the facts summarized in the preceding paragraphs and have taken a global view of all the sanctions and costs we have imposed on Furtado.[23]

[61] Accordingly, we order that the trading ban in respect of Furtado be subject to a carve-out for registered plans, which is not conditional upon prior payment of the monetary amounts owing pursuant to this decision.

3.5 Disgorgement

3.5.1 Introduction

[62] The Commission requests, pursuant to paragraph 10 of s. 127(1) of the *Act,* that the respondents be ordered to disgorge, on a joint and several basis, the amounts they obtained as a result of their breaches of Ontario securities law.

[63] The Commission submits that the respondents should be required to disgorge, jointly and severally, $28,588,087.33. For the reasons below we order disgorgement on a joint and several basis of $22,200,000.

[64] Subsection 127(1) of the *Act* permits the Tribunal to order disgorgement of any amounts obtained by non-compliance with Ontario securities law.

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[23] *Solar Income Fund* at para 127

[65] The purpose of a disgorgement order is to ensure that wrongdoers do not benefit from their breach of Ontario securities law, to deter others from engaging in similar conduct,[24] and to restore confidence in the capital markets.[25] As such, the focus in ordering disgorgement is not on whether the fraudster pocketed the money, but rather on the fact that the money was improperly diverted at all.[26]

[66] The Tribunal considers a non-exhaustive list of factors when deciding if a disgorgement order is appropriate and the quantum, including:

a. whether amounts were obtained as a result of 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 non-compliance is reasonably ascertainable;

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

e. the deterrent effect of the disgorgement order on the respondents and other market participants.[27]

[67] We have organized our analysis around these five factors. We consider first whether there were amounts obtained as a result of non-compliance with Ontario securities law.

3.5.2 There were amounts obtained as a result of the respondents' non-compliance with Ontario securities law

[68] It is a well-established principle that the term "amounts obtained" is not limited to the amounts personally obtained by the respondents, directly or indirectly. It

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

[25] *North American Financial Group Inc v Ontario Securities Commission*, 2018 ONSC 136 (Div Ct) (***North American Financial***) at para 218

[26] *Paramount* at para 71

[27] *Feng* at para 54; *First Global Data* at para 86; *Paramount* at para 72

may include any amounts obtained as a result of non-compliance.[28] Deductions for costs or expenses incurred by a respondent are not required.[29]

[69] The Tribunal has also held that individual respondents cannot shelter themselves from administrative sanctions by acting through corporations that they control or direct.[30] An individual respondent who is the directing mind of a corporate respondent can, therefore, be held jointly and severally liable for a disgorgement order made against that corporate respondent.[31]

[70] The essence of the issue before us is whether and in what amount there were amounts obtained as a result of the respondents' non-compliance with Ontario securities law. We conclude that the amount obtained as a result of the respondents' fraudulent activities was the $42 million raised from investors in the Adelaide LP. Our analysis supporting that conclusion follows directly below. The amount we order to be disgorged is a portion of the $42 million based on appropriate adjustments set out in our analysis below of the third factor, whether the amount to be disgorged is reasonably ascertainable.

[71] In the Merits Decision, the Tribunal found the respondents had committed five frauds. For the purposes of arriving at that conclusion, the Tribunal had assessed each of the frauds separately. To determine whether a disgorgement order is appropriate, we consider the frauds together as a whole. We exclude from our consideration the third fraud the respondents were found to have committed, where the respondents used the assets of two other Go-To Developments Holdings' limited partnerships to secure the obligations of the Adelaide LP. We do so because, as the Commission concedes, there are no reasonably ascertainable amounts obtained from that fraud.

[72] The Merits Decision concluded that Furtado intended to obtain a personal benefit from the purchase of the Adelaide Properties. The four frauds the respondents were found to have committed were:

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[28] *Limelight* at paras 49-51; *North American Financial* at para 217

[29] *Pushka v Ontario Securities Commission*, 2016 ONSC 3041 (Div Ct) (***Pushka***) at para 253; *Limelight* at paras 49-51

[30] *First Global Data* at para 97, citing *Limelight* at para 59

[31] *Paramount* at para 79, *First Global Data* at paras 114-115.

a. failure to disclose the information about the "lift" and Furtado's intention to personally benefit from it (Fraud #1);

b. the early redemption of Marek's $16.8 million investment contrary to the representations to all investors that their investment was illiquid and that payments would be made to all investors on a pro rata basis (Fraud #2). The redemption was effected by directing the assignment fee to be paid by the Adelaide LP on purchase of the Adelaide Properties, representing the "lift", to Adelaide Square Developments. The assignment fee was replaced by the Demand Loan which Furtado caused the Adelaide LP to enter into with Adelaide Square Developments, thereby converting a large portion of the equity in the Adelaide Project into debt;

c. Furtado's fraudulent solicitation of a further $12 million from Marek (Fraud #4), which Furtado then caused the Adelaide LP to pay Adelaide Square Developments to pay down the Demand Loan. Adelaide Square Developments then paid the $6 million dividend to Furtado Holdings; and

d. the fraudulent activity in Fraud #2 was also found to be a fraud against the Adelaide LP (Fraud #5).

[73] The Divisional Court in *Pushka v Ontario Securities Commission* upheld the Tribunal's decision to order disgorgement. The Court stated: "The [Tribunal] reasoned that the purpose of the impugned transactions was to generate long-term fee income of just the kind received: receipt of these amounts was the intended and foreseeable result of the wrongful conduct. This reasoning is persuasive and lies at the heart of the [Tribunal's] expertise."[32]

[74] Furtado obtaining the personal benefit, in the form of $6,388,087.33 in dividends, was similarly the intended and foreseeable result of the misconduct, consisting of the failure to disclose, the early redemption of Marek's initial investment, and the further solicitation of $12 million from Marek.

[75] In the Merits Decision the Tribunal found that:

[32] *Pushka* at para 257

a. The failure to disclose the "lift" and Furtado's intended personal benefit affected all the initial investors who were exposed to the risk that the purchase of the Adelaide Properties "had not been, and would not be, pursued solely in best interests of the Adelaide LP". This resulted in a pecuniary risk for which the investors had not bargained.[33]

b. The early redemption of Marek's initial investment affected all investors as it was "contrary to the bargain that had been placed before investors, that all investors were in it together until the project came to fruition, at which point investors would be paid out on a pro rata basis".[34] Also,"[t]he capital structure of the Adelaide LP was materially altered by the Adelaide LP entering into the Demand Loan using most of the proceeds to pay Marek on redemption of his units, substituting debt for equity. This early, material payment to Marek placed the pecuniary interests of the other investors at risk".[35]

c. The information Furtado provided to Marek when solicitating the further $12 million "materially understated the Adelaide LP's debt and overstated its equity". While Marek might not have relied, in fact, on the information provided to him, as the Merits Decision concluded, he was entitled to rely on the information provided to him and it reflected a situation materially different from that for which he bargained. The funds from this fraudulent solicitation were used to pay the $6 million intended personal benefit to Furtado.[36]

[76] Furtado submits that the Merits Decision did not conclude that the dividend payments Furtado received were obtained by the fraud. Rather, the fraudulent conduct found was the imposition of an undisclosed risk on investors that Furtado might not pursue the purchase of the Adelaide Properties solely in the best interests of the Adelaide LP because he stood to receive a personal benefit. As we've indicated earlier in these reasons, we reject Furtado's narrow view of

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[33] Merits Decision at para 83
[34] Merits Decision at para 94
[35] Merits Decision at para 95
[36] Merits Decision at para 115

the misconduct in question and adopt the view that the frauds considered together as a whole created the risk that the investment differed significantly from the bargain investors had agreed to.

[77] A disgorgement order may be appropriate even where there is no provable or direct loss to investors.[37] Even in circumstances where investors did not suffer direct financial losses, exposure of investors to substantial risks is sufficient to warrant a disgorgement order.[38]

[78] In the case of each of the frauds, the Merits Decision concluded that investors had been put to a substantial risk and that their investment in the Adelaide LP was not what they bargained for. Viewed holistically, the four frauds operated together to achieve the intended result, which was the ultimate diversion of the "lift" to Furtado's personal benefit, and resulted in exposing the investors to risks they had not anticipated.

[79] Furtado submits that none of the investor witnesses were asked whether the non-disclosure of the personal benefit would have affected their decision to invest or stay invested in the Adelaide LP. Without this evidence, he submits, there is no evidence to support the Commission's submission. While reliance may not be necessary to establish fraud, Furtado submits, evidence of reliance is necessary to conclude that the amounts in question were obtained as a result of the non-compliance. As such, Furtado submits, the Commission cannot connect the specific findings of fraud made in the Merits Decision to any monetary result. Disgorgement of the full amount invested is not appropriate for this reason alone, Furtado submits.

[80] In support of this position, Furtado refers us to *R v Bikhit.*[39] We do not find this decision persuasive on this point. *Bikhit* is a decision of the Ontario Superior Court of Justice considering fraud allegations under the *Criminal Code*, which is distinct from the matter before us. The sections of that decision Furtado cites describe the subjective element of the test for fraud under those provisions and conclude, based on the facts in that case, that there was no fraudulent omission.

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[37] *Solar Income Fund* at para 102

[38] *Pushka* at para 255, citing *Crown Hill Capital Corporation (Re),* 2014 ONSEC 22 at paras 121-127

[39] *R v Bikhit,* 2024 ONSC 3318 at paras 223 and 250-251

In the matter before us, the Tribunal has already concluded in the Merits Decision that there was fraud, including by fraudulent omission.

[81] Furtado submits that we should be guided by the findings of the British Columbia Court of Appeal in *Voegtlin v Paprotka.*[40] In that case, the Court commented that where a property was worth its price (as Furtado submits the uncontested evidence confirms in this case), a sophisticated investor would be indifferent to whether a portion of the purchase price was being paid to a developer as a finder's fee, as opposed to going to the vendor.

[82] We agree that *Voegtlin* is on point, but it is distinguishable. In that case, investors in a limited partnership formed to purchase a property lost their entire investment when the project wasn't completed. The investors lost at trial and then appealed on one issue – that the developer breached its fiduciary duty based on a failure to properly disclose the quantum of the finder's fee and the granting of a mortgage to secure the finder's fee, which was not in the best interests of the partnership.

[83] The case is distinguishable because investors in *Voegtlin* received a term sheet prior to investing that disclosed that a sizeable finder's fee would be paid to a related party, and that the finder's fee reflected the equity in the land. Investors in the Adelaide LP received no such disclosure.

[84] Furtado goes on to submit that investor losses were caused by the Commission appointing a Receiver over the Go-To projects, including the Adelaide Project. The Divisional Court in *Pushka* found that the phrase "as a result of" requires a causal link between "amounts obtained" and the "non-compliance". The Court stated that, "the analysis of causation includes consideration of events that interrupt the chain of causation and principles of remoteness."[41]

[85] Furtado submits that the evidence at the hearing that appointing a receiver would inevitably result in investor losses was uncontested. The Commission's appointment of the Receiver, Furtado submits, "broke the chain of causation" between the non-compliance (the failure to disclose Furtado's personal benefit)

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[40] *Voegtlin v Paprotka,* 2014 BCCA 323 (***Voegtlin***) at para 25

[41] *Pushka* at 254

and the losses incurred by investors as a result of the Receivership. Having caused that break, Furtado submits, the Commission cannot now seek disgorgement for the consequences the Commission brought on itself.

[86] We do not find Furtado's submissions persuasive. Furtado is asking us to consider the Commission's request for a disgorgement order only in the context of the one finding of fraud, the failure to disclose his intended personal benefit to investors. We decline to take that narrow approach. The respondents, including the corporations that Furtado directed or controlled, were found to have committed five frauds, four of which we are considering as part of our disgorgement analysis. As indicated above, the result of these frauds viewed together as a whole was the creation of the risk to investors that their investment differed significantly from what they had bargained for. To view the matter more narrowly is to miss the nature and impact of the respondents' misconduct.

[87] Disgorgement under the *Act* is not a compensatory order. As we indicated earlier, a disgorgement order can be appropriate and has been ordered in circumstances where there were no direct losses to investors.[42] The harm to investors in the Adelaide LP was that they were put to the substantial risk that their investment was not what they bargained for. As in *Pushka*, where there were no direct financial losses, the substantial risk to investors warrants a disgorgement order.

[88] The causal link in this instance is between the fraudulent conduct overall and the pecuniary risk that misconduct caused for investors, that their investment was different than they had been led to believe. The Receivership came well after the respondents committed those fraudulent acts creating the risk. There was no break in causation between the respondents' misconduct and the amounts obtained as a result.

[89] Furtado refers us to the Tribunal's decision in *TeknoScan Systems Inc (Re)* in which, Furtado submits, the Commission's proposed quantification of losses was rejected by the Tribunal based on its speculative nature and lack of causal

[42] *Solar Income Fund* at para 102

connection.[43] The Tribunal in *TeknoScan* was determining whether and to what extent the respondents in that case had benefited or profited from their misconduct and concluded that the Commission had failed to establish a causal link between the fraud and the salaries and bonuses received by the individual respondents. This factual analysis does not assist us in assessing whether there has been a break in the chain of causation for the purposes of disgorgement in the case before us.

[90] We conclude therefore that there were amounts obtained from the respondents' non-compliance with Ontario securities law in the amount of the $42 million invested in the Adelaide LP.

3.5.3 The misconduct was serious

[91] As we noted, while the fraud in this case is not amongst the most serious that has come before the Tribunal, it is nevertheless very serious as investors were exposed to risks they did not bargain for. In addition, we conclude from the Receiver's submissions that it is unlikely that any amounts recovered in the Receivership will be available to unsecured parties and that therefore the investors in the Adelaide LP are likely to suffer significant losses. The seriousness of the misconduct and its impact on investors therefore are significant factors in our decision to order disgorgement.

3.5.4 The amounts obtained are reasonably ascertainable

[92] We conclude there is a reasonably ascertainable amount obtained as a result of the respondents' non-compliance with the *Act* totalling $22,200,000, as described below.

[93] The Tribunal has held that disgorgement orders should be based on gross amounts obtained, rather than net amounts,[44] recognizing however that disgorgement of the full amount is not mandatory, and the Tribunal has the discretion to order a lower amount.[45]

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[43] *TeknoScan* at para 39

[44] *Feng* at para 67 citing *Bradon Technologies Ltd,* 2016 ONSEC 19 at para 85

[45] *Feng* at para 67 citing *Quadrexx Hedge Capital Management Ltd (Re),* 2018 ONSEC 3 at para 47

[94] The Commission is seeking a joint and several disgorgement order for $28,588,087.33. It arrives at this number by starting with the total amount raised from investors: $42 million. It then deducts the $2 million invested by Jain, who was aware of the "lift" and Furtado's intent to receive a personal benefit ($40 million). The Commission then further deducts the $17.8 million returned to investors as redemptions, including the fraudulent return of $16.8 million to Marek and a redemption of an additional $1 million invested by Marek ($22.2 million). Finally, the Commission adds back in the $6,388,087.33 in dividends paid to Furtado Holdings ($28,588,087.33).

[95] The Commission submits that dividends paid to Furtado need to be added back into the calculation because the following events are inextricably linked and should be represented in the disgorgement calculation:

a. the early redemption of Marek's units;

b. the subsequent solicitation of a further $12 million from Marek;

c. entering into the Demand Loan; and

d. the dividend payments to Furtado Holdings.

[96] Furtado submits that we should exclude from the disgorgement calculation the $12 million second investment from Marek because the Merits Decision concluded that Marek didn't rely on the misrepresentations made in the materials provided to him when his investment was solicited. He also submits that we should then also remove the $6,338,087.33 in dividend payments that flowed from this $12 million investment.

[97] The Commission submits that if we were to do that, then we should add back into the calculation the $16.8 million redemption paid to Marek which had been found to be a fraud impacting all the other investors.

[98] The fact that the parties submit different approaches for calculating the amount to be disgorged does not mean that the amount is not ascertainable. Rather, it means that there are a variety of considerations for us when exercising our discretion about what amount we order be disgorged.

[99] As we've indicated above, the four frauds at issue for our disgorgement analysis viewed together impacted all investors, except for Jain. We, therefore, start our

calculation with the $42 million raised for the Adelaide project. We deduct Jain's $2 million because Jain was the one initial investor who was aware of the discussions about the "lift" and Furtado's intended personal benefit ($40 million). We also deduct the $17.8 million in redemptions made by the Adelaide LP as is consistent with Tribunal practice ($22.2 million).[46] The Tribunal's decision in *Feng* assists us in this approach. In that case, where only some investor funds had been misused, contrary to representations made to investors, the Tribunal, nonetheless, ordered disgorgement of all the funds raised, less amounts proven to have been returned to investors.[47]

[100] We decline to use our discretion to add back into the calculation the $6,388,087.33 in dividends paid to Furtado Holdings. While it is tempting to add back in the amounts that Furtado Holdings received directly because of the respondents' misconduct, a disgorgement order (as we laid out earlier) is not directed at the profit made or amounts retained from the misconduct. We focused our analysis on the amounts obtained as a result of the non-compliance, rather than on the amounts Furtado Holdings directly obtained. We conclude that approach appropriately takes into consideration the broad purposes of a disgorgement order and will effectively send the message that when raising capital from the investing public, non-disclosure and misrepresentation that amounts to fraud will result in very serious sanctions.

3.5.5 It is uncertain whether those who have suffered losses are likely to obtain redress

[101] The onus is not on the Commission to show that victims are unlikely to obtain redress. If a respondent can show that those that suffered losses are likely to obtain redress, that might be a reason to reduce the disgorgement amount.[48]

[102] The Commission submits that Furtado cannot show that the investors who suffered losses are likely to obtain redress. Therefore, there is no reason to reduce the disgorgement amounts sought by any amount that might be recoverable through the Receivership.

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[46] *Money Gate* at paras 57-58

[47] *Feng* at para 69

[48] *Pro-Financial Asset Management (Re),* 2018 ONSEC 18 at para 70

[103] Furtado submits that due to the Receivership, which the Commission caused to be put in place, and the number of claims and lawsuits connected with and resulting from the Receivership, we cannot know what the result will be on the investors' ability to recoup their losses.

[104] The Commission submits that in these circumstances we should order disgorgement according to the usual principles, without accounting for the outcome of the receivership process, as laid out in the Tribunal decisions in *Money Gate* and *Paramount*. In both those cases, the Tribunal considered whether the respondents' disgorgement order should be reduced based on amounts the receiver may recover from the corporate entities. It was unclear whether there would be further recoveries by the receivers and to what uses the funds recovered would be put. The Tribunal in both instances declined to deduct any amounts from the disgorgement calculation that might reflect unknown, if any, future recoveries through the receivership process. The Tribunal in both cases proceeded to order disgorgement based on the facts before it at the time, without speculating about potential future recoveries.[49]

[105] We adopt the Tribunal's approach reflected in those cases. We decline to deduct from the disgorgement calculation amounts that may be returned through the Receivership to investors who suffered losses. To do so would require us to speculate about what, if any, amounts may be returned to investors, which would not be appropriate. Any party may apply to the Commission to vary our order, based on more current information regarding the Receiver's ability to repay funds to investors.

[106] Furtado submits that the ability to seek a variance of any order is not realistic, as the Commission has recently moved to put respondents into bankruptcy when they have failed to pay disgorgement orders made by this Tribunal. It is true that the Commission has a wide variety of tools available for it to pursue its legislative purposes. However, this Tribunal should not be constrained in crafting appropriate sanctions by speculating about what actions the Commission may or may not take because of Tribunal orders.

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[49] *Money Gate* at paras 60-61; *Paramount* at para 86

3.5.6 Deterrent effect on the respondents and others

[107] A disgorgement order is appropriate where it will ensure that the respondents do not benefit in any way from their breaches of the *Act,* and it deters others from similar misconduct, thereby protecting investors and restoring confidence in the capital markets.[50]

[108] Committing fraud when raising capital from the investing public will not be tolerated. In this instance, disgorgement ensures this message is clear for the respondents and for any like-minded individuals who seek to take advantage of investors who rely on them for a true representation of the risks of the investment they are making.

3.5.7 Conclusion regarding disgorgement

[109] The Commission has asked that the disgorgement order be joint and several among all respondents. As we indicated above, the Receiver has not asked us to exclude the Corporate Respondents from any sanctions and costs order, including disgorgement. For the reasons above we conclude that a disgorgement order, joint and several against all respondents, in the amount of $22,200,000 is in the public interest.

3.6 Administrative penalty

[110] Paragraph 9 of s. 127(1) of the *Act* has been recently amended to provide that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than $5 million for each failure to comply. However, in this matter, the Commission seeks administrative penalties of up to $1 million for each violation of the *Act,* consistent with the limits that applied prior to the amendment.

[111] The Commission is seeking an order that the respondents pay the following amounts in administrative penalties:

a. Furtado: $1.3 million, which includes $1 million for fraud and $300,000 for misleading the Commission;

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[50] *Al-Tar* at para 71

b. Go-To Developments Holdings: $750,000;

c. Furtado Holdings: $750,000; and

d. Adelaide GP: $750,000.

[112] For the reasons below we conclude it is in the public interest to order the following administrative penalties:

a. Furtado to pay $1,000,000 which includes $750,000 for fraud and $250,000 for misleading the Commission; and

b. Go-To Developments Holdings, Furtado Holdings and Adelaide GP to each pay an administrative penalty of $200,000.

[113] We first consider the administrative penalties the Commission requests for the respondents' fraudulent conduct. We next consider the administrative penalty the Commission requests against Furtado for misleading statements made by him in his compelled interviews.

[114] Determining the amount of an administrative penalty is not a science.[51] Each case must turn on its unique facts. There are, however, factors to be considered in determining an appropriate administrative penalty. We have addressed a number of these factors already in these reasons. In our analysis below, we will consider the level of administrative penalties imposed in other cases cited to us. These precedents reflect a wide range of sanctions that vary according to the circumstances, but they assist us by providing a possible range of penalties and a principled approach to determining appropriate penalties in this case. We also consider all the sanctions we impose on each respondent individually, as well as both specific and general deterrence, and the extent to which those objectives are achieved by all the sanctions we impose.

3.6.1 Fraudulent conduct

[115] We adopt the same approach used above in our analysis for disgorgement and consider the five frauds perpetrated by the respondents as a whole for the purposes of determining what administrative penalty is appropriate.

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[51] *Feng* at para 73

[116] The Commission submits that fraud is a flagrant breach of the *Act*, generally requiring higher administrative penalties. The Commission further submits that the administrative penalties requested in this case are proportionate to the gravity of the misconduct. The respondents were dishonest in raising investor funds and they misused some of those funds. This placed all investors' interests, except for Jain's, at a risk they had not bargained for. Further, Furtado indirectly obtained quantifiable benefits of nearly $6.4 million.

[117] The respondents assert that the fraudulent activities in this case are not of the most serious nature on the spectrum of frauds, and that there are several factors that should be considered. We discussed those factors above in our analysis of the seriousness of the respondents' misconduct

[118] The Commission submits that the factors asserted by Furtado as providing context for the fraudulent conduct are in some instances not established as facts and/or are not mitigating as a matter of law. The Commission further submits that there is no indication that Furtado appreciates the wrongfulness of his conduct, citing various attempts by Furtado to blame or impugn various people (including the Commission, the Receiver, his prior counsel and various investors) for various issues. The Commission submits that such an approach only underscores the need for significant sanctions to ensure that the goal of specific deterrence is met.

[119] The Commission further submits that the administrative penalties requested are proportionate to the range of penalties imposed in comparable cases. The Commission referred us to the following decisions in support of its request:

a. *Bridging*: a 2025 decision in which separate administrative penalties were ordered against two individual respondents who perpetrated three frauds on more than 26,000 investors. For the first fraud, administrative penalties of $1 million and $600,000 were ordered, relating to diversion of funds to their personal benefit. Further administrative penalties were ordered in respect of the second and third frauds of $700,000 and $400,000 against one respondent and $600,000 and $500,000 against the second respondent. These second and third frauds involved the

diversion of, respectively, approximately $40 million and $30 million of investor funds.[52]

b. *Paramount*: a 2023 decision in which administrative penalties of $1.5 million and $1 million were ordered against two individual respondents who had perpetrated three frauds on more than 500 investors, by (i) diverting $50 million of $70 million raised from investors to high-risk mortgages investments, contrary to representations made to investors; (ii) improperly acquiring ownership interests in projects which received investor finds; and (iii) misusing almost $5 million in a pre-paid account meant to benefit investors, for their own purposes. A third respondent received an administrative penalty of $500,000 due to the existence of mitigating factors.[53]

c. *Money Gate*: a 2021 decision in which administrative penalties of $750,000 and $600,000 were ordered against the two individual respondents who had perpetrated a fraud on more than 150 investors and diverted over $8.7 million of $11 million of investor funds for the benefit of the respondents and their related entities.[54]

[120] The Commission submits that *Paramoun*t is a particularly useful comparator. *Paramount* involved a misuse of $50 million contrary to representations made to investors, whereas the respondents raised $42 million based on the fraud perpetrated in this case, which included misrepresentations to investors. *Paramount* also involved a misappropriation of $5 million for the respondents' own purposes, whereas Furtado indirectly received almost $6.4 million.[55]

[121] Furtado submits that the quantum of the administrative penalty sought by the Commission is so excessive as to be punitive, and the circumstances of this case are not remotely analogous with those in the cases cited by the Commission. Furtado distinguishes *Paramount* and other cases involving the diversion of investors' funds from this case, arguing that in this case, he did not engage in a

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[52] *Bridging* at paras 1, 8, 33, 60, 71, 76, 90, 97 and 100

[53] *Paramount* at paras 2, 18, 25-28 and 115

[54] *Money Gate* at paras 1, 57-58, 71-72

[55] *Paramount* at para 17

diversion of funds. Rather, Furtado asserts that because the "lift" was not disclosed, this left investors without assurance that the purchase price for the properties would be negotiated solely in the best interests of the Adelaide LP and thereby resulted in a risk to investors for which they had not bargained. The Commission asserts that Furtado's submissions erroneously imply that failure to disclose the "lift" was the only fraudulent conduct found by the Merits Panel, which was not the case.

[122] Furtado submits that the *Solar Income Fund (Re)* case is a useful comparator as it involved findings of fraud in the context of the operation of a legitimate business, and the respondents in this case were also involved in a legitimate business. In *Solar Income Fund*, administrative penalties ranged from $175,000 for the corporate respondent to $125,000 to $175,000 for individual respondents.[56] The Commission submits that *Solar Income Fund* is not a helpful case as it involved the diversion of approximately $235,000, which pales in comparison to the amounts involved in the respondents' fraudulent conduct.

[123] Furtado also relies on *TeknoScan* in support of the lower administrative penalty range he proposes. In that case, the respondents received administrative penalties of $150,000 to $450,000.[57] Furtado argues that *TeknoScan* is an example where the fraud was not the most egregious, as the fraudulent disclosure was in connection with a legitimate business, and the respondents received no personal benefits from the fraud. The Commission submits that *TeknoScan* should be contrasted with the case before us as the Merits Panel found that, in addition to providing misleading disclosure, Furtado intended to and planned to benefit from the fraud.

[124] The Commission seeks a higher administrative penalty for Furtado to reflect his role as the directing mind of all the Corporate Respondents. The Commission seeks a separate administrative penalty against each of the Corporate Respondents in a lesser amount to reflect their roles in the frauds as vehicles through which funds flowed at Furtado's directions.

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[56] *Solar Income Fund* at para 111

[57] *TeknoScan* at para 57

[125] The Commission submits that the purpose of administrative penalties is deterrence and, as a matter of principle, each party involved in a fraud should be responsible for its role in the fraudulent conduct. The Commission asserts that for this reason the Commission is not requesting that any administrative penalties be ordered jointly and severally. We do not adopt the Commission's view as a matter of principle. Rather, we defer to the facts and circumstances of each case as the determinant of whether a joint and several order is warranted.

[126] We agree that the fraudulent conduct on the part of the respondents was not the most egregious kind, that there was a legitimate business involved and that no registerable activity was carried on. We find however that the conduct in this case was on the more serious end of the fraud spectrum. Furtado intended, planned and expected to benefit from the purchase of the Adelaide Properties, and failed to disclose that to investors and he committed the other frauds the end result of which was the achievement of his purpose. We also agree that Furtado continued to point blame at other persons on several occasions.

[127] Administrative penalties are an important tool to ensure deterrence. In this case, we believe that both specific and general deterrence require substantial administrative penalties against all the respondents, with Furtado bearing the higher penalty for being the directing mind of the Corporate Respondents.

[128] We find that an administrative penalty of $750,000 against Furtado is warranted for the frauds in this case. We further find that an administrative penalty of $200,000 is warranted against each of the Corporate Respondents for the roles each played in the frauds.

[129] The Commission did not ask for any of the administrative penalties to be made joint and several. Although we considered a joint and several order may be appropriate in this case because the Corporate Respondents acted at Furtado's direction, our order against Furtado is not made jointly and severally with the Corporate Respondents. Furtado is not part of the Receivership, and we do not believe the Receiver and any beneficiaries of the Receivership should be impacted by the administrative penalty against him.

3.6.2 Misleading the Commission

[130] We now turn to the administrative penalty the Commission requests against Furtado in the amount of $300,000, for misleading the Commission during its investigation of his receipt of dividend payments.

[131] The Commission submits that the requested amount is proportionate to penalties imposed for similar conduct in other cases. The administrative penalties in those cases range from $200,000 to $1 million.

[132] In *Kitmitto*, one respondent was found to have misled the Commission as to the reason he traded shares on a particular day. The Tribunal found that he intentionally concealed the trade from internal compliance and evaded questions in the Commission investigation in claiming not to remember the trade.[58] A $250,000 administrative penalty was ordered.[59]

[133] In *Mughal Asset Management Corporation (Re)*,[60] the respondent was found to have made multiple false and misleading statements during two interviews with the Commission and disclosed the investigation and summons to an investor. The Tribunal imposed a $350,000 administrative penalty for the two breaches.

[134] Furtado submits that he never denied the receipt of the payments and that the Commission was aware of the payments during the investigation. Furtado submits that the Merits Panel found his testimony misleading only in relation to the reasons for which he received payments, not the fact of their receipt. Furtado argues that his conduct cannot be equated with the breaches at issue in the cases relied upon by the Commission in which the underlying conduct itself was hidden. Furtado submits that any administrative penalty should not exceed $200,000.

[135] The Merits Panel found that Furtado made statements to the Commission during his interviews that were misleading or untrue in a material respect. Making misleading or untrue statements to the Commission is very serious misconduct. It matters not in our case whether the statements related to receiving payments

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[58] *Kitmitto (Re),* 2022 ONCMT 12 at paras 212-218

[59] *Kitmitto* at para 46

[60] *Mughal Asset Management Corporation (Re)*, 2024 ONCMT 14 (***Mughal***) at paras 118, 122

or the reason for those payments. As a result, we find that $250,000 is the appropriate administrative penalty for this breach.

3.7 Costs

[136] Section 127.1 of the *Act* authorizes us to order that a respondent who has contravened Ontario securities law pay the Commission's costs of the investigation and the proceeding.

[137] The Commission seeks total costs of $1,137,416.85. This amount consists of $1,122,306.75 in costs incurred, after a deduction of 10 percent, and $15,110.10 in disbursements. For the reasons below we order the respondents to pay, jointly and severally, costs in the amount of $638,613.85.

[138] We have the discretion, under s.127.1 of the *Act*, to order a person or company to pay the costs of any investigation and/or a hearing if we are satisfied that the respondents have not complied with Ontario securities law.

[139] A costs order is not a sanction. It is a means of recovering the costs of an investigation and hearing from those who have breached Ontario securities law. A costs order will not necessarily recover all costs incurred, but it is appropriate that some of those costs are borne by those who have been found to have contravened securities law.[61]

[140] The Commission submits that the amount of costs it is seeking is supported by the fact that:

a. the breaches were serious and complex, involving multiple aspects to the fraud, Furtado's denial of certain facts, and Furtado's misleading the Commission during the investigation; and

b. the investigation and litigation extended over a considerable period. The investigation started in October 2019. The proceeding began in March 2022 and took place over 14 days. It involved testimony from six witnesses for the Commission, a lengthy affidavit from the Commission's investigator, and Furtado testifying in person and via affidavit.

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[61] *2241153 Ontario Inc*, 2016 ONSEC 10 at para 16, aff'd *Evgueni Todorov and Sophia Nikolov v Ontario Securities Commission*, 2018 ONSC 4503 (Div Ct)

[141] The Commission provided a bill of costs setting out the time spent by various members of Commission staff. It sets out the time spent for two senior forensic accountants, three senior legal counsel, one investigation counsel, two litigation counsel and one law clerk. Claiming the costs of all staff is a recent departure from the Commission's past practice of limiting its claim to time spent by only one litigation counsel and only one investigator.

[142] The Commission took a similar approach in *Bridging*. The Tribunal in *Bridging* allowed the approach, because the respondents in that case offered no legal principle that would have permitted the Tribunal to compel the Commission to follow its previously self-imposed practice.[62] Having allowed the approach, the Tribunal in *Bridging* then exercised its discretion to reduce the amount of costs sought by 30% across-the-board, to "recognize the inefficiencies inherent in long, complex investigations and proceedings that inevitably involve some turnover in assigned personnel."[63]

[143] The Commission reduced the amount of the costs they are seeking in this matter. They did not include certain costs in the calculation, and they applied a 10 percent discount to the costs incurred to account for the Tribunal's dismissal of the s. 25(1) and related s.44(2) allegations.

[144] No further reductions are warranted, the Commission submits, because the amount it is seeking is significantly less than the actual costs incurred, a discount has already been applied and the hourly rates of Commission personnel are very low, have not changed in many years, and have fallen far behind given inflation. We make no comment on the latter point, which is beyond the purview of the Tribunal and is not a matter to be addressed through cost awards against specific respondents.

[145] In addition, the Commission submits that no further reduction is warranted because the respondents contributed to the delay in this matter, including Furtado's multiple requests for adjournment of the merits hearing.

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[62] *Bridging* at para 128

[63] *Bridging* at para 131

[146] The Commission submits that the Tribunal has awarded significant costs in cases involving fraud. The Commission cited the Tribunal's order of $600,000 of costs in *Paramount*, a five-day hearing that concerned fraud, among other allegations.[64]

[147] Furtado characterizes the Commission's cost request as unrealistic and excessive. The Commission spent 2.4 years of full-time hours on this matter, by Furtado's calculation. The Commission's proposed 10 percent discount is, Furtado submits, insufficient and inconsistent with past and recent practice. The proposal, Furtado submits, fails to account for the fact that the Tribunal has repeatedly acknowledged that constant changes in staffing of the nature that occurred during the investigation and prosecution of this case, will inevitably result in duplication of work and inefficiencies. The costs associated with such matters, being outside of Furtado's control, should not be borne by him.

[148] Furtado also submits that the costs of the Commission refusing to consent to his request to adjourn the merits hearing for health reasons should be deducted from the Commission's cost request. Furtado received the adjournment despite having to bring a contested motion on three occasions.

[149] An award of costs more than $1 million is out of line with other proceedings of a similar length where findings of fraud were made, Furtado submits. Costs awards in cases of similar length and complexity ranged from approximately $200,000 to $670,000. Furtado submits that costs greater than $1 million have only been awarded by the Tribunal on two occasions – one involving a 35-day hearing and the other a 28-day hearing.[65] An award of this size, Furtado submits, will send the message that private litigants cannot afford to defend themselves against allegations made by the Commission. While a respondent found to have contravened Ontario securities law should expect to pay costs, a cost award of this size can reasonably be viewed as punitive.

[150] In exercising our discretion to award costs, we must balance the principle that some of the costs should be borne by those who have contravened Ontario

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[64] *Paramount* at para 140

[65] *First Global Data Ltd (Re)*, 2022 ONCMT 25; *First Global Data* at para 259(g); *Bridging Finance Inc (Re)*, 2024 ONCMT 23; *Bridging Finance* at para 138

securities laws, against the risk that a high cost award may act as a deterrent to respondents willing to defend themselves against Commission allegations.

[151] We recognize that this matter was complex. It involved numerous corporate entities and limited partnerships and the flow of funds among those entities. In the merits hearing in this matter, the Tribunal concluded that Furtado had committed fraud, in five instances, and had mislead the Commission during the investigation. That is serious misconduct. The Commission was not successful on two of the alleged breaches, s. 25(1) and s. 44(2). The merits hearing, while it occurred over 14 days, took around nine days. Shorter hearing days were ordered by the Tribunal to accommodate Furtado's health.

[152] The amount of a cost award is an exercise of our discretion. Precedents are helpful but not determinative. We note that the two recent cases where costs more than $1 million were awarded were lengthier and more complex than this proceeding.[66] Other proceedings involving fraud of a similar length resulted in significantly smaller cost awards.[67]

[153] In this instance, balancing all the above factors, we apply an across-the-board discount of 50% to the costs incurred by the Commission ($1,247,007.50). Total costs are awarded against the respondents, jointly and severally, in the amount of $623,503.75, plus disbursements of $15,110.10, for a total of $638,613.85.

4. CONCLUSION

[154] For the above reasons, we order that:

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

i. trading in securities of Go-To Developments Holdings, Adelaide GP, and Furtado Holdings shall cease for a period of 10 years, except for trades effected by the Receiver;

ii. Go-To Developments Holdings, Adelaide GP, and Furtado Holdings are prohibited for a period of 10 years from trading in any

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[66] *First Global Data* at para 259(g); *Bridging Finance* at para 138

[67] *Mughal* – 3-day hearing and a costs order of $295,413.65; *Hogg (Re)*, 2024 ONCMT 32 – 4-day hearing and a costs order of $667,605.27; *Paramount* – 5-day hearing and costs order of $600,000; *Feng* – 6-day hearing and costs order of $206,769.34; *TeknoScan* – 20-day hearing and costs order of $400,000

securities or derivatives, or acquiring any securities, except for any trades or acquisitions effected by the Receiver; and

iii. Furtado is prohibited for a period of 10 years 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*, RSC, 1985, c 1 (5th Supp)), of which he, his spouse or his children are the sole legal and beneficial owners, through a registered dealer in Canada to whom he has given a copy of this order;

b. pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to the respondents for a period of 10 years;

c. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the *Act*, Furtado shall resign any positions that he holds as a director or officer of any issuer or registrant;

d. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act*, Furtado is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 10 years;

e. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, the respondents are prohibited from becoming or acting as a registrant or as a promoter for a period of 10 years;

f. pursuant to paragraph 9 of subsection 127(1) of the *Act*:

i. Furtado shall pay an administrative penalty in the amount of $1,000,000 to the Commission;

ii. Go-To Developments Holdings shall pay an administrative penalty in the amount of $200,000 to the Commission;

iii. Adelaide GP shall pay an administrative penalty in the amount of $200,000 to the Commission; and

iv. Furtado Holdings shall pay an administrative penalty in the amount of $200,000 to the Commission;

g. pursuant to paragraph 10 of subsection 127(1) of the *Act,* the respondents shall, jointly and severally, disgorge to the Commission $22,200,000; and

h. pursuant to section 127.1 of the *Act,* the respondents shall, jointly and severally, pay to the Commission $638,613.85 for costs of the investigation and proceeding.

Dated at Toronto this 6th day of March, 2026

"M. Cecilia Williams"

M. Cecilia Williams

"Geoffrey D. Creighton"

Geoffrey D. Creighton

"Cathy Singer"

Cathy Singer