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Citation: Quadrexx Hedge Capital Management Ltd. (Re), 2018 ONSEC 3
Date: 2018-01-23

IN THE MATTER OF
QUADREXX HEDGE CAPITAL MANAGEMENT LTD.,
QUADREXX SECURED ASSETS INC., MIKLOS NAGY and TONY SANFELICE

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)

Hearing: October 24-26, 2017

Decision: January 23, 2018

Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
	Philip Anisman	Commissioner
	AnneMarie Ryan	Commissioner
Appearances:	Derek Ferris Michelle Vaillancourt	For Staff of the Ontario Securities Commission
	Miklos Nagy	Representing himself, Quadrexx Hedge Capital Management Ltd. and Quadrexx Secured Assets Inc.
	Tony Sanfelice	Representing himself

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. INTRODUCTION

[1] In its decision of February 6, 2017 (the **Merits Decision**),[1] the Commission found that the individual respondents, Miklos Nagy and Tony Sanfelice, and three companies that they controlled and of which they were the directing minds, had engaged in fraudulent conduct in connection with three distributions of securities, contrary to clause 126.1(1)(b) of the *Securities Act* (the **Act**).[2]

[2] The three companies included the two corporate respondents, Quadrexx Hedge Capital Management Inc. (**QHCM**) and Quadrexx Secured Assets Inc. (**QSA**). The third company, Quadrexx Asset Management Inc. (**QAM**; referred to as "Quadrexx" in the Merits Decision), filed an assignment in bankruptcy before the commencement of this proceeding.

[3] In addition to the findings of fraud, the Commission found that Nagy, Sanfelice and QAM committed several other contraventions of Ontario securities law.

A. The Three Frauds

[4] QAM was registered under the Act as an exempt market dealer and portfolio manager, and from 2011, as an investment fund manager.[3] It was entitled to sell securities in exempt distributions using offering memoranda, and was central to the three frauds.

[5] The first fraud occurred in 2009. Nagy and Sanfelice arranged for a sale of their shares of Canadian Hedge Watch Inc. (**CHW**) at an inflated value, by manipulating the valuation process relating to the acquisition. At their direction, QHCM participated in the fraud as the general partner of Diversified Assets LP (**DALP**), which acquired the shares. Also at their direction, QAM participated in the fraud by selling securities of DALP to investors to finance the acquisition and by acting as DALP's investment adviser. As a result of the fraud, DALP paid $1,000,688 more than CHW's shares were worth. Nagy and Sanfelice received $806,042.95 more than the $1,236,425.28 that their shares were worth.

[6] The second fraud occurred in 2011 and 2012. QAM sold its own shares, without disclosing to investors that it was using the proceeds to pay to prior investors dividends that it did not have sufficient funds to pay otherwise. By directing those activities, Nagy and Sanfelice engaged with QAM in a fraudulent course of conduct through which QAM received $2,411,880. That amount was largely lost by investors when QAM subsequently went bankrupt.

[7] The third fraud occurred late in 2012, when QAM was having business difficulties and required working capital. QAM misappropriated funds that it raised in an offering of securities by its wholly-owned subsidiary, QSA. Nagy and Sanfelice had QSA pay QAM $185,397 more than QAM was entitled to receive under the terms of QSA's offering memorandum. QSA investors lost more than half of their investments as a result of this fraud.

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[1] *Re Quadrexx Hedge Capital Management Ltd.* (2017), 40 OSCB 1308.
[2] RSO 1990, c S.5.
[3] Until September 2009, the equivalent registration category to "exempt market dealer" was "limited market dealer", and the equivalent registration category to "portfolio manager" was "investment counsel and portfolio manager".

B. Other Contraventions

[8] The Commission found that Nagy, Sanfelice and QAM committed a number of other contraventions of Ontario securities law:

a. QAM failed to report a working capital deficiency, contrary to section 12.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and failed to deal fairly, honestly and in good faith with its clients, contrary to subsection 2.1(1) of OSC Rule 31-505 – *Conditions of Registration*.[4]

b. As directors and officers of QAM, QHCM and QSA, Nagy and Sanfelice directed all matters pertaining to those corporations. Nagy and Sanfelice were therefore deemed, by section 129.2 of the Act, to have themselves breached the various provisions of Ontario securities law that the corporations contravened.[5]

c. Nagy and Sanfelice breached their obligations as QAM's Ultimate Designated Person (**UDP**) and Chief Compliance Officer (**CCO**) in contravention of NI 31-103, sections 5.1 and 5.2, respectively.[6]

[9] In addition to the above contraventions, the Commission found that QAM acted contrary to the public interest by causing DALP to make a loan to it indirectly through CHW to avoid the Act's prohibition against making the loan directly.[7]

C. Sanctions and Costs Hearing

[10] This hearing was convened to consider the sanctions and costs that the Commission should impose on the respondents as a result of the findings in the Merits Decision. Based on the three frauds, which are the most serious contraventions, Staff seeks orders for disgorgement of funds, administrative penalties and permanent prohibitions against the respondents continuing to participate in the capital markets in any manner. Although Staff says that all of the conduct of the respondents is relevant to a determination of sanctions for these three frauds, Staff does not seek additional sanctions for the other contraventions, because they were part of the course of conduct constituting the frauds.

[11] All parties relied on documents tendered at the merits hearing. In addition, Staff provided an affidavit supporting its request for costs, and the respondents called a witness to testify about the circumstances affecting QAM during the time of the contraventions.

[12] The respondents said that while they intend to appeal the Merits Decision, they nonetheless accept the Commission's findings for purposes of the sanctions hearing. However, they asked that the sanctions not be based on "the label" of fraud that Staff and the Commission chose to attach to their conduct,[8] but on their motives, intentions, knowledge and beliefs when they engaged in the

[4] Merits Decision at paras 341 and 367.
[5] Merits Decision at para 391.
[6] Merits Decision at para 383.
[7] Merits Decision at para 357.
[8] Sanctions and Costs Submission of the Respondents Miklos Nagy and Tony Sanfelice, September 5, 2017, p 3 (**Respondents' Submission**).

conduct addressed in the Merits Decision.[9] To explain their motives and intentions, and to provide context for their actions, they addressed at some length their business plans for QAM and their efforts in furtherance of those plans, particularly in and after 2011. Those efforts led to registration staff of the Commission refusing to approve QAM's acquisition of another registered firm and to an undertaking from Nagy, Sanfelice and QAM to Staff that they would cease all trading in QAM securities.

[13] This was also the focus of the evidence of the respondents' witness, who worked at QAM during the relevant time, but was not involved in the decisions relating to the frauds. His evidence addressed QAM's circumstances, his understanding about Nagy and Sanfelice's business plan and goals for QAM, and the purposes of various transactions QAM conducted or proposed.

[14] Although a respondent's motives and intentions are relevant to the sanctions that should be imposed, the Commission's findings of multiple frauds cannot be dismissed as mere "labels", or disregarded. Those findings reflect a determination that the respondents engaged in dishonest activity that placed investors at risk and resulted in significant losses. As a result, information about the respondents' efforts to further QAM's business plan was potentially relevant only in providing context for their actions and in assessing the seriousness of the frauds.

[15] That being said, this information did little to mitigate the seriousness of the frauds. Indeed, the respondents' submissions reinforce the finding in the Merits Decision that their conduct "throughout the transactions and events that are the subject matter of these Reasons demonstrate repeatedly their commitment to the survival of [QAM] without regard to the consequences of their actions."[10]

II. SANCTIONS

A. General Principles

[16] The Commission's authority to impose sanctions is essential to its ability to fulfill its statutory mandate to protect investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in them.[11] It is forward-looking and preventive rather than punitive or compensatory.[12]

[17] Section 127 of the Act gives the Commission broad discretion to order a wide array of sanctions to achieve these goals in the public interest and to tailor them to the specific persons and circumstances in the proceeding before it.

[18] The sanctions authorized by section 127 enable the Commission to prohibit participation in the market by persons who are likely to engage in conduct contrary to the public interest, to remediate practices that may be harmful to

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[9] Respondents' Submission, pp 3-5, citing *Re Sabourin* (2009), 32 OSCB 2707 (***Re Sabourin***) at paras 68-71.
[10] Merits Decision at para 382.
[11] Act, s 1.1.
[12] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 39-45.

investors or market confidence, and to deter improper activities both specifically by a respondent and generally by others.[13]

[19] In determining appropriate sanctions, the Commission takes into account a respondent's conduct and personal circumstances, and the effect of any sanction on future activities of the respondent and of others. We therefore consider, among other things, the seriousness of the conduct, the length and level of each respondent's market activities and experience, the amount of any benefits sought or obtained, and the harm to investors. A respondent's inability to earn a livelihood or to pay a penalty may be mitigating factors.[14]

[20] Given the highly contextual nature of these various factors, sanctioning precedents, while helpful, may be of limited value when the Commission determines the appropriate mix of sanctions for a particular respondent.

B. Disgorgement

1. First Fraud: Sale of Shares to DALP at Inflated Value

(a) Facts

[21] In June 2008, QHCM established DALP, of which it was the general partner, to raise funds to invest in a private equity business. QHCM retained QAM as DALP's investment adviser and to sell the units of DALP to investors. From July 2008 to May 2009, QAM sold DALP's units in two private offerings under two offering memoranda, both of which were signed by Nagy and Sanfelice on behalf of QHCM.

[22] The first offering memorandum relating to the sale of most of DALP's units ($5 million of $5.65 million) represented that DALP intended to acquire CHW, by purchasing all of CHW's outstanding shares. Nagy and Sanfelice controlled and were the directing minds not only of QHCM and QAM, but also of DALP and CHW. They also held over 80 percent of CHW's outstanding shares.

[23] The offering memorandum stated that the price would not exceed $2.65 million, and would be based on an independent valuation by a third party valuation firm. Under the direction of Nagy and Sanfelice, CHW retained Deloitte & Touche LLP (**Deloitte**) to prepare the valuation, which was to be completed by the end of January 2009. On January 19, 2009, Deloitte informed Sanfelice in a telephone meeting that the valuation would be substantially less than $2.65 million. Although Deloitte had not completed its valuation report, it had prepared several estimates based on a forecast provided by Nagy and Sanfelice. Deloitte's estimated value for the CHW shares at that time had a midpoint of $1,535,000.

[24] The next day, as a result of that information, Nagy and Sanfelice terminated Deloitte's engagement. They later retained another valuator to prepare the required valuation. They provided the new valuator with a revised, more aggressive forecast. In the Merits Decision, the Commission found that Nagy and Sanfelice revised the forecast "by just enough to support a valuation that they knew from their own calculations would approximate their target value of $2.65 million".[15]

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[13] *Re Cartaway Resources Corp.*, 2004 SCC 26 (***Re Cartaway***).
[14] *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 (***Re Limelight***) at paras 21 and 52.
[15] Merits Decision at para 155.

[25] The second offering memorandum, which immediately followed receipt of the new valuation, said that the price for DALP's acquisition of CHW's shares would be $2,535,688. This was the midpoint of the valuation provided by the new valuator. DALP purchased the CHW shares for this amount; Nagy and Sanfelice received $1,223,035.43 and $819,432.80, respectively, for their shares.

[26] Nagy and Sanfelice prepared the revised forecast for the sole purpose of obtaining a valuation of CHW that would approximate $2.65 million. In doing so, they deceitfully caused DALP to pay a higher price for their CHW shares than DALP would have paid had Deloitte been allowed to complete and issue its valuation report. This conduct was "dishonest and deceitful and enriched Nagy and Sanfelice as the owners of more than 80% of CHW's shares at the expense of DALP and its investors."[16] The Commission concluded that Nagy, Sanfelice and QHCM thereby perpetrated a fraud on DALP investors contrary to clause 126.1(1)(b) of the Act.[17]

(b) Submissions

[27] Paragraph 127(1)10 of the Act authorizes the Commission to require a person who has not complied with Ontario securities law "to disgorge to the Commission any amounts obtained as a result of the non-compliance." Staff submitted that Nagy and Sanfelice should be required to disgorge the full amounts they received from the sale of their shares ($1,223,035.43 and $819,432.80, respectively), as those were the "amounts obtained" by them as a result of their contravention of section 126.1.

[28] We asked Staff how the "amounts obtained" should be calculated if we were to conclude instead that any disgorgement order ought to be based on the difference between the value of CHW shares and the price paid by DALP. Staff submitted that in that event, the $1,535,000 midpoint in Deloitte's valuation work immediately prior to the termination of its engagement was the best estimate supported by the evidence and should be used.

[29] The respondents argued that DALP investors were not harmed because those who purchased DALP securities under the initial offering memorandum expected that DALP would pay as much as $2.65 million for CHW shares and because the value of CHW, which is DALP's primary asset, is now greater than the amount DALP paid for CHW.

[30] Alternatively, they argued that Staff's primary submission incorrectly attributed no value to the CHW shares. They submitted that if we were to base a disgorgement order on the difference between the amount paid by DALP for CHW shares and another value, the difference would be no more than $668,909, which they calculated by applying the second valuator's methodology to the forecast that was provided to Deloitte.

(c) Analysis

[31] The respondents' argument that DALP investors were not harmed is inconsistent with the Merits Decision, in which the Commission expressly found that the respondents' dishonest conduct was at the expense of DALP and its investors. However, as the Merits Decision indicates, the CHW shares did have some value,

[16] Merits Decision at para 162.
[17] Merits Decision at para 163.

but not the higher value that Nagy and Sanfelice obtained by preventing Deloitte from completing and issuing its valuation report and by fraudulently manipulating the second valuation.

[32] Paragraph 127(1)10 of the Act authorizes disgorgement only of "amounts obtained as a result of the non-compliance". In our view, the amount obtained as a result of Nagy and Sanfelice's non-compliance is the difference between the price they obtained on the sale of their shares and the value of the shares at the time. They must disgorge this difference.

[33] Staff has the burden of proving that a respondent obtained some amount as a result of a contravention. However, if a respondent's illegal conduct creates difficulty in determining the amount, the risks of any such uncertainty fall on that respondent.[18] In this case, any uncertainty arising out of Nagy and Sanfelice's fraudulent termination of Deloitte's engagement before Deloitte could complete its valuation report cannot inure to the respondents' benefit.

[34] We are not persuaded by the respondents' submissions that the difference between the amount paid by DALP and the value of the CHW shares is $668,909. This amount is based on their own recalculation, without any evidence that the second valuator's valuation methodology properly applies to the materials provided to Deloitte.

[35] Although the difference in value resulting from the respondents' contravention was not quantified in the Merits Decision, it can be determined from the evidence. By January 19, 2009, the date of the telephone meeting with Nagy and Sanfelice, Deloitte had done substantial work in preparation of its valuation. At that time, Deloitte's work indicated a valuation with a midpoint of $1,535,000, subject to its request to Nagy and Sanfelice for further information.

[36] By January 19, Deloitte's valuation work was sufficiently developed to provide the basis for a disgorgement order. We find, therefore, that for purposes of determining the amount obtained by Nagy and Sanfelice as a result of their contravention of the Act, the value of the CHW shares purchased by DALP was $1,535,000.

[37] Based on DALP's purchase price of $2,535,688, Nagy and Sanfelice received $1,223,035.43 and $819,432.80, respectively, for their CHW shares. Based on a valuation of $1,535,000, the prorated amounts would have been $740,374.76 and $496,050.52, respectively. The difference between the amounts they received and should have received is the amount obtained as a result of their contravention of clause 126.1(1)(b) of the Act. Nagy, therefore, must disgorge $482,660.67 and Sanfelice must disgorge $323,382.28.

2. Second Fraud: Undisclosed Use of Funds by QAM

(a) Facts

[38] From August 2009 to March 2011, QAM issued and sold preference shares with a fixed, cumulative dividend. From March 2011 to June 2012, QAM sold a second series of preference shares (**QAM II Shares**), also with a fixed, cumulative dividend (the **QAM II Offering**). Dividends on both series of shares were

[18] *Re Limelight* at paras 48(b) and 53. This principle has also been adopted in British Columbia: *Poonian v British Columbia Securities Commission*, 2017 BCCA 207 at paras 139-140 (***Poonian***).

payable semi-annually on June 30 and December 31, with an additional dividend payment of 0.5 percent for each month that the cumulative dividend was in arrears.

[39] By June 2011, QAM had insufficient funds to pay the dividends that were due. At Nagy and Sanfelice's direction, QAM used more than $500,000 of the $2,411,880 raised in the QAM II Offering to pay part of the June 2011 and December 2011 dividends on both series of shares.

[40] This intentional use of funds by Nagy and Sanfelice was for a purpose other than those identified in the QAM II offering memorandum. As a result, the offering memorandum conveyed what the Merits Decision described as "a thoroughly misleading picture of what investors were buying into and what was happening with their money."[19] The Commission found that the QAM II Offering and the use of the funds to pay the dividends constituted a fraudulent course of conduct and therefore a contravention of clause 126.1(1)(b) of the Act by Nagy, Sanfelice and QAM.

[41] The misuse of funds raised in the QAM II Offering was contrary to the interests of the investors and increased the risk associated with their investment. As the Commission found in the Merits Decision, this misuse deprived QAM of "the funds it needed to generate revenue through the growth and expansion of its business."[20]

(b) Submissions

[42] The undisclosed use of the funds from the QAM II Offering began with payment of the June 30, 2011 dividends. Staff submitted that Nagy and Sanfelice should be required to disgorge $2,309,880, being $2,411,880 (the amount raised from investors in the QAM II Offering after June 30, 2011) less $102,000, the total dividends paid to holders of QAM II Shares.

[43] The respondents submitted that no disgorgement order should be made. They admitted that no one would have purchased QAM II Shares if QAM had failed to pay the dividends. However, they argued that the contravention related to their failure to disclose their use of funds to pay dividends and that there is no evidence that purchasers of QAM II Shares would not have purchased had the use of funds been disclosed.

[44] In making that submission, they also suggested that the use of those funds was not material in light of the size of the QAM II Offering and QAM's business plan. They contended, as well, that they should not have to disgorge any amount because they received no personal benefit from their fraudulent conduct, as the offering was made by QAM.

(c) Analysis

[45] The respondents' submission concerning disclosure and reliance misconceives the nature of a fraud. In view of the Commission's finding of fraud in the Merits Decision, Staff does not need to prove that investors relied on the respondents' failure to disclose their use of QAM II funds. Further, the materiality of the use that was made of the funds is implicit in the finding that QAM's offering

[19] Merits Decision at para 245, quoting *Re Capital Alternatives Inc.*, 2007 ABASC 482 at para 61.
[20] Merits Decision at para 249.

memorandum contained a misrepresentation.[21] Accepting the respondents' submissions would therefore lead us to conclusions that are impermissibly inconsistent with the finding of fraud in the Merits Decision. Accordingly, we reject those submissions.

[46] As discussed above, the Act authorizes disgorgement of amounts obtained by the respondents as a result of their fraud. The respondents admitted in their oral submissions that Nagy and Sanfelice received an indirect benefit from the distribution in view of their positions and interests in QAM. Moreover, as the directing minds of QAM, their conduct was QAM's and vice versa. Accordingly, the funds that QAM received through the QAM II Offering were obtained by Nagy and Sanfelice. Staff need not show that the funds received by QAM were personally obtained by Nagy and Sanfelice.[22] In these circumstances, the Commission has commonly held the directing minds of an issuer that receives funds through a contravention of the Act to be jointly and severally liable for the disgorgement of those funds.[23]

[47] Disgorgement of the full amount obtained, however, is not mandatory. Paragraph 127(1)10 authorizes the Commission to require disgorgement of "any" amounts obtained as a result of a contravention. It is open to the Commission to order disgorgement of less than the full amount obtained, if circumstances warrant a reduction.[24] It is appropriate in this case to apply a reduction to reflect the amount of the dividends paid to investors in QAM II Shares. The evidence does not support any other reduction.

[48] The amount obtained as a result of Nagy's, Sanfelice's and QAM's contravention of clause 126.1(1)(b) was $2,411,880, and QAM II investors received $102,000 back as dividends. Accordingly, Nagy and Sanfelice must jointly and severally disgorge $2,309,880.

3. Third Fraud: Misappropriation of QSA Funds

(a) Facts

[49] QSA was incorporated in June 2011 as a wholly-owned subsidiary of QAM to provide investors with an indirect investment in a portfolio of U.S. residential mortgage-backed securities, with QAM managing QSA's assets. Units of QSA were sold to investors from August 31 to December 22, 2012, on the basis of offering memoranda that provided that QAM would receive, in total, 14 percent of the funds raised in the offering, comprising 10 percent for sales commissions and 4 percent to reimburse QAM for costs of the offering. QAM was to bear any additional costs.

[50] In October and November 2012, when QAM was having business difficulties and required working capital, Nagy and Sanfelice had QSA pay QAM $218,893, which was approximately two thirds of the $327,534 raised and $185,397 more than

[21] Merits Decision at para 241; see Act, s 1(1) "misrepresentation".
[22] *North American Financial Group Inc. v Ontario Securities Commission*, 2018 ONSC 136 (Div Ct) at para 127.
[23] See, *e.g.*, *Re Limelight* at paras 59-60; *Re Blackwood & Rose Inc.* (2014), 37 OSCB 4699 at para 53; *Phillips v Ontario Securities Commission*, 2016 ONSC 7901 (Div Ct) at paras 77-78; *Re Sabourin* at para 70.
[24] *Re Phillips* (2015), 38 OSCB 9311 (***Re Phillips***) at paras 32-36; *Poonian* at para 138.

QAM was entitled to receive.[25] Those funds enabled QAM to maintain its working capital for an additional two months. As the respondents admitted at the merits hearing and before us, the funds from the QSA offering were the only funds available to QAM.

[51] As the Commission found in the Merits Decision, Nagy and Sanfelice were fully aware that they had "achieved mixed to very poor results and that Quadrexx was continuing to incur significant monthly operating losses".[26] The transfer was a misappropriation of the proceeds of the QSA offering and reflected an egregious failure to disclose information of which Nagy and Sanfelice were fully aware. By engaging in this course of conduct, Nagy, Sanfelice, QAM and QSA perpetrated a fraud on QSA investors, contrary to clause 126.1(1)(b) of the Act.

(b) Submissions

[52] Staff submitted that Nagy and Sanfelice should be required to disgorge the $185,397 on a joint and several basis.

[53] The respondents argued that QAM was in dire circumstances, that it had to report a capital deficiency two months later and they were attempting to benefit QAM rather than themselves. They again argued that no disgorgement order should be made, because they received no personal benefit from the overpayment of funds to QAM, as Sanfelice received no salary from QAM during this period and Nagy received only a minimal amount. Ultimately, they submitted that Sanfelice should not be required to disgorge any amount and Nagy should be required to disgorge at most 25 percent of the overpayment, being approximately $46,000.

(c) Analysis

[54] The respondents' submissions reinforced the finding in the Merits Decision that Nagy and Sanfelice's conduct demonstrated their commitment to QAM's survival, "without regard to the consequences of their actions."[27] As with the QAM II Offering, their devotion to QAM does not mitigate the finding in the Merits Decision that they engaged in a fraudulent course of conduct. The respondents admitted in their oral submissions that Nagy and Sanfelice received an indirect benefit in view of their positions and interests in QAM. Moreover, as the directing minds of QAM and QSA, their conduct was that of QAM and QSA and vice versa. Again, Staff need not show that the funds received by QAM were personally obtained by Nagy and Sanfelice.

[55] For these reasons, the appropriate order is that Nagy and Sanfelice disgorge the amount so obtained, $185,397, on a joint and several basis.

C. Administrative Penalties

1. Introduction

[56] Disgorgement may deprive a wrongdoer of funds obtained through wrongdoing, but its deterrent effect is necessarily limited, as it may leave the wrongdoer no worse than in a "break-even" position. To achieve effective deterrence, an additional sanction may be required. An order under paragraph 127(1)9 of the

[25] Merits Decision at paras 284, 299 and 319.
[26] Merits Decision at para 329.
[27] Merits Decision at para 382.

Act, which authorizes the Commission to impose an administrative penalty of up to $1 million for each failure to comply with Ontario securities law, may serve this purpose.

[57] Staff requested administrative penalties for each of Nagy and Sanfelice for their contraventions of section 126.1. Focussing on the need for specific and general deterrence as central to sanctions in this case, Staff emphasized Nagy and Sanfelice's three discrete contraventions over a four-year period, involving different securities offerings, different investors and different types of conduct. Staff submitted that we should therefore impose a separate penalty for each contravention.

[58] The determination of an appropriate administrative penalty must be global, taking into account the disgorgement ordered and the fact that the respondents will be prohibited from participating in the capital markets, as discussed more fully below. Both specific and general deterrence have to be considered, recognizing that an undue emphasis on general deterrence may result in a penalty that is disproportionate and punitive.[28] An appropriate penalty will accomplish both specific and general deterrence, but the remedial emphasis required to protect the public interest will vary according to the circumstances.[29]

[59] As Staff acknowledged, determining the amount of an administrative penalty is not a science, but a matter of judgment. The Commission's precedents reflect a wide range of sanctions that vary according to the circumstances; the precedents provided by Staff had penalties from $150,000 to $1 million.[30] Because of the differences in detail and circumstances in the cited decisions, the sanctions imposed in them largely serve to suggest a possible range of penalties and a principled approach to them.

[60] We begin by addressing each contravention separately. To ensure proportionality, we then consider the monetary sanctions that are appropriate in light of all the respondents' conduct and their personal circumstances.

2. First Fraud: Sale of Shares to DALP at Inflated Value

[61] The fraudulent conduct relating to DALP is described above, in paragraphs [21] to [26], in our discussion of disgorgement. That discussion dealt only with the amounts obtained by Nagy and Sanfelice. As the general partner of DALP, however, QHCM also participated in the fraud in contravention of clause 126.1(1)(b) of the Act. We must address its conduct, as well.

(a) Submissions

[62] Staff requested an administrative penalty of $600,000 for each of Nagy, Sanfelice and QHCM. Staff emphasized the seriousness of the respondents' fraudulent conduct with respect to DALP, Nagy and Sanfelice's overall pattern of conduct over a four-year period (including the non-fraud contraventions), the fact that they were registrants, and the fact that the distribution of DALP securities raised $5.65 million from 37 investors. Staff submitted that the requested penalties were necessary for deterrence, both specific and general.

[28] *Re Cartaway* at para 64.
[29] *Re Cartaway* at para 64.
[30] Schedule D to Staff Submission.

[63] The respondents said that their reason for selling their shares in CHW was to enable Nagy and Sanfelice to concentrate on QAM's business and that sanctions should take this motivation into account. They submitted that no administrative penalty should be imposed in view of the fact that the offering memoranda for DALP securities fully disclosed their conflicts and other material matters, but that if a penalty is imposed, it should be nominal.

(b) Analysis

i. Nagy and Sanfelice

[64] Fraud is always serious. Fraudulent conduct undermines both of the Act's purposes, namely, investor protection and fair and efficient capital markets. Nagy and Sanfelice's conduct in orchestrating the DALP transaction at an inflated price is particularly egregious in view of their control of all parties to the transaction and the fact that only their personal profit, as opposed to a legitimate business purpose, motivated their conduct. In addition, as QAM's UDP and CCO, respectively, they were registrants with substantial experience in the securities industry and as such, were obligated to deal fairly, honestly and in good faith with QAM's clients, including DALP. Nagy and Sanfelice's multiple relationships with the various parties involved in the DALP transaction compounded the seriousness of their fraudulent conduct. That conduct is no less serious because of their motivation to benefit QAM or their disclosure in DALP's offering memorandum of their various positions.

[65] We must also consider the respondents' submissions with respect to Nagy's and Sanfelice's current financial circumstances. In their written submissions, they state that this proceeding and the findings on the merits have had a "devastating" impact on their careers and financial positions.

[66] They submit that Nagy can no longer be employed in the securities business, that he is having difficulty finding any work, that he has no assets left "except a computer and a 9 year old car", that he has developed high blood pressure and stress-related illnesses since 2013 and that he has lost many friends as a result of the Merits Decision.

[67] They submit that Sanfelice has had "little or no income for the past 5 years" while working at CHW, that he has lost approximately $109,000 as a creditor of QAM, that he guaranteed a $340,000 bank loan to save CHW from collapse, that he personally (with his wife) loaned approximately $270,000 to CHW in 2012 and 2013 to allow it to continue, and that he has incurred significant legal expenses in his defence in the merits hearing.[31]

[68] We have taken this information into account. However, because the respondents did not make these submissions under oath and have not adduced evidence to substantiate them, we give them limited weight. In any event, we must view them alongside the findings of fraud.

[69] The Commission has previously imposed administrative penalties ranging from $400,000 to $750,000 on persons who have directed fraudulent distributions of

[31] Respondents' Submission, pp 155-160.

securities.[32] Although those decisions indicate a range of penalties, they did not involve circumstances like the DALP transaction.

[70] As explained above, we will order Nagy and Sanfelice to disgorge $806,042.95, which is no more than the amount that they improperly received as a result of their fraud. The disgorgement order alone will therefore have little, if any, deterrent effect for them or for any other person who might be inclined to engage in similar conduct. An administrative penalty is necessary to reflect the seriousness of their fraud, and the penalty should be significant in order to achieve specific and general deterrence. However, in view of the fact that Nagy and Sanfelice must disgorge the amounts they obtained, in view of their financial circumstances, and in view of the permanent market bans to be imposed on them, the administrative penalty need not be at the upper end of the available range to achieve deterrence.

ii. QHCM

[71] QHCM did not obtain any funds from the sale of the CHW shares, and Staff did not request an order requiring disgorgement by it, but QHCM contravened section 126.1 through its participation as DALP's general partner, under Nagy and Sanfelice's direction. An administrative penalty should be imposed on all participants in the fraud relating to the DALP purchase.

[72] Although no evidence was adduced concerning the ownership of QHCM, it is reasonable to infer that Nagy, and possibly Sanfelice, will be affected by any penalty imposed on it. The considerations relevant to them, therefore, also apply to QHCM, although less directly.

3. Second Fraud: Undisclosed Use of Funds by QAM

(a) Submissions

[73] Staff requested administrative penalties of $500,000 for each of Nagy and Sanfelice in respect of their fraudulent conduct relating to QAM's payment of dividends, because their actions were intentional and extended over a period of nine months, from July 2011 to March 2012.

[74] The respondents' submissions largely replicated those made with respect to disgorgement; namely, that they received no personal benefit from the dividend payments; that unlike the businesses in cases cited by Staff, QAM's business was a real one; that they were attempting to further QAM's business plan; and that a failure to pay dividends would have been harmful to QAM. They submitted that there should be no administrative penalty for this fraud but alternatively, if there were one, it should be nominal and not more than $10,000.

(b) Analysis

[75] The general considerations applicable to the DALP transaction also apply to the conduct relating to the QAM II Offering, but there is a difference. We must take into account the fact that the respondents must disgorge the full amount of the funds improperly raised through the offering. Because those funds went to QAM,

[32] See, *e.g.*, *Re Moncasa Capital Corp*. (2014), 37 OSCB 229 (***Re Moncasa***) at paras 32-37 ($400,000); *Re Bradon Technologies Ltd.* (2016), 39 OSCB 4907 at paras 94-96 ($500,000); *Re Al-Tar Energy Corp*. (2011), 34 OSCB 447 (***Re Al-Tar***) at paras 47-52 ($650,000 and $750,000); *Re Pogachar* (2012), 35 OSCB 6479 at paras 37-38 ($750,000).

which is now bankrupt, the effect of the $2,309,880 disgorgement order on Nagy and Sanfelice is substantial both in its deterrent and personal financial impact.

[76] Nevertheless, Nagy and Sanfelice benefited from the funds raised in the QAM II Offering. As they were the directing minds of QAM, they had control of those funds and directed their use. In short, they "obtained" the funds as a result of their contravention of the Act. This approach is consistent with the instances in which the Commission has required the directing minds of a corporation, jointly and severally, to disgorge amounts that ended up in the pockets of their fraudulent vehicles.[33]

[77] Two decisions bear similarities to QAM's distribution of QAM II Shares and the undisclosed use of funds to pay dividends. In *Re Phillips*, the Commission imposed an administrative penalty of $700,000 on the directing mind of a registrant that raised funds without disclosing to investors that its financial condition was precarious,[34] as did QAM,[35] although the amount raised by Phillips was significantly greater than in this case.

[78] In *Re North American Financial Group Inc.*, in addition to requiring disgorgement, the Commission imposed penalties of $600,000 on the respondent registrants, who distributed securities in a real business for which they had unrealistic plans and expectations, and which subsequently declared bankruptcy. Because they used funds raised from new investors to pay earlier investors, the Commission found that they were perpetrators of a fraudulent Ponzi scheme.[36] Although the QAM II Offering was not a Ponzi scheme, the use of funds raised in the QAM II Offering to pay dividends is analogous and the general patterns and amounts raised are similar.

[79] These two decisions, and the aggravating factors that are discussed above with respect to the DALP transaction, and that apply here as well, might suggest an administrative penalty approaching the $500,000 requested by Staff. However, in light of the effect of our disgorgement order and the other sanctions, an administrative penalty of that amount is not necessary for specific or general deterrence. The necessary deterrence may be achieved through a less severe penalty for this fraud.

4. Third Fraud: Misappropriation of QSA Funds

(a) Submissions

[80] In respect of the fraud relating to misappropriation of QSA funds, Staff requested an administrative penalty of $300,000 for each of Nagy and Sanfelice. Staff submitted that the amount of the penalty should not be less than the $185,397 that Nagy and Sanfelice obtained through their fraudulent conduct.

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[33] See, *e.g.*, *Re Limelight* at paras 59-60; *Re Blackwood & Rose Inc.* (2014), 37 OSCB 4699 at para 53; *Phillips v Ontario Securities Commission*, 2016 ONSC 7901 (Div Ct) at paras 77-78; *Re Sabourin* at para 70. The British Columbia Court of Appeal has accepted the imposition of a disgorgement remedy on the directing minds of an issuer, if the regulator considers it appropriate in the public interest; see *Poonian* at paras 121-131.

[34] *Re Phillips* at paras 64-69, affirmed 2016 ONSC 7901 (Div Ct).

[35] Merits Decision at para 235.

[36] (2014), 37 OSCB 8522 at paras 56-58 (***Re North American Financial Group***), affirmed 2018 ONSC 136 (Div Ct).

[81] The respondents made essentially the same submissions with respect to this contravention as with respect to the others. They said that no other funds were available to QAM because their voluntary undertaking to Staff in June 2012 precluded QAM from raising capital through a sale of its shares and because the Commission's registration staff had refused to allow them to pursue a business plan that they believed would have been profitable. They said that their action was not motivated by an attempt to cover QAM's working capital deficiency.

(b) Analysis

[82] As with the funds raised in the QAM II Offering, the misappropriated QSA funds did not go to Nagy and Sanfelice directly. In both cases, Nagy and Sanfelice's motive was to preserve and further QAM's business. In both cases, they engaged in fraudulent conduct based on what can only be viewed as an unrealistic belief in QAM's eventual success. As stated previously, neither this motivation nor the fact that the funds from the QSA Offering were the only funds available to QAM can justify the respondents' fraudulent conduct.

[83] Once again, Nagy and Sanfelice's conduct warrants administrative penalties in addition to disgorgement.[37] Penalties that approximate the amount they obtained from the contravention of section 126.1 relating to QSA would be sufficient to achieve specific and general deterrence.[38]

5. Amount of Appropriate Penalties

(a) Nagy and Sanfelice

[84] Nagy and Sanfelice were experienced registrants who held positions of special responsibility (UDP and CCO), and who engaged in three separate and distinct frauds, in addition to other contraventions of Ontario securities law, over a four-year period.

[85] Nagy and Sanfelice allowed their pursuit of QAM's corporate goals to override legal and ethical considerations. Their manipulation of the valuation process associated with the sale of their CHW shares at an inflated value was a singularly self-interested and egregious abuse of their positions with respect to DALP and showed complete disregard for DALP's investors. Their three frauds require a significant administrative penalty in order to achieve deterrence and protect investors and the integrity of the capital market.

[86] Staff's requests for administrative penalties for each of the three fraud contraventions total $1.4 million. While we addressed disgorgement on the basis of each contravention separately, as we must do, we need not adopt a similar approach for administrative penalties. In our view, three separate penalties are not required for deterrence in this case.

[87] Having said that, because the disgorgement and the administrative penalties for the three contraventions of section 126.1 are complementary, they should be considered together. Nagy and Sanfelice are required to disgorge $2,495,277 on a joint and several basis for the QAM II and QSA contraventions; in addition,

[37] See, *e.g.*, *Re Moncasa* at para 21(a) (misappropriation of $327,773.52 for personal expenses) and paras 34-37 ($400,000).
[38] *Re Al-Tar* at para 47.

Nagy is required to disgorge $482,660.67 and Sanfelice $323,382.28 for the DALP contravention.

[88] We have taken into account these disgorgement amounts, the seriousness of Nagy and Sanfelice's recurrent contraventions, their overall conduct relating to those contraventions, their financial circumstances, and the fact that they will be subject to permanent market bans. Considering all these factors, and the need for specific and general deterrence, we conclude that an administrative penalty of $600,000 is appropriate for each of them.

[89] Nagy will therefore be required to pay to the Commission $1,082,660.67 (disgorgement of $482,660.67 and an administrative penalty of $600,000.00). Sanfelice will be required to pay $923,382.28 (disgorgement of $323,382.28 and an administrative penalty of $600,000.00). They will also be jointly and severally obligated to disgorge an additional $2,495,277. These totals are proportionate to the conduct and circumstances of Nagy and Sanfelice.

(b) QHCM

[90] Although QHCM did not obtain any funds as a result of the DALP transaction, QHCM was the vehicle through which Nagy and Sanfelice accomplished it. As DALP's general partner, QHCM was responsible for DALP's operations, which included its offering of units and the conduct of its business activities, in the course of which QHCM contravened section 126.1 of the Act by participating in Nagy and Sanfelice's fraudulent course of conduct.

[91] The characteristics of the DALP transaction that resulted in QHCM's contravention of section 126.1 need not be repeated. Suffice it to say that a significant monetary penalty is required. In view of QHCM's role in DALP, and taking into account that Nagy and Sanfelice were its directing minds and are likely to be affected by any penalty imposed on it, QHCM must pay an administrative penalty of $300,000.

D. Prohibitions on Market Participation

1. Submissions

[92] Staff requested that Nagy and Sanfelice be prohibited permanently from trading in securities, from acting as registrants, and from being involved with any issuer in a managerial capacity.

[93] The individual respondents requested limited bans for themselves, ending on December 31, 2018. They said the findings in the Merits Decision did not relate to personal trading by them, that they had been out of the market since March 2013, at least with respect to registrable activities, and that a ban for the period they proposed would therefore effectively amount to a six-year prohibition.

2. Analysis

[94] Nagy and Sanfelice's three fraud contraventions, and the other contraventions of Ontario securities law found in the Merits Decision, demonstrate a consistent pattern of disregarding investors' interests in order to further QAM's interests and their own. Such conduct would usually warrant a lifetime prohibition against participation in the capital markets, absent a reason for a lesser period or a limited exception to a complete prohibition (a "carve-out"). Staff requested such a prohibition, without carve-outs.

(a) Registration

[95] Nagy and Sanfelice were directors and officers of QAM, which was a registrant, and were themselves registrants with responsible positions and regulatory responsibilities, Nagy as QAM's UDP and Sanfelice as its CCO. Registrants are expected to be trustworthy; they have an obligation to deal honestly, fairly and in good faith with their clients. Because registrants must adhere to high standards of proficiency and integrity, and because they must meet educational requirements to ensure that they understand these obligations, the Commission has consistently held that expectations about registrants' conduct are greater than those for non-professionals.[39]

[96] Nagy and Sanfelice's involvement in the three frauds, including their directing the involvement of QAM, QHCM and QSA in those frauds, demonstrates that they lack the integrity required of registrants, and disqualifies them from registration. An order permanently prohibiting each of them from acting as a director or officer of a registrant, including an investment fund manager, and permanently prohibiting them from becoming or acting as a registrant, an investment fund manager or a promoter is appropriate.

[97] The respondents submitted that no order should be made with respect to QHCM. While Staff's written submissions did not address QHCM in this respect, as it is not currently a registrant, the Notice of Hearing did contemplate a similar order against QHCM. As DALP's general partner, QHCM participated in the fraudulent valuation of Nagy and Sanfelice's shares in the sale of CHW to DALP, under the direction of Nagy and Sanfelice, and contravened section 126.1. QHCM should also be prohibited from becoming or acting as a registrant or a promoter.

(b) Trading

i. Prohibitions

[98] The primary method of protecting investors and the securities market has historically been to prohibit wrongdoers from trading in or purchasing securities, and to deny them the use of the exemptions from registration that would permit them to trade or advise without being registered. Such orders apply to both professional and personal trading.

[99] We cannot accept the respondents' argument that the fraudulent conduct that contravened section 126.1 of the Act did not involve or was not related to personal trading by them. Both Nagy and Sanfelice sold their own shares in CHW to DALP at a price that was calculated on the basis of their fraudulent conduct. In addition, the valuation of CHW shares was conducted in connection with a distribution of DALP securities to investors under offering memoranda prepared at the direction of Nagy and Sanfelice. The fraud was therefore directly connected to trading in securities in which they and QAM, also under their direction, participated and from which they received a benefit.

[100] QAM's payment of dividends using funds raised in the QAM II Offering was also related to a distribution of shares and was intended to permit that distribution to occur, as the respondents admitted in their written and oral submissions. Similarly, the misappropriation of funds raised in the QSA Offering related to a

[39] Merits Decision at para 381, citing *Re Sterling Grace & Co.* (2014), 37 OSCB 8298 at para 255; see also, *e.g.*, *Re North American Financial Group* at para 38.

distribution of securities. In both cases, Nagy and Sanfelice directed the sale of securities, and the fraudulent conduct was intended to further their personal interests.

[101] All of the respondents' fraudulent transactions involved trading in securities. There is therefore no reason for a prohibition on trading against Nagy and Sanfelice to be limited on the basis that their conduct did not involve personal trading. They should be permanently prohibited from trading or acquiring securities, and they should be permanently denied the exemptions under the Act. The same prohibitions should apply to:

a. QHCM, which as general partner authorized the distribution of DALP units by QAM and the purchase of CHW shares at a fraudulently inflated value; and

b. QSA, because it was a vehicle for the misappropriation of funds it raised.

ii. Carve-outs

[102] It is not uncommon for a person subject to a prohibition on trading and purchasing to be permitted to continue to invest in securities in personal accounts. As the respondents were self-represented and did not request a carve-out in their written submissions, we asked Staff to address this issue. In particular, we asked Staff to distinguish this case from a recent decision in which a respondent who had been criminally convicted of fraud was granted a carve-out for personal trading.[40]

[103] The burden of demonstrating a need for a carve-out of any type is on the respondent.[41] Although the respondents in this case addressed carve-outs in their oral submissions, they provided no evidence or information concerning personal investment accounts that they may hold, or with respect to the need for such carve-outs. We have concluded, therefore, that there is no basis for granting a carve-out from the prohibition on trading and acquiring securities.

[104] We agree with Staff's submission that it is open to the respondents to request a variation of the order by bringing an application under section 144 of the Act on the basis of evidence that they then bring before the Commission, which Staff will have an opportunity to address. It should be noted, however, that if we had decided to grant a trading carve-out, we would have made that carve-out conditional on payment of the administrative penalties and the amounts required to be disgorged.

(c) Prohibition against Acting as a Director of Officer

i. Prohibitions

[105] Paragraphs 127(1)7 and 8 authorize the Commission to order a person to resign a position as a director or officer and to prohibit the person from becoming or acting as a director or officer of an issuer. Staff requested such an order with respect to Nagy and Sanfelice. As the directing minds of QAM, QHCM, QSA, CHW and, indirectly, DALP, Nagy and Sanfelice directed and participated in all of the conduct found in the Merits Decision to have been contrary to Ontario securities law. An order prohibiting them from acting as a director or officer of any issuer is

[40] See *Re Drabinsky* (2017), 40 OSCB 5298.
[41] *Re MRS Sciences Inc.* (2014), 37 OSCB 5611 at para 99.

warranted. The question that remains is whether there should be any exception to such an order.

ii. Carve-outs

[106] The respondents advised that DALP has a new independent investment adviser, which replaced QAM following its bankruptcy. They requested a carve-out to permit Nagy to continue as the director and officer of QHCM and Sanfelice to remain the director and officer of CHW.

[107] In his oral submissions, Nagy said that he is the only director and officer of QHCM and that if he cannot continue in this position, DALP will effectively be deprived of its general partner, which will have the effect of penalizing its limited partners.

[108] Similarly, the respondents advised that Sanfelice is currently the only director and officer of CHW, which is DALP's major asset and remains, according to the respondents, a viable business. The respondents referred to Sanfelice's history with CHW, particularly his providing funds to assist it and his protecting its business following Staff's allegations and again following the issuance of the Merits Decision. They represented that in view of CHW's importance to DALP, DALP's new independent investment adviser refused to accept an offer by Sanfelice to resign his position with CHW and that Sanfelice continues to work at CHW under this investment adviser's supervision.[42] They said that if Sanfelice cannot continue in this position, his removal will also harm DALP's limited partners.

[109] Although the Commission's investor protection mandate would ordinarily preclude the granting of a carve-out from the prohibition against acting as directors or officers where a person has engaged in fraudulent activities, it also requires us to consider any harm that our order may cause to investors. For example, the Alberta Securities Commission has granted a carve-out from such a prohibition to enable a person to engage in activities that might benefit investors.[43] However, we require an evidentiary basis to allow us to evaluate the need for, and determine proper limits on, such a carve-out. In this case, the respondents adduced no such evidence.

[110] We received no evidence, for example, concerning QHCM's current operations, the new investment adviser's role with DALP, the nature of this adviser's supervision of Sanfelice's work for CHW, or why Sanfelice must be a director or officer of CHW to perform this work for CHW. Similarly, we heard no evidence of the views of affected investors. We might have been influenced by evidence that a majority of the DALP limited partners, after having been provided with full disclosure of the Merits Decision, voted in favour of Nagy continuing as the director and officer of QHCM and of Sanfelice continuing as the director and officer of CHW.

[111] We conclude that the respondents have not demonstrated an adequate basis for the requested carve-outs. If the respondents decide to seek an order granting such carve-outs, it is open to them to make an application under section 144 of the Act for a variation of our order.

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[42] Respondents' Submission, p 158.
[43] *Re DeLaet,* 2013 ABASC 228 at paras 28, 35 and 57-59.

[112] However, because of the concerns that the respondents raised with respect to a ban's effect on the limited partners of DALP, our order prohibiting Nagy and Sanfelice from acting as a director or officer will not take effect for 30 days; that is, until the time for an appeal with respect to this proceeding has expired.

E. Reprimands

[113] Staff initially requested that the Commission reprimand each of the respondents. When asked what purpose a reprimand would serve in addition to the requested monetary sanctions and preclusive orders, Staff withdrew its request, implicitly conceding that a reprimand would serve little additional purpose in this case. We agree.

III. COSTS

[114] Section 127.1 of the Act authorizes the Commission to order a respondent to 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.

[115] Staff has provided an affidavit regarding costs and disbursements, which shows Staff's costs of the investigation, prehearing activities and merits hearing. The affidavit lists staff members who participated in each phase, the hourly rates approved by the Commission for their positions, and time spent by them, shown in time dockets. The costs incurred, including disbursements for which receipts were included, totalled $1,378,689.98 for more than 7,700 hours.

[116] Staff have reduced these costs by $476,038.11 by excluding time spent by three enforcement staff members, resulting in $1,098,672.50 for approximately 5,600 hours, and by reducing the time of the remaining four by an additional $213,214.36. They do not request costs relating to this sanctions hearing. In the result, Staff's request for costs of the investigation and hearing, including disbursements, is $902,651.87.

[117] While this request appears reasonable in view of the length of the hearing (44 days), the complexity of the issues addressed in the hearing, Staff's success in establishing virtually all of its allegations, and the time spent by Staff, the $902,651.87 requested is more than the administrative penalties that we are imposing on Nagy and Sanfelice.

[118] Reimbursement of the Commission's costs by a respondent who contravenes Ontario securities law is reasonable in view of the fact that the Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and others. Nevertheless, although a respondent can expect to pay costs, a large costs award will likely be viewed by the respondent as an additional penalty. The potential for such an award may affect a respondent's willingness, and ability, to pursue a full defence.

[119] As with an administrative penalty, determining the amount of a costs award is not a science. The Commission should adopt a balanced approach that takes into account all of these considerations.

[120] Considering the length of the hearing, the complexity of the issues, Staff's success in establishing its allegations, the time spent by Staff, the financial sanctions imposed on the respondents, and the representations concerning their financial circumstances, we have determined that a costs award of $550,000 is appropriate, which amount comprises:

a. $300,000 to be paid by Nagy and Sanfelice jointly and severally;

b. $150,000 to be paid by QHCM, Nagy and Sanfelice jointly and severally; and

c. $100,000 to be paid by QSA, Nagy and Sanfelice jointly and severally.

IV. ORDER

[121] For all of these reasons, the following orders are in the public interest:

a. Nagy, Sanfelice, QHCM and QSA are prohibited permanently from trading in or acquiring any securities;

b. all exemptions contained in Ontario securities law shall not apply to Nagy, Sanfelice, QHCM and QSA, permanently;

c. Nagy and Sanfelice shall resign all positions they hold as an officer or director of any issuer no later than 30 days after the date of this order and thereafter are prohibited permanently from becoming or acting as a director or officer of any issuer;

d. Nagy and Sanfelice shall resign from any positions they hold as an officer or director of a registrant, including an investment fund manager, and are prohibited permanently from becoming or acting as a director or officer of a registrant, including an investment fund manager;

e. Nagy, Sanfelice and QHCM are prohibited permanently from becoming or acting as a registrant, as an investment fund manager, or as a promoter;

f. Nagy and Sanfelice shall each pay to the Commission an administrative penalty of $600,000.00;

g. QHCM shall pay to the Commission an administrative penalty of $300,000.00;

h. Nagy shall disgorge to the Commission $482,660.67;

i. Sanfelice shall disgorge to the Commission $323,382.28;

j. Nagy and Sanfelice shall jointly and severally disgorge to the Commission $2,495,277.00;

k. each of the payments required by paragraphs (f) to (j), inclusive, of this order is designated for allocation or use by the Commission in accordance with subparagraph 3.4(2)(b)(i) or (ii) of the Act;

l. Nagy and Sanfelice shall jointly and severally pay the Commission costs of $300,000.00;

m. Nagy, Sanfelice and QHCM shall jointly and severally pay the Commission costs of $150,000.00; and

n. Nagy, Sanfelice and QSA shall jointly and severally pay the Commission costs of $100,000.00.

Dated at Toronto this 23rd day of January, 2018.

"*Timothy Moseley*"

Timothy Moseley

"*Philip Anisman*"

Philip Anisman

"*AnneMarie Ryan*"

AnneMarie Ryan