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: *Mughal Asset Management Corporation (Re)*, 2024 ONCMT 14
Date: 2024-06-03
File No. 2022-15

IN THE MATTER OF
MUGHAL ASSET MANAGEMENT CORPORATION,
LENDLE CORPORATION and USMAN ASIF

REASONS AND DECISION

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

Adjudicators:	Andrea Burke (chair of the panel) Mary Condon Geoffrey D. Creighton	
Hearing:	By videoconference, March 5, 2024	
Appearances:	Sarah McLeod	For the Ontario Securities Commission
	Usman Asif	For himself and Mughal Asset Management Corporation and Lendle Corporation

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REASONS AND DECISION

1. OVERVIEW

[1] In a decision on the merits dated November 1, 2023[1] (the **Merits Decision**), the Capital Markets Tribunal found that the respondents, Mughal Asset Management Corporation, Lendle Corporation and Usman Asif breached the Ontario *Securities Act*[2] (the ***Act***) by perpetrating a fraud on investors. The Merits Decision also found that Asif made false and misleading statements to the Ontario Securities Commission in the course of an investigation, disclosed a confidential investigation order and summons, and engaged in conduct contrary to the public interest.

[2] As a result of the findings in the Merits Decision, the Commission asks that we order against the respondents:

a. permanent restrictions on their participation in capital markets;

b. the payment of financial sanctions, including the disgorgement of funds they improperly obtained and administrative penalties; and

c. the payment of a portion of the Commission's costs of the investigation and proceeding.

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

a. the respondents be permanently banned from participating in the Ontario capital markets;

b. the respondents jointly and severally disgorge $661,077 and US$245,000 in connection with the Mughal fraud;

c. Asif and Lendle jointly and severally disgorge an additional $70,000 in connection with the Lendle fraud;

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[1] *Mughal Asset Management Corporation (Re)*, 2023 ONCMT 39 (***Merits Decision***)

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

d. the respondents jointly and severally pay an administrative penalty of $800,000;

e. Asif pay an additional administrative penalty of $350,000; and

f. the respondents jointly and severally pay $295,413.65 of the costs of the investigation and hearing.

2. BACKGROUND

[4] The Merits Decision made the following findings of fact that are relevant to our decision on sanctions and costs:

a. Asif was the sole director, officer, shareholder and directing mind of Mughal;

b. from October 2016 until December 2021, Mughal and Asif raised at least $2.757 million and US $264,000 from at least 82 investors by making representations that Mughal was an investment firm, managed various investment funds, and that investors' funds would be pooled and invested and investors would be paid all profits on their investment less a management fee and could expect to earn 2 to 5 percent in monthly returns;

c. Mughal and Asif primarily targeted Ontario investors from the Pakistani community and advertised Mughal as an investment firm through a website, radio, emails, and social media;

d. Mughal investors' funds were never used to purchase securities and were instead primarily used to pay other Mughal investors as simulated returns or to satisfy withdrawal requests. Mughal transferred approximately $1.811 million and US $19,000 back to Mughal investors, and Asif transferred $83,350 from his personal accounts to Mughal investors;

e. Mughal investors' funds were also used for Asif's benefit or personal spending in the amount of $650,698;

f. Mughal investors never received any real return and some investors lost all of their invested funds;

g. in or around November 2019, Asif incorporated Lendle, a purported credit and loan corporation of which he was the chief executive officer and directing mind and Asif and his brother were the sole directors;

h. Mughal also transferred $290,385 of Mughal investors' funds to Lendle;

i. Lendle paid Mughal investors $201,573;

j. in or around mid-2021, Asif solicited two Mughal investors to provide $70,000 directly to Lendle, which he represented would be used for the Lendle business. At least $57,540 of these funds were instead used for Asif's personal expenses;

k. during the Commission's investigation, Asif made false and misleading statements to the Commission and failed to disclose material information;

l. prior to the commencement of this proceeding, Asif disclosed to certain Mughal investors that he was being investigated by the Commission and provided one of them a copy of his s. 13 summons; and

m. Asif disregarded a warning letter sent by the Commission in 2019, he told at least one investor that he had settled the proceeding when no settlement had occurred, and he interfered with the Commission's investigation by coaching a witness and by telling investors they should not cooperate with the investigation. He also attempted to conceal banking activity, and began directing new investments to Lendle after learning that Mughal was under investigation.

[5] The Merits Decision concluded that:

a. Asif and Mughal committed a fraud on Mughal investors, in which Lendle knowingly participated, contrary to s. 126.1(b) of the *Act*;

b. Asif and Lendle committed a separate fraud against two Lendle investors, contrary to s. 126.1(b) of the *Act*;

c. Asif made false and misleading statements to the Commission, contrary to s. 122(1)(a) of the *Act*;

d. Asif disclosed the nature or content of an investigation order and details regarding a summons, contrary to s. 16 of the *Act*;

e. Asif's conduct offended the animating principles of the *Act*, and he engaged the Tribunal's public interest jurisdiction by:

i. disregarding the warning letter sent in 2019;

ii. interfering with the Commission's investigation; and

iii. telling at least one investor that he had settled this enforcement proceeding when no settlement had occurred.

3. PRELIMINARY ISSUES

3.1 Adjournment Motion

[6] At the outset of the sanctions and costs hearing, we denied the respondents' motion for an adjournment of the sanctions and costs hearing, with reasons to follow. These are our reasons for that decision.

[7] The Merits Decision was released on November 1, 2023. The parties agreed that the hearing with respect to sanctions and costs would be on March 5, 2024. They also agreed to a timetable for exchanging and filing materials including scheduling February 20, 2024, for the respondents to serve and file their responding written evidence and submissions. These terms were ordered by the Tribunal on November 28, 2023 (**November 28 Order**).[3]

[8] The respondents did not file any materials for the sanctions and costs hearing in accordance with the agreed timetable. On February 29, 2024, a lawyer wrote to the Tribunal on behalf of the respondents and advised that he was requesting an adjournment of the sanctions and costs hearing and a fresh timetable for the exchange of written materials. He stated in his email that should the adjournment be granted, he would be retained to appear on behalf of the respondents at the sanctions and costs hearing. He further stated that he would be out of the office until in or around mid-April.

[9] We advised that same day, via an email from the Registrar, that if the respondents were seeking an adjournment of the sanctions and costs hearing, it would be heard at the outset of the scheduled March 5 hearing. We also set a

[3] *Mughal Asset Management Corporation (Re)*, (2023) 46 OSCB 9599

timetable for the filing and exchange of any evidence or written submissions that the parties intended to rely on in connection with the adjournment request.

[10] On March 1, Asif sent an email to the Tribunal, stating that:

a. he hired a lawyer so close to the date of the sanctions and costs hearing due to the financial burden he had been experiencing;

b. he has made it a priority to pay off remaining investors, who will be retracting their complaints in the next two weeks;

c. he would be severely prejudiced should he not be represented by counsel at the hearing;

d. he has suffered financial hardship, as a result of losing several business contracts and paying off investors involved in this matter, which has made it difficult to obtain legal counsel;

e. his mother's health has deteriorated; and

f. he had to relocate his family because a lien on his house obtained by the Commission precluded him from refinancing or selling the house, and he defaulted on the mortgages.

[11] Neither the lawyer nor anyone from the lawyer's office appeared at the adjournment motion. When asked, Asif (who appeared on his own behalf and on behalf of the corporate respondents) clarified that the respondents were seeking an adjournment until no later than the end of April. However, he was not in a position to confirm the lawyer's availability to deal with the sanctions and costs hearing in this timeframe.

[12] The Commission submitted that the respondents' request for an adjournment should be denied as they had not filed any evidence to demonstrate "exceptional circumstances" which might justify an adjournment and there was in general a lack of evidence filed in support of the adjournment request.

[13] The Commission submitted that a change in counsel or counsel unavailability is not by itself an exceptional circumstance. The Commission highlighted the fact that the individual the respondents proposed to retain as their lawyer for the

sanctions and costs hearing was previously counsel of record in this proceeding and was also currently retained by the respondents in related proceedings.

[14] The Commission further submitted that the respondents had failed to offer a sufficient explanation as to why the lawyer had not been retained earlier and also why the adjournment request was made mere days before the scheduled hearing rather than seeking a variation of the schedule earlier to accommodate proposed counsel's availability. The Commission also submitted that the respondents had not explained whether they had looked for alternative counsel who was available to appear on the scheduled hearing date.

[15] In addition to the lack of evidence going to the matters related to retaining a lawyer, the Commission also submitted that Asif had not provided any documentation supporting his assertions that he allegedly had repaid or would repay investors, nor had he provided any supporting details or evidence of contracts he had lost or his financial circumstances.

[16] After considering the submissions of Asif and the Commission, we declined to grant the requested adjournment for the following reasons.

[17] Exceptional circumstances are required to justify an adjournment. Rule 29(1) of the Tribunal's *Rules of Procedure and Forms* (the ***Rules*** that were in place at the time the adjournment request was heard and decided) provides that every sanctions and costs hearing shall proceed on its scheduled date unless a party satisfies the Tribunal that "there are exceptional circumstances requiring an adjournment".

[18] A party seeking an adjournment is required to file and serve a motion to that effect. In this case, given that the respondents were self-represented and the adjournment was sought so close to the scheduled hearing, we exercised our discretion to waive the requirements of delivering a formal motion. The respondents were given the opportunity to serve and file evidence and written submissions in advance and made oral submissions seeking an adjournment at the opening of the hearing. We marked Asif's March 1 email as an exhibit that was treated like an affidavit of sworn evidence.

[19] The "exceptional circumstances" threshold is a high bar. It reflects the important objective set out in r. 1 of the *Rules* that Tribunal proceedings be conducted in a

"just, cost effective and expeditious manner". While adjournments by their nature ordinarily disrupt existing plans, consume resources unnecessarily, and delay the conclusion of the hearing[4], the objective reflected in r. 1 must be balanced against the parties' ability to participate meaningfully in hearings and to present their case.[5] We engaged in this balancing exercise when making our decision.

[20] There are numerous Tribunal cases considering the application of its discretion to grant or deny adjournments. While each determination is necessarily dependent on the circumstances of the case, these cases have identified several non-exhaustive factors to consider, which we have done. These factors are:

a. whether the principal delay was caused by unforeseen circumstances;

b. whether the party attempted to deliberately delay or manipulate the process, or more generally the party's conduct in the case;

c. the seriousness of the potential consequences to the respondent;

d. whether more time is needed for the respondent to respond;

e. the Tribunal's interest in making decisions on a full factual record; and

f. any prejudice as a result of an adjournment.[6]

[21] The Tribunal has been clear in past cases that a change in counsel is not considered, by itself, exceptional circumstances.[7] We find that this principle also extends to circumstances where an unrepresented respondent decides to retain counsel after a proceeding is underway. In the recent case of *Valentine (Re)*, the Tribunal stated that when the unavailability of chosen counsel is the basis for an

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[4] *Kitmitto (Re),* 2020 ONSEC 22 at para 27

[5] *First Global Data Ltd (Re)*, 2022 ONCMT 23 (***First Global Adjournment***) at para 8; *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (***Money Gate Merits***) at para 54; *Odorico (Re)*, 2023 ONCMT 34 at para 26; *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 35 at para 18

[6] *Pro-Financial Asset Management (Re),* 2018 ONSEC 18 (***Pro-Financial***) at para. 29

[7] *Valentine (Re)*, 2023 ONCMT 33 (***Valentine***), para. 19*; Money Gate Merits* at paras 52-64; *First Global Adjournment* at paras 13-15; *Debus (Re),* 2020 ONSEC 20 (***Debus***) at paras 23-24; *Bridging Finance Inc (Re)*, 2023 ONCMT 17 at para 19

adjournment request, the requesting party must explain and justify its decision with evidence to establish exceptional circumstances.[8]

[22] In the case before us, the adjournment request was primarily based on the unavailability of counsel proposed to be retained. The respondents' other submissions relating to financial circumstances, Asif's mother's health and the need to relocate Asif's family were offered by way of explanation for the late retainer of counsel and presumably also the very late notice that an adjournment was being sought.

[23] The respondents cited no unforeseen circumstances to justify the adjournment, provided no explanation or justification for choosing to retain counsel who was unavailable and, we find, offered no persuasive explanation or evidence why their proposed counsel had not been retained earlier or why the need for an adjournment had not been raised earlier. Furthermore, because the respondents were unable to advise when their proposed counsel would be available for the hearing and did not have any proposal for a new hearing date and new timetable for the exchange of materials—basic details that should be a necessary element of any adjournment request—we were faced with an adjournment request for an indeterminate period of time.

[24] We bore in mind the serious consequences the respondents face in this hearing. That alone, however, is not enough in this case to justify an adjournment in the absence of any evidence or submissions that establish the "exceptional circumstances" required by our *Rules*. While a party appearing before the Tribunal has a right to be represented by counsel, that right is not absolute and there are other protections in place to ensure that self-represented respondents get a fair hearing.[9] We accordingly denied the request to adjourn this hearing.

3.2 Asif's request to give oral evidence at the outset of the sanctions and costs hearing

[25] Following our denial of the request to adjourn the hearing, we moved directly into the sanctions and costs hearing.

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[8] *Valentine at* para 19

[9] *First Global* at para 13; *Debus* at paras 23-24

[26] As a preliminary matter, Asif requested permission to give oral evidence at the hearing. Neither he nor the corporate respondents had filed any evidence in advance of the hearing in accordance with the agreed timetable that was set out in the Tribunal's November 28 Order.

[27] Asif confirmed that the nature of his proposed evidence was to explain how he was paying back investors and has "corrected the situation". He also confirmed that he did not intend to seek to introduce any new documents as part of his evidence.

[28] The Commission did not object to Asif giving such evidence, on condition that (a) he not seek to introduce new documents, and (b) the Commission would be afforded the opportunity to cross-examine Asif and file reply evidence, if appropriate.

[29] We exercised our discretion to permit Asif to introduce his proposed evidence at the outset of the hearing, despite not complying with the terms of the Tribunal's November 28 Order. Our decision took into account:

a. that the Commission was not objecting;

b. the relatively narrow scope of the proposed evidence;

c. that the respondents are self-represented; and

d. our interest in having all potentially relevant evidence available to us in making our decision on sanctions and costs.

4. LEGAL FRAMEWORK FOR SANCTIONS

[30] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the *Act*'s purposes, which include the protection of investors from unfair, improper and fraudulent practices, and the fostering of fair and efficient capital markets.[10]

[10] *Act*, s 1.1

[31] The sanctions listed in s. 127(1) of the *Act* are protective and preventative, and are intended to be exercised to prevent future harm to Ontario's capital markets.[11]

[32] Sanctions must be proportionate to a respondent's conduct in the circumstances of the case.[12] Determining the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case.

[33] In previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions, which include:

a. the seriousness of the misconduct;

b. the respondent's level of activity in the marketplace or, in other words, the "size" of the contravention;

c. whether the misconduct was isolated or recurrent;

d. the respondent's experience in the marketplace;

e. whether the respondent benefitted or profited from the misconduct;

f. any mitigating factors; and

g. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[13]

5. FACTORS RELEVANT TO SANCTIONS

[34] We will now consider the application of each of these factors in this case.

5.1 Seriousness of the misconduct

[35] The Commission submits that the respondents' misconduct was egregious. Asif acknowledges that there was wrongdoing but submits that the wrongdoing does not come close to the wrongdoing in some of the cases referred to by the Commission.

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

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

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

[36] For the following reasons we find that the respondents' misconduct was egregious.

[37] When assessing the seriousness of the misconduct, the Tribunal can consider the inherent nature of the contraventions and, in cases of fraud, the respondents' frame of mind at the time of the contraventions.[14]

[38] Fraud is one of the most serious securities law violations and often causes direct harm to investors and undermines confidence in the capital markets.[15]

[39] Mughal was a sham investment corporation solely owned, operated and controlled by Asif that did not conduct any legitimate investment business. It used investors' funds to pay simulated returns to other investors, satisfy withdrawal requests, and for Asif's personal spending.[16]

[40] Asif's conduct was deliberate. He knew that Mughal was not an investment firm, but advertised it as such through multiple communication channels, met with investors and created false "client forms".[17] Because Asif was also the directing mind of each of Mughal and Lendle, their conduct was deliberate as well.

[41] Asif's conduct was aggravated by his attempts over years to conceal his activities from the Commission and deliberately obstruct the investigation, as found in the Merits Decision.[18]

[42] This is not a case where the respondents were misguided or reckless. The respondents were running a Ponzi scheme and diverting significant funds for personal spending. They knew that their victims were going to lose money.[19]

5.2 Level of activity and whether isolated or recurrent

[43] The Tribunal has applied various measures to determine the level of activity and whether it is isolated or recurrent, including the dollar amount, the number of

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[14] *First Global Data Ltd (Re)*, 2023 ONCMT 25 (***First Global***) at para 14

[15] *First Global* at para 18; *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate Sanctions***) at para 14

[16] *Merits Decision* at paras 9, 43-45

[17] *Merits Decision* at paras 10-11, 53-54, 57

[18] *Merits Decision* at paras 87-119

[19] *Merits Decision* at para 57

investors affected, the number of individual breaches, and the duration of the conduct.[20]

[44] The Commission submits, and we find, that the fraud in this case was long-running and wide-scale.

[45] Mughal and Asif raised at least $2.757 million and US$264,000 from at least 82 investors. Asif then continued the fraud with Lendle, raising an additional $70,000 from two investors.[21]

[46] These amounts, and the numbers of investors, are significant. In addition, the conduct was not isolated but recurrent, over a five year period.[22] The misrepresentations made to investors were repeated frequently through various channels of communication and advertisements.[23]

5.3 Experience in the marketplace

[47] This factor typically refers to a respondent's level of experience as a participant in the capital markets. In the context of sanctions, its relevance is as a gauge of how aware the respondent was or ought to have been of the offending nature of their conduct.

[48] Asif incorporated Mughal in 2014 while he was still a university student. In October 2015 he sent an email to the Commission's Contact Centre asking about the regulatory requirements to establish a trading firm. The Commission submits this as evidence of Asif's awareness of the Commission's regulatory requirements. We do not find this evidence particularly helpful. There is no evidence the Commission ever gave a substantive response to Asif in 2015.

[49] That said, we do not find experience in the marketplace a relevant factor since there is no legitimate conduct occurring in the marketplace when perpetrating a fraud through a Ponzi scheme.

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[20] *First Global* at para 12

[21] *Merits Decision* at paras 8, 83

[22] *Merits Decision* at para 8

[23] *Merits Decision* at para 11

5.4 Benefit

[50] This factor considers whether the respondents made a profit, or avoided a loss, as a result of their misconduct. A contravention will generally attract greater sanctions where the respondents benefit from it.[24]

[51] The Merits Decision found that Asif received (or received the benefit of) $650,698 of Mughal investor funds directly from Mughal accounts, by way of payment of his personal expenses, payment of deposits for two residential real estate properties and transfers to him, to his personal Questrade account, to a joint bank account he shared with his brother and to his personal credit card. In addition, the Merits Decision found that both Mughal and Lendle received more investor funds than they transferred back to investors.

[52] As a result, we find that the respondents benefitted from their misconduct.

5.5 Mitigating Factors

[53] The Commission submits that there are no significant mitigating factors in this case. The Commission further submits that the fact that the respondents entered into an Agreed Statement of Facts (**ASF**) should be given limited weight as a potential mitigating factor, because (a) this only occurred after the first day of the Merits Hearing and (b) Asif's conduct during the Commission's investigations (i.e. making false and misleading statements to the Commission and failing to disclose material information) caused significant disruption, and should be considered a countervailing factor.

[54] As a general proposition, we accept that a respondent entering into an agreed statement of facts is a mitigating factor and, in appropriate circumstances, something to be encouraged by this Tribunal and taken into account in sanctions. Generally, an agreed statement of facts can avoid preparation time and expense for all parties as well as hearing time.

[55] In this case, however, we agree that the utility of the ASF for these purposes was limited. Prior to the Merits Hearing, the respondents had already indicated they would not be calling any witnesses or introducing any documents. The ASF

[24] *First Global* at para 26

was only entered into after the hearing commenced, following a confidential conference that was arranged on the first hearing day. We find that the ASF did not significantly reduce preparation time. It did, however, result in fewer hearing dates than had originally been scheduled, although this reduction was not significant.

[56] Consequently, we conclude that the ASF is not a significant mitigating factor.

5.6 Specific and general deterrence

[57] General deterrence is an important consideration when applied to serious contraventions. It must be clear to those who may be inclined to engage in similar misconduct that there are serious consequences for doing so.[25]

[58] Specific deterrence is tied to the purposes of investor protection and confidence in the capital markets. It seeks to ensure that the respondents are discouraged from engaging in similar conduct in the future.[26]

[59] The respondents perpetrated a serious fraud over an extended period of time. We find that the sanctions must reflect that seriousness to achieve the purposes of both general and specific deterrence. Fraud offends the animating principles of both investor protection, and fostering confidence in fair capital markets, and must be met with sanctions that firmly deter such conduct.

6. NON-MONETARY SANCTIONS

[60] The Commission seeks comprehensive permanent bans to remove the respondents from participating in Ontario's capital markets. This includes permanent trading and acquisition bans and the removal of exemptions. The Commission also seeks permanent director, officer, registrant and promoter bans against Asif. The respondents did not propose any carve-outs to the requested bans.

[61] The Tribunal has repeatedly found that it is in the public interest to permanently deprive those who commit fraud of the privilege of participating in the capital

[25] *First Global* at para 56

[26] *First Global* at para 57

markets.[27] The exceptions are rare and usually involve mitigating circumstances that are not present here.[28]

[62] We agree with the Commission's submission about the need for permanent market bans in this case. These sanctions are proportionate to the conduct at issue, are consistent with past cases of comparable misconduct, and achieve appropriate specific and general deterrence.[29] We agree with the Commission's submission that anything short of permanent bans in this case would result in substantial loss of confidence in the integrity of the capital markets and expose investors to risk.[30] Asif, in his submissions, advised that "there will be no investors in my future venture, unless if there's an institutional raise". We specifically draw this comment to the attention of Asif to caution him and make clear that he must ensure that any of his future business activities do not contravene the broad-based permanent bans that we are ordering.

7. FINANCIAL SANCTIONS

[63] The Commission seeks financial sanctions in the form of both disgorgement and administrative penalties.

[64] For the reasons below, we have decided that:

a. the respondents, jointly and severally, shall be ordered to pay to the Commission by way of disgorgement the sums of $661,077 and US$245,000;

b. Asif and Lendle, jointly and severally, shall be ordered to pay to the Commission by way of disgorgement $70,000;

c. the respondents, jointly and severally, shall pay to the Commission by way of administrative penalty, $800,000 in respect of their frauds; and

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[27] *First Global* at para 213

[28] *First Global* at para 213

[29] *First Global* at para 259; *Paramount Equity Financial Corporation (Re)* (***Paramount Equity***), 2023 ONCMT 20 at para 142; *Money Gate Sanctions* at para 84; *Meharchand (Re)*, 2019 ONSEC 7 at para 97

[30] *First Global at* para 214

d. Asif shall be ordered to pay an additional $350,000 administrative penalty in respect of his additional breaches of Ontario securities laws.

7.1 Disgorgement

[65] The Commission is seeking two disgorgement orders representing, respectively, the full amount that the Merits Decision found had been raised from investors in connection with the "Mughal fraud" (namely, $2.757 million and US$264,000) and the "Lendle fraud" (namely, $70,000). The Commission is requesting that the first disgorgement order in respect of the Mughal fraud be made on a joint and several basis against all respondents and that the second disgorgement order in respect of the Lendle fraud be made on a joint and several basis against Asif and Lendle.

[66] For the reasons set out below, we find that a disgorgement order in respect of each of the frauds is appropriate and also that it is appropriate for the orders to be made on a joint and several basis, as described above. However, with respect to the Mughal fraud, we have determined that in the circumstances of this case the disgorgement figure should reflect a reduction for the amounts that the Merits Decision found the respondents transferred back to the Mughal investors.

7.1.1 General Principles

[67] Pursuant to paragraph 10 of s. 127(1) of the *Act*, the Tribunal may order disgorgement of "any amounts obtained as a result of the non-compliance" with Ontario securities law.[31]

[68] When considering whether a disgorgement order is appropriate, and if so in what amount, this Tribunal has established the following non-exhaustive list of factors to consider:[32]

a. whether an amount was obtained by a respondent 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;

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[31] *Act*, s 127(1)10

[32] *Feng (Re)*, 2023 ONCMT 43 at para 54; *First Global* at para 86; *Paramount* at para 72

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

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

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

7.1.2 Application of General Principles

[69] Below we consider each of these factors.

[70] First, the Merits Decision found that Mughal received at least $2.757 million and US $264,000 of investment funds from Mughal investors. The Merits Decision also found that Lendle received $70,000 from two investors. All these amounts were obtained by the respondents' fraudulent conduct. There is no doubt these amounts were obtained through non-compliance with Ontario securities laws as found by the Merits Decision.

[71] Second, we have already found that the misconduct was serious and the Merits Decision found that the misconduct caused direct harm to investors.

[72] Third, the amount obtained as a result of the non-compliance is readily ascertainable. These amounts were ascertained in the Merits Decision. The issue, which we will address separately below, is the consequence that should flow from the findings in the Merits Decision concerning the equally ascertainable amounts transferred from the respondents back to Mughal investors.

[73] Fourth, we consider if those who suffered losses are likely to be able to obtain redress. This entails taking into account the prospect of recovery for investors, but must be based upon the present facts, without speculating about future uncertain recoveries.[33]

[74] Asif gave evidence that in the months leading up to the hearing he repaid some investors. He stated that currently there are only five or six investors who are still owed money totalling less than approximately $500,000 and that it is his

[33] *Paramount Equity* at para. 86; *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10, paras 60-61

intention to repay these remaining investors in the future. Asif did not provide any further details about how much allegedly had been repaid, to which investors and when, nor did he provide any details about which investors were still owed money and in what amounts. He offered no corroborating evidence for his general statements. We find Asif's general statements without corroborating evidence insufficient to establish on a balance of probabilities that some investors have recovered their money from Asif since the Merits Decision was issued. Furthermore, Asif's statement of an intention to repay investors in future does not establish any certainty that investors will recover from him in future. Accordingly, we find that Asif's unsupported assertions about repayment of investors is not a reason for us to decline to make a disgorgement order or to reduce the amount ordered to be disgorged. The Commission submits, and we agree, that if circumstances warrant, it is available to the respondents to apply to vary the Tribunal's order.

[75] Finally, consistent with our discussion of deterrence above, we conclude that disgorgement is a necessary element of deterrence in this case of serious fraud to ensure that the respondents do not profit from the fraud. It also serves to deter others who might consider similar conduct.

[76] Accordingly, based on the factors listed above, we conclude that orders for disgorgement in respect of both the Mughal fraud and the Lendle fraud are appropriate in this case.

7.1.3 Should the disgorgement orders be joint and several?

[77] We have concluded that it is appropriate in the circumstances for the disgorgement order in respect of the Mughal fraud to be joint and several amongst all respondents and for the disgorgement order in respect of the Lendle fraud to be joint and several between Asif and Lendle.

[78] There is no requirement to show that the amounts obtained as a result of the non-compliance flowed directly to a particular respondent.[34] Even though a

[34] *Paramount* at para 76; *First Global* at para 98; *David Charles Phillips et al*, 2015 ONSEC 36 (***Phillips***) at para 20, aff'd 2016 ONSC 7901 (Div Ct), at para 20; *North American Financial Group Inc. v Ontario Securities Commission*, 2018 ONSC 136 (Div Ct) (***North American Financial Group***) at paras 217-218

central purpose of disgorgement orders is to deprive wrongdoers of ill-gotten gains, a respondent wrongdoer who benefits only indirectly rather than directly cannot raise the indirect nature of the benefit as a shield to a disgorgement order.[35]

[79] The Tribunal has held that the directing minds of issuers that receive funds through a contravention of Ontario securities law should be jointly and severally liable for the disgorgement of those funds.[36] The Tribunal has been clear that "individuals should not be protected or sheltered from administrative sanctions by the fact that the illegal actions they orchestrated were carried out through a corporation which they directed and controlled."[37]

[80] The Merits Decision found that:

a. Asif was the directing mind of both Mughal and Lendle;

b. Lendle knowingly participated in the Mughal fraud;

c. Asif transferred funds between Mughal, Lendle and his personal accounts; and

d. Lendle received funds from Mughal and disbursed amounts to Mughal investors.

[81] In these circumstances we conclude that Asif should be held jointly and severally liable along with the corporate respondents. We also conclude that a joint and several order in relation to the Mughal fraud is appropriate for Lendle, despite the fact that Lendle's level of participation in the Mughal fraud was less extensive than Mughal's and Asif's. Given that Asif directed and controlled both corporate respondents and both were involved in the Mughal fraud, we see no reason to draw a distinction between them in making a disgorgement order.

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[35] *Paramount* at para 76; *Feng* at para 66

[36] *Paramount* at para 79; *First Global* at paras 114-115; *Quadrexx Hedge Capital Management Ltd (Re)*, 2018 ONSEC 3 (***Quadrexx***) at para 46; *North American Financial Group* at para 217; *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18 (***Pro-Financial***) at para 61

[37] *First Global* at para 97, citing *Limelight Entertainment Inc et al*, 2008 ONSEC 38 (***Limelight***) at para 59

7.1.4 Should the disgorgement order for the Mughal fraud reflect a reduction for amounts found to have been paid to Mughal investors?

[82] The Merits Decision determined that funds were both received from Mughal investors, and paid out to Mughal investors, by the respondents. In aggregate, Mughal received at least $2.757 million and US $264,000 from Mughal investors. The Merits Decision also found that Mughal transferred back to Mughal investors approximately $1.811 million and US $19,000, and that Lendle and Asif respectively transferred $201,573 and $83,350 back to Mughal investors.

[83] Based on these figures, the aggregate amount obtained by the respondents as a result of the Mughal fraud, and not transferred back to investors, was $661,077 and US $245,000.

[84] Some prior decisions of the Tribunal have held that disgorgement orders should be based on gross amounts obtained, rather than net amounts.[38] In these decisions the "amount obtained" does not mean the amount "retained" by the wrongdoer, nor does it mean the related profit from the wrongdoing or any other amount calculated by considering expenses and other possible deductions. In other words, it does not matter how the funds were used after they were obtained in contravention of the *Act*.[39] This approach ensures that wrongdoers do not benefit from their misconduct, it deters the wrongdoer and others, and provides a more straightforward method of calculation.[40]

[85] However, there are also several cases of this Tribunal where disgorgement amounts were reduced to reflect repayments made to investors, as a result of payments made from a receivership or otherwise.[41] This refinement to the general approach to "gross" and "net" amounts places a focus on the deprivation of investors as much as the receipt of funds by the wrongdoer.

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[38] *Feng* at para 67; *Limelight* at para 49

[39] *Phillips* at para 19

[40] *First Global* at para 100; *Al-Tar Energy Corp et al,* 2011 ONSEC 1 at para 71; *Pro-Financial* at para 49; *Limelight* at para 49

[41] *Axcess Automation LLC et al.*, 2013 ONSEC 8 at paras. 42, 45; *Meharchand (Re)*, 2019 ONSEC 7 at paras. 72 and 76; *Paramount Equity Financial Corporation (Re)*, 2023 ONCMT 20 at paras. 83-85; *Phillips* at paras 53 and 56

[86] The Commission submits that the Mughal fraud disgorgement amount should be the total amount found in the Merits Decision to have been obtained by the respondents from Mughal investors, without deduction for amounts that were found to have been transferred back to Mughal investors. It urges the Tribunal to keep in mind the nature of the respondents' scheme and how the funds were obtained. Mughal was a sham in which new investor funds were used to pay simulated "profits" to, and satisfy withdrawal requests from, existing investors.

[87] There is some merit in this submission. The payments to investors in a Ponzi scheme are not intended to make investors whole or to repair harm done by the fraud; rather, they are a necessary element of the Ponzi scheme to allow it to continue.

[88] The permissive wording of the statute, and prior Tribunal cases, make clear that the Tribunal has discretion in determining when and to what degree a disgorgement order is in the public interest.[42] The challenge in this case is that we are faced with two competing, valid considerations in determining what, if any, reduction should be made to the full "amounts obtained".

[89] On the one hand, repayments of principal investments to investors should generally reduce the amount of a disgorgement order since the investors have ultimately recovered those amounts previously obtained by the wrongdoer.

[90] On the other hand, where repayments to investors are a feature of a fraud in the nature of a Ponzi scheme, intended to allow the fraud to continue, the Tribunal should be cautious in applying any offset to disgorgement for amounts repaid.

[91] We conclude that in the case of Ponzi schemes, and subject to the particular facts of each case, it is generally appropriate to reduce the "amounts obtained" by amounts of principal investments repaid to investors, but to not reduce the disgorgement amount for any payments made to investors as simulated "profits".

[92] Where a principal investment amount is repaid to an investor, the motive behind the payment, virtuous or otherwise, is generally neither easy nor necessary to establish. That investor has not been deprived of their investment regardless of

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[42] *Pro-Financial* at para 50; *Paramount* at para 88

the motive for the repayment. We think that, subject to other relevant considerations, it is generally appropriate to reduce a disgorgement amount to reflect such principal repayments.

[93] However, simulated returns paid as part of a fraudulent course of conduct in the nature of a Ponzi scheme are not repayments of investor principal. They exist for no reason other than the continuation of the scheme. Unlike the repayment of investor principal, the payment of such simulated returns does not reduce investor deprivation. In our view, and subject to other relevant considerations, no reduction of a disgorgement amount is generally appropriate for such amounts.

[94] In the current case, these considerations are complicated by the available evidence before the Tribunal and the findings made in the Merits Decision.

[95] As described above, the Merits Decision sets out total amounts obtained by the respondents, and total amounts transferred back to Mughal investors by the respondents. These amounts were based on the detailed evidence submitted by the Commission through its investigator witness, a senior forensic accountant. The Merits Decision noted that the investigator's methodology, assumptions and judgment calls with respect to his analysis related to Mughal investor funds were reasonable, and that he took a conservative approach.

[96] However, the merits panel was not asked to make, and did not make, any findings in the Merits Decision about the constituent elements of the amounts that were transferred back to Mughal investors, including whether and to what extent these amounts were transferred as repayment of principal or as simulated "profits".

[97] The Commission draws our attention to examples contained in the investigator's analysis of the respondents' banking records, where it appeared some Mughal investors may have been paid more than the principal they invested (i.e. both their principal and some simulated profits), or where payments were subject to a notation such as "profit payout", "payout" or "account closed". It notes other instances where there was a lack of clarity around the identity of the particular investor who had received a payment or where a payment was made to an individual for whom the Commission did not have records establishing how much

that individual had invested. Based on these examples, which the Commission says reflect uncertainty regarding the nature of the transfers to investors, the Commission submits that it is not possible to know which investors have been fully repaid and also that it is possible and even likely that certain investors have been overpaid while others have not been repaid at all.

[98] The Commission submits that it bears, and has discharged, the burden to establish on a balance of probabilities the "amount obtained" by the respondents as a result of their non-compliance with the *Act*. Subject to that onus, any risk of uncertainty in calculating the disgorgement amount, including in this case in calculating and establishing the amount of principal that was repaid to Mughal investors, should fall on the wrongdoer whose non-compliance with the *Act* gave rise to the uncertainty.[43]

[99] The Commission submits that, based on the lack of the respondents' business records and their failure to cooperate with the investigation (including by failing to provide a list of the Mughal investors), it is not possible to determine what portion of the amounts transferred back to Mughal investors was repayment of investor principal.

[100] We find no factual or evidentiary basis for the Commission's submission that such a determination is not possible. The investigator did not include such a breakdown in his analysis, but did not testify that it was not possible. The Commission confirms that this work has not been done, and, when pressed, suggests that the investigator could be asked if it is possible to do such a breakdown. The Commission agrees that the investigator's analysis does include evidence of some repayment of principal to investors, but no work has been done to tally such amounts.

[101] We accept that the onus of proof regarding any uncertainty in the disgorgement calculation generally shifts to a respondent once the Commission has established the "amount obtained" by the respondents as a result of their non-compliance with the *Act*. However, here we are faced with the unusual situation that the Merits Decision, based on acceptance of the Commission's own evidence, made a

[43] *Limelight*, para 53; *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 at para 118

specific finding of ascertainable amounts transferred back to investors. Further the Commission acknowledges that its own evidence reflects repayment of principal but no work has been undertaken to add up the amounts. Based on the examples in the investigator's analysis that the Commission draws to our attention, it appears that it would have been a reasonably straightforward exercise for the Commission's investigator to have, at the very least, identified those repayments or portions of repayments that are clearly attributable to the repayment of investor principal, such that those amounts could be deducted from any disgorgement amount.

[102] In this unique situation, considering the sizeable amounts of the transfers back to Mughal investors when compared to the gross amounts obtained, and in the absence of any effort by the Commission to identify the amount of repayment of principal based on the analysis already prepared by its investigator, we determine that it is in the public interest for the disgorgement ordered in connection with the Mughal fraud to reflect a reduction for the amounts transferred back to Mughal investors.

[103] As a result, we conclude that the respondents shall be ordered to disgorge to the Commission in respect of the Mughal fraud, jointly and severally, the amounts of $661,077 and US$245,000.

[104] Given that there was no finding in the Merits Decision of any repayments in connection with the Lendle fraud, we also conclude that Lendle and Asif shall be ordered to disgorge to the Commission, jointly and severally, $70,000.

7.2 Administrative penalty

[105] The Commission requests that we make an order requiring the respondents to pay, on a joint and several basis, an administrative penalty in the amount of $800,000 in relation to the frauds they committed. The Commission also requests an order that Asif pay an additional administrative penalty of $350,000 in connection with his other breaches of Ontario securities laws.

[106] For the reasons set out below, we decide that such orders are appropriate.

[107] Paragraph 9 of s. 127(1) of the *Act* provides 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 $1 million for each failure to comply.[44]

[108] In deciding the appropriate administrative penalties, we have taken a global view of all the sanctions imposed on each respondent, taking into account the disgorgement orders and the fact that the respondents will be prohibited from participating in the capital markets.[45] We have also taken into account the fact that the disgorgement order in connection with the Mughal fraud gives full credit for all amounts transferred back to Mughal investors.

[109] We have considered both specific and general deterrence, and the extent to which those objectives are achieved by the other sanctions imposed.[46] The administrative penalties must also be meaningful and not just reflect a "cost of doing business".[47]

[110] Factors we have considered in determining the appropriate administrative penalties in this case include:[48]

a. the scope and seriousness of the respondents' misconduct;

b. whether there were multiple or repeated breaches of the *Act*;

c. whether the respondents realized any profit as a result of their misconduct;

d. the amount of money raised from investors;

e. the harm caused to investors; and

f. the level of administrative penalties imposed in other cases.

[111] The first five of these factors have been canvassed earlier in these reasons, in relation to factors relevant to sanctions generally.

[112] We note, at the outset, that the rationale for making joint and several orders for disgorgement against the respondents, set out above, applies equally to the

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[44] *Act*, s 127(1)9; *First Global* at para 150
[45] *First Global* at para 152; *Paramount* at para 113
[46] *First Global* at para 152; *Quadrexx* at para 58
[47] *First Global* at para 152
[48] *First Global* at para 152; *Money Gate* at para 67

administrative penalty in respect of the frauds.[49] While Lendle and Asif were involved in two frauds, given the size of the Lendle fraud and the relationship between the two frauds, we do not think this warrants drawing a distinction between the respondents. Asif's additional independent breaches attract a separate administrative penalty.

[113] In previous cases, where the respondents have committed multiple contraventions of Ontario securities law, including distinct courses of conduct found to be fraudulent, and where the magnitude of the fraud was significant, the Tribunal has found that high administrative penalties are warranted.[50]

[114] Each case is unique, with different amounts raised, numbers of investors, aggravating and mitigating factors. Yet a pattern emerges that supports high administrative penalties in serious frauds even where, unlike here, the respondents were running a legitimate underlying business or invested some funds as represented to investors. Two recent cases demonstrate this.

[115] In *First Global Data Ltd (Re)*, the Tribunal considered a fraud involving a number of parties that had raised approximately $4.5 million from 80 investors. The case also involved the illegal distribution of securities without a prospectus and unregistered trading. The Tribunal ordered permanent market bans and disgorgement in addition to over $3 million in administrative penalties, with the most culpable respondents being ordered individually to pay $825,000, $750,000 and $725,000, respectively.[51]

[116] In *Paramount Equity Financial Corporation (Re)*, the fraud involved the application of a portion of investor funds in a manner different from what was promised, following an illegal distribution. Some $43 million was misapplied. In addition to permanent market bans and full disgorgement the Tribunal also ordered the individual respondents to pay administrative penalties of $1.5

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[49] *Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 31 at para 88; *Axcess Automation LLC et al*, 2013 ONSEC 8 at para 53; *Bluestream Capital Corporation et al*, 2015 ONSEC 12 at para 11(h); *International Strategic investments et al*, 2015 ONSEC 17 at paras 11-13

[50] *Paramount* at paras 114-115

[51] *First Global* at paras 2, 13, 259

million, $1.0 million and $500,000, recognizing their different levels of culpability.[52]

[117] In this case, given the extent and nature of the fraud as an unmitigated Ponzi scheme that never had any legitimate underlying business, and taking into account all the other factors discussed above, we find an administrative penalty of $800,000 payable jointly and severally by the respondents is appropriate and proportionate to sanctions ordered in other recent fraud cases.

[118] Apart from the frauds, the Merits Decision found that Asif breached Ontario securities laws:

a. by making multiple false and misleading statements during the Commission's investigations contrary to s. 122(1)(a) of the *Act,* including during two interviews while under oath; and

b. disclosing the Commission's investigation to an investor and providing a copy of his summons to an individual, contrary to s. 16 of the *Act*.

[119] The Commission seeks a separate administrative penalty against Asif of $350,000 in respect of these breaches.

[120] We find that this conduct by Asif merits a separate administrative penalty. In terms of the amount, the most recent instructive case is *Kitmitto (Re)*,[53] where one of several respondents was found to have misled the Commission with a number of answers in the course of one examination. The Tribunal noted, citing Ontario Court of Appeal authority, that "[i]t is difficult to imagine anything that could be more important to protecting the integrity of [the] capital markets than ensuring that those involved in those markets ... provide full and accurate information to the [Commission]."[54] In *Kitmitto,* the particular respondent was ordered to pay an administrative penalty that included $250,000 for his misleading the Commission in his examination.[55]

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[52] *Paramount* at paras 2, 142

[53] 2023 ONCMT 4 (***Kitmitto***)

[54] *Kitmitto* at para 46, citing *Wilder v Ontario Securities Commission*, 2001 CanLII 24072 (ONCA) at para 22

[55] *Kitmitto* at para 46

[121] Asif's conduct is more significant than that addressed in *Kitmitto.* His attempts to mislead spanned two examinations under oath and written communications. He also was found to have breached s. 16 of the *Act*, which is in place to protect the integrity of the Commission's investigations.

[122] We conclude that a separate administrative penalty in the amount of $350,000 payable by Asif is appropriate. This is in addition to the joint and several administrative penalty ordered to be paid by all respondents.

8. COSTS

[123] The Commission seeks an order that the respondents pay the Commission its costs of the investigation and hearing in the amount of $295,413.65, on a joint and several basis.

[124] For the reasons that follow, we find that the respondents shall be ordered to pay the Commission's costs of the investigation and hearing in the amount sought by the Commission.

[125] The Tribunal may order a person or company to pay the costs of an investigation or hearing if the Tribunal is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.[56]

[126] A costs order is discretionary and is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[57]

[127] As is typical, in support of its submission the Commission has filed extensive affidavit evidence of the time spent on the matter, supported by docket summaries, and invoices confirming disbursements. Also as is typical, it has filed a Bill of Costs, divided into Costs Incurred and Costs Sought.

[128] The Costs Incurred are less than the Commission's actual costs, as they do not include all of the time incurred by the Commission. For example, time spent by employees of the Commission who recorded 35 or fewer hours on the matter, and time spent with respect to matters that were not ultimately included in the Statement of Allegations, is not included.

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[56] *Act*, s 127.1

[57] *First Global* at para 231; *Quadrexx* at para 118

[129] The total Costs Incurred, calculated by the Commission and not contested, were $432,741.09.

[130] The Costs Incurred were further reduced to generate the Costs Sought. To do so, the Commission excluded time spent and disbursements with respect to the separate but related temporary cease trade and freeze order proceedings against the respondents, plus time spent by a law clerk. An additional 10% discount was also applied against the remaining recorded time.

[131] Those exclusions and discount took the Costs Incurred down to Costs Sought of $295,413.65.

[132] We considered whether the Commission's lack of success at the merits hearing regarding alleged breaches of s. 13 and s. 129.2 of the *Act* warrants a reduction in the costs the Commission is claiming. We decided that it does not. These alleged breaches were based on legal argument made on the basis of facts that were separately established in connection with other breaches that the Tribunal did find. As such, we conclude that such unsuccessful allegations did not add in any material way to the Commission's costs.

[133] In considering costs, we also bear in mind the conduct of Asif, as described in the Merits Decision, including in particular the finding that he concealed the existence of documents and information from the Commission during the investigation. We accept the Commission's submission that Asif's conduct undoubtedly increased the time needed in the investigation to derive information that should otherwise have been readily available.

[134] We also took into account the fact that the parties entered into the ASF after the merits hearing was already in progress. We considered whether the fact of the ASF should operate to reduce the amount of costs in this case. While a respondent's willingness to reduce hearing time by admitting facts may, in appropriate cases, be worthy of some recognition in the consideration of costs, in this case we do not think it should. Here, the timing of the ASF did not materially change the time expended in preparing for the hearing by the Commission. Preparation was already largely complete when the hearing began, and obviously no costs are claimed by the Commission for attending hearing days that did not proceed as a result of the ASF.

[135] Finally, we considered the overall amount of the claimed costs in comparison to costs ordered in other Tribunal cases involving hearings of comparable complexity and projected length. Overall, we find the amount of costs claimed to not be unreasonable, or out of step with other cases.

[136] On balance, we believe these factors justify a costs award in the amount of $295,413.65, as claimed by the Commission, to be paid by the respondents jointly and severally.

9. CONCLUSION

[137] The sanctions we have set out above are proportionate to the misconduct in this case and appropriate when considered together in the context of each respondent. They ensure that none of them profit, directly or indirectly, from their misconduct and are tailored to effect both general and specific deterrence.

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

a. As against all respondents, an order:

i. pursuant to paragraph 2 of s. 127(1) of the *Act* that trading in any securities cease permanently;

ii. pursuant to paragraph 2.1 of s. 127(1) of the *Act* that the acquisition of any securities is prohibited permanently;

iii. pursuant to paragraph 3 of s. 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply permanently;

iv. pursuant to paragraph 8.5 of s. 127(1) of the *Act* permanently prohibiting them from becoming or acting as a registrant, an investment fund manager or a promoter;

v. pursuant to paragraph 9 of s. 127(1) of the *Act* that they jointly and severally pay to the Commission an administrative penalty of $800,000;

vi. in connection with the Mughal fraud, pursuant to paragraph 10 of s. 127(1) of the *Act* that they jointly and severally disgorge to the Commission $661,077 and US$245,000;

vii. pursuant to s. 127.1 of the *Act* that they jointly and severally pay $295,413.65 to the Commission for the costs of the investigation and hearing; and

b. as against Asif and Lendle, an order in connection with the Lendle fraud, pursuant to paragraph 10 of s. 127(1) of the *Act* that they jointly and severally disgorge to the Commission $70,000; and

c. as against Asif, an order:

i. pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the *Act* that he immediately resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

ii. pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the *Act* that he is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

iii. pursuant to paragraph 9 of s. 127(1) of the *Act* that he pay to the Commission an administrative penalty of $350,000.

Dated at Toronto this 3rd day of June, 2024

"*Andrea Burke*"

Andrea Burke

"*Geoffrey D. Creighton*"

Geoffrey D. Creighton

"*Mary Condon*"

Mary Condon