Douglas G. Rudolph, Peter A.D. Mill, Cfg*Cn Ltd. (also known as CanGlobe Financial Group), and CanGlobe International Capital Inc. (Re), 2021 NSSEC 7

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED
(the *Act*)

- and -

IN THE MATTER OF
DOUGLAS G. RUDOLPH, PETER A.D. MILL, CFG*CN LTD. (also known as CANGLOBE FINANCIAL GROUP), AND CANGLOBE INTERNATIONAL CAPITAL INC.

(collectively the Respondents)

SANCTION DECISION

Introduction

1. We have no doubt that Mr. Rudolph's and Mr. Mill's behaviour justifies significant remedies and penalties. Remedies and penalties, however, must be grounded in the *Act* and ordered on the basis of principle. The fundamental principle is that "the focus of regulatory law is the protection of societal interests, not punishment of an individual's moral faults" (*Committee for Equal Treatment of Asbestos Minority Shareholders (Securities Commission)* 2001 SCC 37 at paragraph 42). The Supreme Court of Canada, in speaking of the powers of the Ontario Securities Commission (OSC), also said:

   > The sanctions under the section are preventive in nature and prospective in orientation. Therefore, s. 127 cannot be used merely to remedy *Securities Act* misconduct alleged to have caused harm or damages to private parties or individuals. [paragraph 45]

2. Following a hearing on the merits, we found in our decision dated May 28, 2021 (the "Liability Decision") that the Respondents breached the *Act* by perpetrating fraud against the witnesses, engaging in unfair practices, engaging in unauthorized trading, failing to file a prospectus where required, providing undertakings with respect to the future value of a security, and making untrue statements an investor would have found material to one of the witnesses with the intention of effecting a trade in securities.

3. We requested in the Liability Decision that the parties make written submissions on sanctions and penalties to be imposed as a result of the Respondents' breaches of

securities laws. The Director of Enforcement of the Nova Scotia Securities Commission (Enforcement) requested the following order:

a. Pursuant to section 134(1)(a)(i) of the *Act*, the Respondents shall comply with Nova Scotia securities laws;

b. Pursuant to section 134(1)(b)(ii) of the *Act*, trading in any securities and derivatives by the Respondents shall cease permanently;

c. Pursuant to section 134(c) of the *Act*, the exemptions contained in Nova Scotia securities law shall not apply to the Respondents permanently;

d. Pursuant to section 134(1)(d)(ii) of the *Act*, Rudolph and Mill are prohibited permanently from becoming or acting as a registrant, investment fund manager, or promoter;

e. Pursuant to section 135 of the *Act*, Rudolph shall pay an administrative penalty to the Commission of $1,800,000;

f. Pursuant to section 135 of the *Act*, Mill shall pay an administrative penalty to the Commission of $600,000;

g. Pursuant to section 135A of the *Act*, Rudolph shall pay costs in connection with the investigation and conduct of this proceeding in the amount of $52,000; and

h. Pursuant to section 135A of the *Act*, Mill shall pay costs in connection with the investigation and conduct of this proceeding in the amount of $17,500.

Participation in the Hearing

4. The Respondents have largely ignored the Commission's jurisdiction and authority in these matters. Collectively, they have steadfastly refused to engage in the proceedings except to employ delay tactics or to reject responsibility.

5. Counsel for Peter Mill received notice of these proceedings, but Mr. Mill did not participate in the hearing of this proceeding against him and Mr. Rudolph at all and did not respond to the invitation to make submissions on the sanctions to be imposed on him arising out the Liability Decision. We decided to proceed through this last step without Mr. Mill's participation. Mr. Rudolph did, however, make a 21-page written submission on sanctions. We will address his submissions later in this Sanction Decision.

6. Neither corporate Respondent has ever responded to any notice of any of the previous proceedings in this matter and, as noted in the Liability Decision, the companies appear never to have had a legitimate business purpose and are long struck from the Registry of Joint Stocks. Although there is limited practical value in sanctioning these defunct

corporate entities, to the extent that there were findings against them, we assess the sanctions outlined below.

Penalty, Sanctions and Costs

7. Enforcement seeks an order of the Commission for sanctions, for an administrative penalty and for costs.

Sanctions

8. Section 134 of the *Act* provides that where the Commission considers it in the public interest, after a hearing, the Commission may make a variety of orders to prohibit the registration and participation in capital market activities including capital raising and trading. The order for sanctions sought by Enforcement would effectively ban Mr. Mill and Mr. Rudolph from market access and would prevent them from undertaking any capital market activities either for clients or in their personal capacity (the "Market Access Bans").

9. In *Portfolio Capital Inc*., Re, 2015 ONSEC 27, 2015 CarswellOnt 12746, the OSC relied on the earlier decision of *Mitheras* in considering similar market access bans (at paragraph 31):

> The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As stated by the Commission in *Mitheras Management Ltd., Re* (1990), 13 O.S.C.B. 1600 (Ont. Securities Comm.):
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> > The role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all. [Emphasis in original.]

10. Market access bans are a means of achieving two objectives of both specific and general deterrence through sanctions. In *Re Bluforest Inc.* 2021 ABASC 25, the Alberta Securities Commission (ASC) found at paragraph 69 that in those circumstances, "nothing short of permanent market bans can contribute appropriately to the objectives of specific and general deterrence." In reaching that conclusion, the ASC considered both the seriousness of the misconduct and the intent to defraud as a factor in making the order at paragraph 49:

> The seriousness of the misconduct in this case is exacerbated by the deliberation, design and execution of an elaborate scheme extending over a long time period in several jurisdictions. These were not impulsive or inadvertent contraventions of securities laws; rather, both Can and Miller carefully conceived a multifarious stratagem to deceive the market for their personal gain. This raises grave concerns and evinces a compelling need for meaningful specific deterrence and for general deterrence directed to those who might contemplate similar behaviour.

11. Similarly, our Liability Decision documents serious serial misconduct by both Mr. Rudolph and Mr. Mill over a long period of time in multiple jurisdictions. Mr. Rudolph and Mr. Mill had elaborate strategies to extract the maximum amount of money from the witnesses for an investment opportunity that simply did not exist and then proceeded to maintain a ruse of a viable business for years. They collaborated to defraud the witnesses and their behaviour represents some of the most serious breaches of the *Act*. In considering the objectives of specific and general deterrence in this instance, the Commission must assess both the potential harm to the public interest if these individuals were permitted to participate in the markets once more and the message that it may send to other market participants.

12. Mr. Rudolph and Mr. Mill solicited and obtained substantial amounts of money from a wide range of unrelated, relatively unsophisticated people – in a word, the "public". Mr. Rudolph represents in his submissions that he was ignorant that securities laws applied and that Mr. Mark David (a lawyer with whom Mr. Rudolph dealt at the relevant times) did not advise him of them. We take Mr. Rudolph's representations with more than a grain of salt. He, on the evidence, was a competent accountant and tax advisor. He understood tax avoidance schemes and knew how to implement them. Ignorance of the law is, of course, no excuse in any event, but a reasonable person would expect that someone of his financial sophistication knows that engaging in the wholesale solicitation of money for a profitable return is subject to regulation. While Mr. Mill and Mr. Rudolph are unlikely to have paid any attention to any financial regulation, it must be made clear as general deterrence through sanctions that such transactions as they engaged in do contravene securities laws. It must also in the public interest be brought home to Mr. Mill and Mr. Rudolph through sanctions that they are not to engage in such activities, regulated or unregulated, ever again. They are to be removed from capital markets.

13. In the circumstances, given the extent of the fraud, the number of victims impacted and the sheer volume of breaches of securities laws in question, it is necessary and appropriate for the Respondents to be prohibited from participating in the Nova Scotia capital markets. A permanent ban on participating in the capital markets is consistent with the caselaw. We hereby order that each of the Respondents be permanently banned from trading in securities and derivatives and are prohibited permanently from becoming or acting as a registrant, investment fund manager, or promoter. We also order that the exemptions in Nova Scotia securities laws permanently not apply to the Respondents.

Penalty

14. In NSSC decision, *In the Matter of Electronic Benefits Inc., Everett R. Stuckless, and Advantage Financial Group Inc.* (NSSEC, 12 March 2008) (affirmed 2009 NSCA 6), the Commission laid out a non-exhaustive list of factors usually relevant to making orders under sections 134 and 135 of the *Act* as follows:

    - the seriousness of the person's conduct;
    - the harm suffered by investors as a result of the person's conduct;
    - the damage done to the integrity of the capital markets by the person's conduct;
    - the extent to which the person was enriched;
    - factors that mitigate the person's conduct;
    - the person's past conduct;
    - the risk to investors and the capital markets posed by the person's continued participation in the capital markets;
    - the person's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or advisor to issuers;
    - the need to demonstrate the consequences of inappropriate conduct of those who enjoy the benefits of access to the capital markets;
    - the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and
    - orders made by the Commission in similar circumstances in the past.

15. Our Liability Decision details the seriousness of the Respondents' conduct and the harm suffered by the witnesses that came forward and participated in the hearing. We also know that there are other potential investors who were solicited by the Respondents to participate in the fraudulent CanGlobe scheme who may have also suffered losses. Our Liability Decision also documents other tax schemes promoted by Mr. Rudolph which also caused some of the witnesses to suffer additional losses. Some of the factors listed above will be addressed by the Market Access Bans, but others may be more properly addressed by administrative penalty and other financial sanctions.

16. Section 135 of the *Act* states that:

    Where the Commission, after a hearing,

(a) determines that

(i) a person or company has contravened or failed to comply with any provision of Nova Scotia securities laws, or

(ii) a director or officer of a person or company or a person other than an individual authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Nova Scotia securities laws by the person or company;

and

(b) considers it to be in the public interest to make the order,

the Commission may order the person or company to pay an administrative penalty of not more than one million dollars for each contravention or failure to comply.

17. Enforcement submits that it is in the public interest that an administrative penalty in the amount of $1,800,000 be issued against Mr. Rudolph. Enforcement also submits that it is in the public interest that an administrative penalty in the amount of $600,000 be issued against Mr. Mill. In making this submission, Enforcement relies upon the Commission's decision in *In the Matter of Quentin Earl Sponagle and Trevor Wayne Hill* (NSSEC, 4 August 2011).

18. Enforcement notes that the relevant administrative penalty provision set out in section 135 of the *Act* has been amended three times over the course of the conduct in question resulting in three different maximum penalty amounts for different time frames. From 1990 to 2005, section 135 of the *Act* provided for a maximum administrative penalty of $100,000 per offence. From July 29, 2005 until the current section came into force, the maximum administrative penalty was $500,000 per offence. The current maximum administrative penalty since February 6, 2007 is $1,000,000 per offence.

19. Given the sheer number of breaches found in the Liability Decision, it is easy to see how a straight calculation totalling the maximum administrative penalty amount for each offence during each of the timeframes could produce administrative penalties in the range recommended by Enforcement. However, although there is nothing to prevent the Commission from issuing administrative penalties in the amounts recommended by Enforcement, we believe further analysis is required to determine the appropriate range. In *Re Bluforest Inc.*, the ASC found (paragraph 78) that:

> An ASC panel may, notwithstanding the imposition of other sanctions, order a person or company to pay an administrative penalty of not more than $1 million for each contravention or failure to comply with the Alberta securities laws (s.199(1) of the *Act*.) An administrative penalty represents an important sanctioning measure that delivers specific and general deterrence (*Workum* at paras. 135-136). While an

> administrative penalty should not be so low that it amounts to nothing more than another cost of doing business (*Alberta Securities Commission v. Brost*, 2008 ABCA 326 at para. 54) the amount must be proportionate to the offence, and fit and proper for the individual offender", after taking into account any disgorgement order (Walton at para.156). In *Maitland Capital Ltd.* v. *Alberta (Securities Commission)*, 2009 ABCA 186 (at para 21), the Alberta Court of Appeal observed that "[i]f sanctions under this legislation are so low as to communicate too mild a rebuke to the misconduct, or perhaps a licensing fee for its occurrence, the opposite to deterrence may result".

20. Accordingly, the default amount of administrative penalty is not the maximum administrative penalty available. The Panel must ensure that any administrative penalty issued is sufficiently high to act as a deterrent for similar activities in the future, proportionate to the offences in question and fit proper for the Respondents.

21. In *Meharchand (Re)*, 2019 ONSEC 7, 2019 CarswellOnt 1504, where the respondents had raised CDN $1.5 million and US $140,000, Staff requested a penalty of between $500,000 to $700,000 "due to the seriousness of the breaches and the fact that the breaches, including the fraud, occurred over a prolonged period of time." In rendering its decision of the appropriate sanctions and penalties, the Ontario Securities Commission surveyed six other penalty decisions in concluding that an administrative penalty of $550,000 was at the high end of the reasonable range for the administrative penalty due to certain aggravating factors.

22. In *Re Bluforest Inc*., the ASC stated (paragraph 78):

> The Commission has stated on previous decisions that the purpose of the administrative penalties is to "deter the particular respondents from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants that the conduct in question will not be tolerated in Ontario capital markets." Thus, the Commission intends that administrative penalties will achieve both specific and general deterrence.

23. Mr. Mill and Mr. Rudolph raised an amount of money comparable to the amount raised by the respondents in *Meharchand (Re)* and, similarly, the Respondents committed serious breaches over a prolonged period of time.

24. We must also consider the impact of both the sanctions together with the administrative penalties we intend to order when determining the administrative penalty amount proportionate to the offences. We will order Mr. Rudolph to pay an administrative penalty of $600,000 and Mr. Mill to pay an administrative penalty of $400,000. The difference in the administrative penalty amounts recognizes that Mr. Rudolph was found to have committed an additional serious violation.

Disgorgement

25. Disgorgement is a sanction separate and apart from an administrative penalty. Section 134(1)(da) of the *Act* provides that where the Commission, after a hearing, finds that someone has not complied with Nova Scotia securities laws, and where the Commission considers it in the public interest, the Commission may then order the person to disgorge to the Commission any amounts obtained as a result of the non-compliance. Accordingly, the Commission may consider whether disgorgement is appropriate in addition to an administrative penalty.

26. In *Re Bluforest Inc.*, the ASC states (at paragraph 84):

> As discussed in *Fauth*, a disgorgement order provides an additional element of specific and general deterrence by removing the incentive to profit from one's misconduct (para. 77). The accepted analysis considers (a) whether a respondent directly or indirectly obtained amounts (or avoided any payments or losses) from the misconduct, and (b) whether it is in the public interest to make a disgorgement order. (Emphasis added.)

27. The Liability Decision establishes that Mr. Rudolph and Mr. Mill profited directly or indirectly from the amounts obtained from witnesses through the fraudulent CanGlobe scheme.

28. Enforcement acknowledges that disgorgement is an additional sanction which may be ordered by the Commission but submits that it is not necessary to consider it in these circumstances. Respectfully, we disagree with Enforcement's position on disgorgement and our reasons are set out below. In any event, an administrative penalty that equals the total amount of the money taken from investors by fraudulent means under the CanGlobe scheme plus an administrative penalty in the $500,000-$700,000 range runs the danger of being a thinly veiled attempt to include the disgorgement amount within the administrative penalty to avoid addressing the potential issues related to retroactivity laid out in Enforcement's submissions. It is for this reason that we will address disgorgement under a separate heading.

Disgorgement

29. The *Act* provides one section for what we will call remedies and another, separate section, for "administrative penalties". Section 134 provides a list of remedies that the Commission may award where the Commission considers it to be in the public interest. These are addressed in the ***Sanctions*** section above. There is also, however, the provision in s. 134(da) to disgorge to the Commission any amounts obtained as a result of the non-compliance.

30. Section 135 provides that the Commission may, where a person has contravened the *Act* and it is in the public interest to do so, order an "administrative penalty of not more than one million dollars for each contravention." The Commission in *Sponagle* interpreted the *Act* to authorize the application of administrative penalties in effect at the time of the offence, but not the administrative penalties in effect at the time of the finding of the

contravention of the *Act.* In other words, the *Act* is to be understood as authorizing an order to the maximum amount of the administrative penalties in effect at the time of the contraventions rather than any increases in administrative penalties imposed by later legislation. This interpretation is also consistent with s. 11(i) of the *Canadian Charter of Rights and Freedoms* which provides that a person convicted of an offence is to have the benefit of the lesser punishment if the punishment for the offence has been varied between the time of commission and the time of sentencing.

31. The legislature passed s. 134(da) of the *Act*, the disgorgement provision, in 2012 (Stats. N.S. 2012, c. 34). On the evidence before us, Mr. Rudolph and Mr. Mill had discontinued their contraventions by January, 2011. Thus, Nova Scotia had no disgorgement provision when Mr. Rudolph and Mr. Mill were violating the *Act*. The Commission panel in *Sponagle* assessed administrative penalties without the benefit of it.

32. There is, however, a distinction between laws which are penal in nature and those which are intended to protect the public. We refer to the Supreme Court decision in *Brosseau v. Alberta (Securities Commission),* 1989 CanLII 121 (SCC), [1989] 1 SCR 301. *Brosseau* says that a determination follows from an interpretation of the statute. The Court, in *Brosseau*, quotes a sentence from a *Canadian Bar Review* article by Elmer Driedger, *Statutes*: Retroactive, Retrospective, 56 Can. Bar Rev. 264 at page 275:

> In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, then the presumption does not apply.

33. The issue arises then whether the Commission may make an order for disgorgement under s. 134(da) and whether the object of the amendment empowering the Commission to order disgorgement is to penalize or punish such as Mr. Rudolph and Mr. Mill or to protect the public.

34. In our view, while it may be said that ordering those found to have contravened the *Act* to disgorge the money they made through the contravention is punitive to them, we conclude that the object of the amendment was preventative and that we may order disgorgement.

35. The legislature, in 2012, added the remedy of disgorgement to the powers of the Commission under s. 134. The legislature, we conclude, intends that disgorgement <u>not</u> be considered an administrative penalty under s. 135. Speaking positively, the legislature intended that disgorgement be part of what may be called the "regulatory" jurisdiction of the Commission. The legislature is presumed to know the law and so must be said to be aware of the distinctions made by the Supreme Court in *Brosseau.*

36. "Disgorgement" and penalty are different. A disgorgement is a means of depriving someone who has violated the *Act* of any gain obtained through it. Disgorgement only

serves to return the violator financially to the position he was in before the violation. There is no "penalty" in that.

37. The amendment enables the Commission to avoid mixing a step in a remedial process with the sanction which the Commission should impose by a penalty. A penalty can only be an amount in addition to a return of the gain. A return of the gain is not really a deterrent so much as a limited disincentive. A disgorgement, standing alone, would only mean that the violator's gambit had not in the end profited him, but would not serve as much of a message that the violator ought not to do it again. The added conceptual benefit is that one is not seeking disgorgement through penalty. The penalty becomes pure and is not adulterated by obtaining a disgorgement indirectly through a penalty what could not previously have been obtained directly.

38. Thus, we will order Mr. Rudolph and Mr. Mill, each to pay one-half of the net amounts they inveigled from the witnesses. We accept the figure of $870,410 as calculated by Enforcement. Mr. Rudolph and Mr. Mill actually managed to extract slightly more than $1,400,000, but one witness had obtained security for his investment and was repaid his principal in full. Many other witnesses received small repayments over time. Each of Mr. Rudolph and Mr. Mill will be ordered to disgorge $435,205 to the Commission.

Rudolph Submissions

39. Mr. Rudolph, in his submissions, simply makes no reference whatsoever to the testimony of the many witnesses who testified to his abuse of their trust in him. He accepts no responsibility. Instead, he says that the violations of the *Act* he has been found to have committed are entirely the fault of Mr. Mark David and staff of the Commission through their connection with the notorious litigation involving Knowledge House Inc. (Knowledge House). (Mr. David, it will be recalled, is the lawyer who became involved in the machinations of Mr. Rudolph and Mr. Mill and came to be disbarred for it). Mr. Rudolph, in sum, asks the Panel to accept that he was the victim.

40. Mr. Rudolph also reiterates arguments made by him and on his behalf during the proceeding. He submits there was "no underlying security" (paragraph 9) and there was no trade "in securities in any way shape or form". He says that, in fact, he was simply obtaining "small business loans".

41. He represents, as a further excuse, that he was not aware that he was dealing in "securities" and professional advisors never suggested to him that he was. We dismissed these submissions earlier in this Sanction Decision.

42. Mr. Rudolph also argues in mitigation that Mr. David's failures and the Knowledge House matter have been devastating to him financially and personally. He says his home was foreclosed upon and his car repossessed. He says he has had constant anxiety, depression, social isolation, and relationship breakdowns for many years. He says he has suffered enough and should be assessed an administrative penalty no greater than $10,000.

43. Mr. Rudolph gave no evidence. The Panel has, for example, nothing on the record to say how he got into financial difficulties. He made many statements in his submission that Enforcement would likely relish challenging, but the more fundamental difficulty is that, true or not, the statements and the arguments are irrelevant. We addressed the Knowledge House argument in the Liability Decision. We repeat that none of the witnesses had anything to do with Knowledge House and none made any significant mention of it in their evidence. Knowledge House forms no part of the allegations against him.

Mark David

44. Mr. Rudolph says he took money from the witnesses only because of Mr. David's assurances and representations and that these assurances and representations "did not come to fruition is not my fault and Mr. David's failures should not and cannot be attributed to me ..." He reiterates this argument throughout the 21 pages. He says, for example:

> 30. Based **SOLELY** on Mr. David's legal assurances and representations, I contacted family and friends to assist the group. The legal assurances were the **ONLY** reason for the loans. [Emphasis in original.]

45. There is little evidence before us of Mr. David's engagement with Mr. Rudolph. Mr. Rudolph and Mr. Mill did not testify so there is, of course, none from them. It is not even clear that there was a solicitor-client relationship between Mr. Rudolph and Mr. David. The Nova Scotia Barristers' Society decisions in discipline of Mr. David mentions Mr. Rudolph once as the recipient of a large sum of money from Mr. David's trust account. Commission staff at the time made a note of a conversation with Mr. David's own lawyer which records "Mr. David did not act for Mr. Rudolph but may have represented one or more of the CanGlobe companies..." (Liability Decision at paragraph 214)

46. A few of the witnesses met Mr. David or received copies of correspondence from him, but many of them only heard of him through press coverage of various legal proceedings or his name only in passing. They all said they relied on Mr. Rudolph and Mr. Mill. There is little evidence that any of the witnesses relied on Mr. David at all. Mr. Rudolph's inflation of Mr. David's role now in mitigation has little credibility. Although, again, there is no evidence, Mr. Rudolph may have been duped by Mr. David, it was Mr. Rudolph who duped the witnesses. It was he who played them for suckers, not Mr. David. That Mr. Rudolph may have been duped by Mr. David is no reason in fact or law to view his violations of securities law and his frauds less seriously.

Knowledge House

47. Mr. Rudolph says he maintained a margin account with the National Bank of Canada. He says that in late 2001, National Bank sued him for "margin debt related to shares I owned that had lost value." It is not clear whether the shares he owned were in fact shares of Knowledge House, but he says that ensuing litigation consumed his time and his resources. He says that if an agreement in June 2005 had not been made between

Compliance and Enforcement staff of the Commission and National Bank to hold a settlement agreement arising out of Knowledge House securities transactions confidential and in escrow, then his own litigation with National Bank would have settled. Then, he says, he would have been able to complete his business deals "and there would have been no prior or future financial obligations to family or friends". He says he could have used his own funds had he "decided to become involved with CanGlobe" and there would never been any criminal proceedings against him nor these proceedings either. Mr. Rudolph refers us to the 150-page, 465-paragraph opinion of the Court of Appeal in *National Bank Financial Ltd. v. Barthe Estate,* 2015 NSCA 47 (hereinafter "*Barthe*"). He concludes:

> 62. But for the egregious actions described herein, I could have settled my lawsuit with the bank and would have had my own funds, finalized the business dealings I had at that time and eliminated the need of assistance in any form from family and friends.

48. Mr. Rudolph seems to be saying that the then-Director of Enforcement was at fault for entering into the settlement agreement with National Bank. While the Commission may be said to have been critical of the then-Director's agreement to hold the settlement agreement with National Bank in escrow (see *In the Matter of Kenneth G. MacLeod, and Calvin W. Wadden; and In the Matter of an Investigation in Respect of Knowledge House Inc., and In the Matter of the Motions of Daniel F. Potter, Knowledge House Inc., Kenneth G. McLeod and Calvin W. Wadden* (17 April 2012, amended 30 September 2012), the issue in *Barthe* was National Bank's failure to disclose the settlement agreement as a part of the discovery process in litigation involving the parties to the appeal. The settlement and escrow agreement were fundamental to the Court of Appeal's findings, but the propriety of the agreement itself was not an issue before the Court of Appeal. We know of no finding that the then-Director is liable to anyone for whatever it may be said to have done or even that the then-Director, beyond a difference of opinion, may be said to have erred. Mr. Rudolph might, we suppose, have produced the evidence to prove the then-Director was at fault and caused the consequences he alleges, but he chose not to. We certainly cannot, at this late stage, make any such findings in mitigation of Mr. Rudolph's own conduct.

49. Mr. Rudolph, having decided that the then-Director was at fault, leaps to the conclusion that the settlement agreement being held in escrow was the source of all his woes including the taking of money from the witnesses through fraud and the proceedings emanating from the fraud before us. He said in argument during the hearing that we ought not to proceed at all because of the settlement agreement and now, given that we did proceed, that any sanction ought to be mitigated by it.

50. We reiterate that Knowledge House played no part in the evidence before us. We have no evidence before us that the escrow agreement *per se* was wrongful. We have no evidence before us the escrow agreement led to his financial failure. We have no evidence before us that could lead us to conclude that the failure to disclose the settlement and escrow

agreements caused or justified his taking of money from the witnesses. It has to be said, indeed, that there is no logical connection between the settlement and escrow agreements and his frauds that could possibly explain let alone justify them. The simple facts remain that he defrauded the witnesses. That he himself, if indeed it is true, suffered losses because of his stock speculation and the manipulation of share prices may be ironic but it is, in our view, no more of an excuse than simple greed.

51. Secondly, the Court of Appeal in *Barthe*, as if it were aware that the Knowledge House proceedings were being invoked in other matters, was at pains to say:

> [10] I wish to emphasize that this decision *only* deals with the matters which form the subject of these three appeals. Readers are cautioned that nothing in this judgment should be taken to reflect upon any other proceedings or settlements, whether completed, abandoned, or ongoing, between or among parties who are not participants in these appeals.

52. Mr. Rudolph has asked that this Sanction Decision be held in abeyance for 30 days to provide time for him to appeal and then, if he appealed, held in abeyance until the appeal was resolved. He argues an analogy with the decision of the Commissioner noted above in the Knowledge House litigation. We cannot accede to his request. These are public proceedings and our decisions are public – immediately. Mr. Rudolph would have us do what he fulminates against in his own submissions: sit on a resolution. In any event, the disclosure of the settlement agreement was precisely the issue dealt with by the Commission in its earlier decision in the Knowledge House matter. Disclosure would have made the whole argument moot and deprived a party of an effective appeal and so the Commission directed its decision be held in abeyance. That decision bears no similarity nor precedent for the withholding of a publication of a routine decision of a judicial body.

Costs

53. In addition to the sanctions and administrative penalties, Enforcement seeks an order for costs in the amounts of $52,000 from Mr. Rudolph and $17,500 from Mr. Mill. Section 135A provides that "the Commission may, after a hearing, order a person or company convicted of an offence or against whom an order has been made pursuant to Section 133, 134 or 135, such costs not exceed the costs prescribed in the regulations".

54. The ASC observed in *Gold-Quest International Corp., Re* 2010 ABASC 278 at paragraph 54:

> An order for payment of costs under section 202 of the *Act* – which is not a sanction – is directed at the recovery of costs incurred by the Commission in conducting enforcement proceedings related to a market participant's contravention of the Alberta securities laws or conduct contrary to the public interest. A cost order is also a mechanism by which the Commission can promote procedural efficiency in the conduct of the enforcement proceedings. It is generally appropriate that, when a

respondent has been found to have contravened Alberta securities laws or acted contrary to the public interest, the respondent be required to pay at least a portion, of the costs of the investigation and hearing that led to such finding or findings. One of the factors we consider when determining the amount of the costs incurred that ought to be paid by the respondent is the extent to which the respondent facilitated or impeded an efficient investigation and hearing process. An order or orders resulting in full recovery of costs, within the parameters set by the Alberta Securities Commission Rules (General), might be appropriate where, for example, the conduct of the respondent or respondents in no way contributed to the efficient resolution of an enforcement proceeding. Furthermore, ordering joint and several responsibility for costs might be appropriate where, for example, the conduct of multiple respondents relevant to an investigation and hearing was sufficiently similar.

55. None of the Respondents made submissions on the issue of costs. Our Liability Decision establishes that the Respondents have been found to have contravened the *Act* and acted contrary to the public interest. We also find that both Mr. Rudolph and Mr. Mill failed to facilitate and impeded an efficient investigation and hearing process. The Respondents, in equal measure, failed to contribute to the efficiency of the investigation and proceeding. They are jointly and severally liable for the full amount of the costs.

Conclusion

56. For the above reasons, we will order that:

    a. Pursuant to section 134(1)(a)(i) of the *Act*, each of the Respondents shall comply with Nova Scotia securities laws;

    b. Pursuant to section 134(1)(b)(ii) of the *Act*, the Respondents shall permanently cease trading in any securities and derivatives;

    c. Pursuant to section 134(c) of the *Act*, the exemptions contained in Nova Scotia securities law shall not apply to the Respondents permanently;

    d. Pursuant to section 134(1)(d)(ii) of the *Act*, each of Rudolph and Mill are prohibited permanently from becoming or acting as a registrant, investment fund manager, or promoter;

    e. Pursuant to section 135 of the *Act*, Rudolph shall pay an administrative penalty to the Commission of $600,000;

    f. Pursuant to section 135 of the *Act*, Mill shall pay an administrative penalty to the Commission of $400,000;

    g. Pursuant to section 134(1)(da) of the *Act*, Rudolph and Mill shall each disgorge the sum of $435,205; and

h. Pursuant to section 135A of the *Act*, Rudolph and Mill shall be joint and severally liable to pay costs in connection with the investigation and conduct of this proceeding in the amount of $69,500.

57. We ask Enforcement to please draft for our signatures an order to the above effect.

Dated at Halifax, Nova Scotia this 16th day of September, 2021.

(signed) "*J. Walter Thompson*"
J. Walter Thompson, Q.C.
Commissioner
Chair of Panel

(signed) "*Heidi Walsh-Sampson*"
Heidi Walsh-Sampson
Commissioner

(signed) "*Ken Wheelans*"
Ken Wheelans
Commissioner