ALBERTA SECURITIES COMMISSION

DECISION

Citation: Wealthstreet Inc., Re, 2011 ABASC 611 **Date: 20111207**

Wealthstreet Inc., Colin David Jones aka David Colin Jones and Rachael Poffenroth

Panel:	Glenda A. Campbell, QC Beverley A. Brennan, FCA Glen D. Roane
Appearing:	Andrew Wilson for Commission Staff
	Trevor Batty for the Trustee in Bankruptcy of Wealthstreet Inc.
	Rachael Poffenroth for herself (by teleconference)
Submissions Completed:	16 November 2011
Date of Decision:	7 December 2011

I. INTRODUCTION

[1] In a 25 August 2011 decision (the "Merits Decision", cited as *Re Wealthstreet Inc.*, 2011 ABASC 456), this Alberta Securities Commission (the "Commission") panel found that three respondents (the "Respondents") – Wealthstreet Inc. ("Wealthstreet"), Colin David Jones also known as David Colin Jones ("Jones") and Rachael Poffenroth ("Poffenroth") – had contravened Alberta securities laws and acted contrary to the public interest by trading in and distributing securities without registration and a prospectus and, in the case of Jones, by acting as an advisor without registration, and by engaging in an unfair practice.

[2] The Merits Decision concluded the first phase of a hearing under sections 198 and 199 of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") (the "Merits Hearing") – the hearing into the merits of allegations made by Commission staff ("Staff") set out in an amended notice of hearing dated 13 January 2011.

[3] In the second phase of this hearing, we consider what, if any, orders under sections 198, 199 and 202 of the Act ought to be made against each of the Respondents. We received written submissions from Staff and the Trustee in Bankruptcy of Wealthstreet (the "Trustee"). Jones and Poffenroth made no written submissions. The panel requested an oral hearing. Staff, the Trustee and Poffenroth attended and made oral submissions (the latter by teleconference). Jones neither attended nor made oral submissions.

[4] These are our reasons and decision as to the appropriate sanctions and costs to order against the Respondents. This decision should be read together with the Merits Decision (and the latter defines certain terms also used in this decision).

[5] For the reasons set out below, we conclude that it is in the public interest to make orders sanctioning all of the Respondents, and that it is also appropriate to make cost orders against Jones and Poffenroth. Our decision on appropriate sanction for each of the Respondents is summarized as follows:

- Wealthstreet:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws (with a limited exception), and all trading in or purchasing of Wealthstreet securities must cease, permanently;

- Jones:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws (with limited exceptions), from acting as a director or officer of any issuer, registrant or investment fund manager, and from acting in a management or consultative capacity in connection with securities market activities, permanently;
  - is barred from advising in securities, permanently;
  - shall pay an administrative penalty of $1 500 000; and
  - shall pay $22 000 towards the costs of the investigation and hearing; and

- Poffenroth:
  - is barred from trading in or purchasing securities and from using exemptions under Alberta securities laws (with limited exceptions), for 3 years;
  - is barred from acting as a director or officer of any issuer, registrant or investment fund manager, and from acting in a management or consultative capacity in connection with securities market activities, for 10 years;
  - shall pay an administrative penalty of $75 000; and
  - shall pay $8000 towards the costs of the investigation and hearing.

II. BACKGROUND

[6] The factual background and our detailed conclusions regarding the Respondents' capital market misconduct are set out fully in the Merits Decision. Here, we provide a summary to establish the context for our discussion and conclusions as to the appropriate sanctions and costs orders in these circumstances.

[7] Jones and Poffenroth are Alberta residents and Wealthstreet is an Alberta company. The Wealthstreet operations and activities centred on Jones – the public face and the controlling mind of Wealthstreet. Almost all of the trading and advising activity for which we had evidence occurred in Alberta.

[8] We concluded that all three Respondents engaged in illegal trading and distributions of securities contrary to sections 75(1)(a) and 110(1) of the Act in relation to Wealthstreet promissory notes with an interest rate of 10% per year and a maturity date of 1 August 2008 (the "Promissory Notes"). Specifically, we found that:

- the Promissory Notes were securities;
- Wealthstreet and Jones directly traded in the Promissory Notes, while Poffenroth traded by engaging in acts in furtherance of trading in the Promissory Notes;
- the trades in the Promissory Notes were distributions;
- no registration or prospectus was in place for the trades or distributions; and
- exemptions were not available for all of the trades and distributions of the Promissory Notes.

[9] We concluded that Jones acted as an advisor without being registered, contrary to section 75(1)(b) of the Act, by engaging in or holding himself out as engaging in the business of advising others with respect to investing in or the buying or selling of securities.

[10] We concluded that Jones engaged in an unfair practice by taking advantage of at least one Wealthstreet investor – investor MLR, a senior citizen with limited assets, investment knowledge and investment experience. Jones, in a particularly callous display of seeking funds for his own project at the expense of another, convinced MLR that her home would be stolen from her unless she borrowed against its equity. She then invested that borrowed money to purchase securities offered through Wealthstreet by Jones.

[11] We found that each Respondent acted contrary to the public interest by engaging in the conduct summarized above.

III. PARTIES' POSITIONS

A. Staff's Position

[12] Staff emphasized that Jones's behaviour was the most egregious – not only was his the most serious misconduct but also more allegations were made and sustained against him. Staff noted that Wealthstreet raised over $3 million through the sale of its Promissory Notes and engaged in extensive promotional activities, with Jones as its face. Staff described Poffenroth as being aware that she lacked the necessary education and experience for her position as president of Wealthstreet, yet she continued to so act and in so doing collected her generous compensation.

[13] Staff submitted that each of the Respondents received considerable financial benefits "as a result of their wrongful conduct". Staff urged us to impose significant administrative penalties on each Respondent to send the message to others that an administrative penalty is not merely another cost of doing business.

[14] Referring to the factors relevant to sanction discussed by the Commission in *Re Lamoureux*, [2002] A.S.C.D. No. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253), as refined in para. 43 of *Re Workum and Hennig*, 2008 ABASC 719 (affirmed 2010 ABCA 405), Staff submitted that the following sanctions would be appropriate (given that all parties were aware of the sanctions sought by Staff and hearing no objections at the oral hearing on sanction, Staff was granted leave to amend further the Amended Notice of Hearing and to seek additional sanctions):

- as against Wealthstreet:
    - a permanent prohibition from trading in or purchasing securities;
    - a permanent prohibition of all trading in the securities of Wealthstreet;
    - a permanent denial of the use of all exemptions under Alberta securities laws; and
    - an administrative penalty of $2 250 000, consisting of $1 500 000 payable jointly and severally with Jones and $750 000 payable jointly and severally with Poffenroth;

- as against Jones:
    - a permanent prohibition from trading in or purchasing securities;
    - a permanent denial of the use of all exemptions under Alberta securities laws;
    - a permanent prohibition from advising in securities or exchange contracts;
    - a permanent prohibition from becoming or acting as a director or officer of any issuer, registrant or investment fund manager and from acting in a management or consultative capacity in connection with securities market activities; and
    - an administrative penalty of $1 500 000 payable jointly and severally with Wealthstreet; and

- as against Poffenroth:
    - a permanent prohibition from trading in or purchasing securities;
    - a permanent denial of the use of all exemptions under Alberta securities laws;

- a permanent prohibition from becoming or acting as a director or officer of any issuer, registrant or investment fund manager and from acting in a management or consultative capacity in connection with securities market activities; and
- an administrative penalty of $750 000 payable jointly and severally with Wealthstreet.

[15] Staff also sought costs of the investigation and hearing totalling $33 465 "from the Respondents". During oral submissions, Staff clarified that they are seeking these costs on a joint and several basis against all three Respondents, although appeared not to object to the Trustee's contention that no costs should be awarded against Wealthstreet.

B. Wealthstreet's Position

[16] The Trustee did not object to the bans sought by Staff relating to Wealthstreet. The Trustee asked (and Staff concurred) that if such orders are granted there be a carve-out allowing the Trustee to dispose of certain securities Wealthstreet owns in Mosaic Capital Corporation ("Mosaic") in order to recover the proceeds for distribution to the unsecured creditors. However, the Trustee disagreed that we should order an administrative penalty against Wealthstreet in these circumstances. According to the Trustee, ordering an administrative penalty would harm the Wealthstreet investors (many of whom are unsecured creditors with claims in the Wealthstreet bankruptcy) by effectively decreasing their estimated recovery in the bankruptcy from 27 to 47 cents on the dollar to 14 to 25 cents on the dollar (although those numbers could change with the disposition of the Mosaic securities).

[17] The Trustee submitted that no costs should be awarded against Wealthstreet, in recognition of the Trustee's cooperation with Staff's investigation and hearing, including the Trustee's helpful testimony at the Merits Hearing. The Trustee noted that all of the costs associated with assisting Staff in this way "have been borne by the Estate of Wealthstreet" and that an award of costs could discourage cooperation by trustees in the future.

[18] The Trustee took no position on the sanctions sought against Jones and Poffenroth.

C. Jones's Position

[19] As noted, we received no written or oral submissions from Jones on the issue of sanction. In previous appearances, Jones had essentially portrayed himself as a victim, blaming a downturn in the world economy for the problems encountered by Wealthstreet and for investor losses. He earlier accepted no responsibility and expressed no regret for the money that he caused to disappear and the lives that he devastated.

D. Poffenroth's Position

[20] Poffenroth also continued to represent herself during this portion of the hearing. She made no written submissions, but did make some oral comments. She apparently accepted the majority of the sanctions sought by Staff, although noting that the administrative penalty sought is large considering her very limited role in the illegal trades and distributions of the Promissory Notes. She indicated that she would not again be participating in the "public" market, and requested carve-outs allowing her to invest in a registered retirement savings plan ("RRSP") and a registered education savings plan ("RESP") if market access bans are imposed against her.

IV. ANALYSIS

A. Sanction

1. Principles and Factors

[21] Our task in this part of the hearing is to decide what, if any, sanctions are appropriate to order against the Respondents under sections 198 and 199 of the Act. As orders for costs involve different factors and considerations than do sanction orders, we discuss costs separately.

[22] Under section 198 of the Act, the Commission may, if it considers it to be in the public interest to do so, order one or more of several sanctions. These include prohibitions on various aspects of a respondent's capital market participation. Section 199 empowers a panel to order, in the public interest – against a respondent found to have contravened Alberta securities laws – an administrative penalty of not more than $1 million for each contravention.

[23] Sanctions ordered by the Commission are not made to punish respondents or remedy harm caused by them. Instead, the Commission's mandate is to address potential future harm by protecting Alberta investors and preventing damage to the integrity of the Alberta capital market (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). As part of this protective and preventative function, the Commission considers both specific deterrence (to prevent a particular respondent from engaging in future capital-market misconduct) and general deterrence (to discourage others who may be tempted to emulate a respondent's misconduct). Such consideration of deterrence principles was confirmed as appropriate by the Supreme Court of Canada in *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62.

[24] In that context – prevention and protection, with underlying principles of specific and general deterrence – we consider the factors cited by Staff as set out in para. 43 of *Workum and Hennig* (a restatement of the factors set out in *Lamoureux)*:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

[25] As part of our analysis, we also consider the anticipated effect of a particular sanction order or combination of various sanction orders. This involves an assessment of how the potential types and quanta of sanctions interact to achieve the level of protection and prevention necessary in the particular circumstances of a certain respondent.

2. Principles and Factors Applied

(a) Specific and General Deterrence

[26] All three Respondents engaged in serious capital market misconduct. Illegal trades and distributions of securities strike at the heart of our securities regulatory system. Jones and, through him, Wealthstreet, contravened – indeed, blatantly flouted – basic tenets of and protections offered by Alberta securities laws. Although Poffenroth was less involved in the illegal trades and distributions of the Promissory Notes, she bears responsibility for her and Wealthstreet's roles in those illegal trades and distributions.

[27] In addition, Jones contravened other provisions of Alberta securities laws – advising without being registered to do so and engaging in an unfair practice. In our view, while his illegal advising was the most egregious conduct before us, his unfair practice was also offensive conduct. Jones held himself out to Alberta investors and potential investors as an expert financial advisor in securities investments. He purported to review individuals' portfolios and to choose securities that were to be specifically suited to the individual's particular needs and circumstances. Throughout that process, he encouraged many investors to establish and draw on (or to draw on previously-established) home equity lines of credit for the sole purpose of investing in securities offered by him and Wealthstreet. As we stated in the Merits Decision (at para. 143):

> Jones well knew that Wealthstreet clients and potential clients placed a considerable degree of trust and confidence in him, again fostered by advertising campaigns. The evidence is clear that Wealthstreet clients were relying heavily, if not exclusively, on Jones's advice in making their decisions to purchase the various securities being sold by Wealthstreet. His advice has turned out to be disastrous. Many of his recommended investments in securities have failed. His advice to investors to access investable funds using home equity lines of credit has left many of his clients with little or none of the promised cash flow to service those debts. Most of these investors will lose a substantial portion of the money they invested and have not received the promised returns. Several of Jones's clients now find themselves in financial hardship, caused by the highly questionable investment strategy recommended by Jones – leveraged investing in high-risk, illiquid securities. Some investors have lost their savings and retirement funds; many remain obliged to service debts incurred to purchase the securities. Some investors may even lose their homes. It is understandable that the investor witnesses have lost confidence in our capital market. Undoubtedly, other Wealthstreet investors, and other market participants who learn of their plight, will also have doubts about the integrity of our capital market.

[28] We conclude that, without the imposition of significant sanction, Jones and his vehicle Wealthstreet would most likely engage in future capital market misconduct. We do not see a similar need for significant specific deterrence in the case of Poffenroth.

[29] Appropriate sanction in these circumstances also requires a considerable measure of general deterrence. As already mentioned, Jones's conduct was the most egregious and involved several contraventions of Alberta securities laws. Although Poffenroth was less involved, a significant measure of general deterrence is warranted in her case to communicate a crucial message to those who act as officers of companies that raise money from the capital market – they must not take on such positions unless they are capable of ensuring the company's compliance with all applicable legal requirements, including Alberta securities laws. The orders we make must clearly communicate to others tempted to emulate the conduct of Wealthstreet,

Jones and Poffenroth that such behaviour will not be tolerated, even from those who may not appreciate that securities laws are being contravened.

[30] Although there is a clear need for significant specific and general deterrence in this case, our final decision on sanction also requires a consideration of the specific, relevant sanctioning factors.

(b) Relevant Factors

(i) Seriousness of Misconduct and Recognition of Seriousness

Serious Misconduct

[31] As noted, each of the Respondents breached key Alberta securities law provisions – the registration and prospectus requirements. These provide fundamental protections to investors and are intended to assist individuals in making informed investment decisions. Jones breached another key protective provision that prohibits unregistered advising, and he also engaged in an unfair practice. Finally, all of the misconduct by all of the Respondents was contrary to the public interest.

[32] The provisions prohibiting trades and distributions of securities without registration and a prospectus – or an applicable exemption – are fundamental to the protection of investors in our capital market. The registration requirement is designed to ensure that those purporting to sell or trade securities to prospective investors have the knowledge, training and experience to ensure that the proposed investment is suitable for investors' particular situations, including their investment goals and the appropriate level of risk in all their circumstances. The prospectus requirement is designed to ensure that investors receive the necessary information to be able to make an informed decision about the securities they are considering purchasing.

[33] Alberta securities laws also provide some exemptions to the registration and prospectus requirements. Those exemptions are carefully tailored to specific situations, such as those in which an investor is considered not to need those protections in order to make informed and appropriate investment decisions. When those exemption requirements are minimized or ignored – as by the Respondents – investors are put at risk and may, as here, suffer actual financial losses.

[34] The Respondents clearly knew of the registration and prospectus requirements or the need for exemptions when selling securities. Wealthstreet filed the Exempt Distribution Report; Jones signed it, and Poffenroth was responsible for the accuracy of those filings by virtue of her position as president of Wealthstreet. In the Exempt Distribution Report, the Respondents purported to rely on certain exemptions in selling the Wealthstreet Promissory Notes to investors. The investor witnesses from whom we heard did not qualify for the exemptions as claimed. In fact, some of the investor witnesses had been counselled by Wealthstreet personnel that the exemption qualifications were formalities that could be ignored. It is likely that other Promissory Note investors similarly did not qualify.

[35] The Respondents' illegal securities trading and distribution conduct was serious.

[36] Jones also engaged in illegal advising by acting as an advisor in securities without the proper registration. Advisor registration is designed to ensure an investor in securities is protected by receiving advice from an advisor who has the proper education, experience and training to ensure that the advice given is appropriate and suitable for the individual's particular circumstances. As noted, we view Jones's illegal advising as the most egregious conduct before us. Jones convinced investors that he was a qualified and expert financial advisor in securities who would help them meet their specific financial goals and objectives. He assured investors that he was working hard to find them appropriate and suitable investments and that he was creating balanced investment portfolios for them. He persuaded and encouraged investors to undertake significant risky leveraging strategies – borrowing against the equity in their homes to invest in securities offered through Wealthstreet – without explaining the accompanying risk that they could lose their investment and still be responsible for the borrowed amount and interest. Some of the investor witnesses from whom we heard lost considerable amounts of money and retirement security; one senior citizen may lose her home. Jones engaged in extremely serious misconduct.

[37] In connection with Jones's illegal advising he also engaged in an unfair practice in relation to at least one investor witness – MLR. Jones used a combination of scare tactics and falsehoods to pry MLR's money away from her, putting her in a serious debt position from which she may never recover. He did this while purporting to act as her financial advisor who was looking out for her best interests. However, it was apparent from the evidence that Jones was only looking to better his own financial interests – his goal seemingly was to procure as much money as he could from MLR and his other clients, paying little or no heed to the risk to which he exposed them or the actual financial harm he caused them.

Recognition of Seriousness

[38] Wealthstreet is a corporate entity in bankruptcy. Although Jones was its sole director and shareholder, it is the actions of its Trustee that are relevant in this context. The Trustee is attempting to realize on various assets so that he can repay as much as possible to Wealthstreet's unsecured creditors – primarily the Promissory Note investors. In this sense, Wealthstreet has accepted responsibility for its breaches of Alberta securities laws and is trying to redress matters for investors.

[39] Jones, in our view, still does not recognize the seriousness of his misconduct. Communications to investors that are in evidence and his statements before us (on the few occasions that we saw or heard from him) demonstrate Jones's persistence in contending that any issues with the Promissory Notes and the other securities sold through Wealthstreet were caused by global economic conditions and not his actions. He continues to accept no blame or responsibility for his illegal actions. When cross-examining investor witness KC, he implied that she was in a more balanced position with her current investments (through Wealthstreet) than she had been before meeting Jones. In fact, KC had gone from having retirement savings of over $200 000 and real estate equity of several hundred thousand dollars to apparently losing all of her savings and owing $540 000 on home equity lines of credit. In addition to not accepting responsibility for the financial harm he caused his clients, Jones seems unwilling or unable to appreciate the fact that his actions contravened Alberta securities laws and were contrary to the public interest.

[40] We believe that Poffenroth recognizes the seriousness of her misconduct and sincerely regrets both her involvement in Wealthstreet and the harm caused to Wealthstreet investors. She candidly admitted that she was not qualified to act as Wealthstreet's president. She also testified during the Merits Hearing that she experienced "shock and hurt" at learning some of what Jones had done and how the investors had been affected. She appeared to accept the majority of the sanctions suggested by Staff as appropriate and expressed her intention not to be involved with public companies in the future. However, the evidence also indicates that Poffenroth had concerns about being under-qualified and being upset over some of Jones's activities while still employed at Wealthstreet. Despite her concerns and reservations, Poffenroth continued for a time to act as Wealthstreet's president and collect her generous remuneration. She later filed a claim with the Trustee for money owing to her from her wrongful dismissal claim. At no time did she report Jones or Wealthstreet to any regulators. We conclude that while some of her remorse and recognition of seriousness is genuine, some of that contrition stems from her desire to minimize the sanctions she might receive.

(ii) Characteristics of Respondents

Wealthstreet

[41] We conclude it appropriate in the circumstances to attribute Jones's knowledge, background and experience to his company, Wealthstreet.

Jones

[42] Jones was licensed to sell insurance products by the Alberta Insurance Council. He had been registered in Alberta as a mutual funds salesperson, but that registration had ceased 20 years before this proceeding. Thus, while Jones had not been registered in Alberta in a capacity related to securities for many years, his experience in regulated industries – the insurance industry and his past experience as a registered mutual funds salesperson – would or should have alerted him that his and Wealthstreet's dealings with their clients involved activities in the highly-regulated securities industry. He was or should have been aware of the securities regulatory mandate to protect investors and to ensure that those who sell or advise on securities products must carry out those activities in compliance with Alberta securities laws. He did know or should have known that participation in the securities industry through trading, distributing and advising in securities is a privilege requiring an individual to have certain qualifications, behave in a certain prescribed manner and be registered. Jones knew enough to file the Exempt Distribution Report in connection with the sale of the Promissory Notes and knew or should have known that the qualifications for using such exemptions are critical elements of our investor protection system that must be strictly complied with; those qualifications are not mere formalities or technicalities that can be ignored.

[43] We conclude that Jones either did not know the securities law requirements of which he should have been aware, or that he did know of them but cavalierly ignored them – to the detriment of those who invested in the Promissory Notes and those, who on his advice, borrowed money and invested in other securities through Wealthstreet. This warrants very severe sanction against Jones.

[44] Jones has not previously been sanctioned by the Commission. While we understand Jones is a respondent in another enforcement proceeding before a different hearing panel of this Commission, that proceeding has yet to conclude and so we do not consider that proceeding in our determination of what sanction orders to make against Jones. In any event, in Jones's circumstances, we do not consider that his lack of sanctioning history diminishes the need for very severe sanction against him.

Poffenroth

[45] Poffenroth had no experience in the securities industry or, apparently, in any highly-regulated industry. She has not previously been sanctioned by the Commission. Before Jones persuaded Poffenroth to join Wealthstreet she had been an account manager for Direct Energy. She had taken a course offered by the Investment Fund Industry of Canada, although we were not told the subject-matter of that course. Poffenroth knew that she was unqualified to act as Wealthstreet's president, but agreed to take on the position, acted in that role for slightly over a year, and was handsomely compensated. She knew that there were "grey" areas in Jones's and Wealthstreet's activities, but continued her involvement and did not investigate or report her concerns to anyone. She also continued to oversee Wealthstreet's promotional and advertising efforts and sent a letter to at least one client offering investment opportunities other than the Promissory Notes. She noted in the Poffenroth Affidavit that Wealthstreet's annual revenue grew from $1 million to $4 million during her tenure. Although she saw that certain securities regulatory forms required investors to meet criteria, she ignored those criteria and advised at least some investors to do the same. Poffenroth's role specifically relating to the Promissory Notes was limited, at least in connection with the investor witnesses – for example, Poffenroth's only role with investor KC was picking up a cheque for KC's investment in the Promissory Notes.

[46] We concluded in the Merits Decision that Poffenroth's primary involvement was in the operations side of Wealthstreet not the investment side, although she did also have some role (primarily promotional, but with some investor contact) in the latter side. Her role in the sale of the Promissory Notes was, as noted, limited. No allegations were made against Poffenroth (or Wealthstreet) relating to Jones's unregistered advising and his accompanying encouragement to investors to engage in inappropriate leveraging activities.

[47] Poffenroth's lack of capital-market experience and sanction history ameliorates somewhat the need for significant sanction against her. However, Poffenroth willingly assumed the title of president but failed to carry out the responsibilities that accompany such a position. She recognized at the time that she was in an untenable situation but did nothing to resolve her uncertainties and uneasiness, presumably a result of her lack of qualification and experience. Accordingly, we conclude that sanctions are warranted in Poffenroth's case, particularly to ensure that Poffenroth and others with a similar lack of qualifications and experience do not take on senior management roles in companies raising money from the public. People in such senior management positions must understand and be able to carry out effectively the associated responsibilities.

(iii) Benefit to Respondents

[48] Wealthstreet received over $3.3 million from the sale of the Promissory Notes. All investors were paid their 10% annual interest. Only 31 of the investors chose to be repaid their principal, with the remaining approximately two-thirds of the initial Promissory Note proceeds reinvested. No further interest payments or principal repayments were made. In August 2008 Wealthstreet transferred its main asset – the Building (which had been purchased partly with money raised from the sale of the Promissory Notes) – to another of Jones's companies (141). This rendered Wealthstreet insolvent at the time of the transfer – less than two weeks after the Promissory Note renewal date. Wealthstreet was assigned into bankruptcy on 6 April 2010 and its estate is currently being administered by the Trustee for the benefit of Wealthstreet's creditors.

[49] Jones received commissions from the illegal sales of the Promissory Notes and from the other securities which he illegally advised investors to purchase through Wealthstreet, some of whom he also advised to engage in a risky leveraging strategy from which investment money was obtained. Jones financially benefited from his unfair trading practice when he convinced investor MLR to invest borrowed money in securities offered through Wealthstreet, sales which presumably resulted in payments of commissions to him. Jones also financially benefited from Wealthstreet's illegal trades and distributions of the Promissory Notes and from the transfer of the Building, which was to the benefit of one or more of Jones's other companies. Jones paid himself (and others, including his former spouse) money from Wealthstreet. According to the Trustee, Jones received cheques from Wealthstreet totalling approximately $1.2 million between January 2007 and August 2009. We consider this to be the minimum amount that Jones personally benefited from his contraventions of Alberta securities laws.

[50] Poffenroth received approximately $695 000 in commissions and bonuses from Wealthstreet from January 2007 until her departure in March 2008. Poffenroth sought a further $629 432 from Wealthstreet as damages for wrongful dismissal; this has now been settled as a $200 000 claim by Poffenroth against the Wealthstreet estate.

[51] Poffenroth was at Wealthstreet when the Promissory Notes were sold, and we found her responsible, in her role as president, for the illegal trades and distributions of those Promissory Notes. However, she was not at Wealthstreet when the decisions were made to solicit investors to reinvest their Promissory Note funds and only pay them their interest. We conclude that Poffenroth did not suspect, at the time she left Wealthstreet, that Wealthstreet would not honour its obligations under the Promissory Notes or the Amended Promissory Notes. She was not at Wealthstreet when Jones incorporated 141 and caused Wealthstreet to transfer the Building to 141, which action resulted in Wealthstreet's insolvency. Further, Poffenroth was not alleged to have been a party to Jones's illegal advising activities relating to the sale of other securities through Wealthstreet. In our view, Poffenroth's responsibility arose from her limited role in the illegal trades and distributions of the Promissory Notes; apart from that role, she was not responsible for the losses ultimately suffered by some of the Promissory Note investors. That limited role can realistically be connected to only a limited amount of the compensation received by Poffenroth through Wealthstreet.

[52] We conclude that the Respondents intended to be financially enriched from the trades and distributions of the Promissory Notes, and that Jones intended to be financially enriched from his

illegal advising activities and his unfair trading practice. We also conclude that the Respondents were, in fact, financially enriched by their respective illegal activities, with Jones clearly receiving the most financial benefit. This consideration calls for sanctions against the Respondents, with more severe sanctions imposed on Jones, so that they and others are not inclined to repeat this otherwise-profitable misconduct.

(iv) Harm to Investors and the Capital Market

[53] In contrast to the financial benefits received by the Respondents, the Respondents' actions harmed particular investors – including the investor witnesses – and the Alberta capital market in general (again, with Poffenroth's actions causing less harm than those of Jones and Wealthstreet).

[54] As noted, although all Promissory Note investors received their interest payments and some their principal repayments, those who elected to renew their Promissory Notes lost their principal and the subsequent interest owed. The Trustee plans to return some amount, likely at least between 27 and 47 cents on the dollar, to those investors, but financial damage has clearly resulted. Those who invested in securities through Wealthstreet on Jones's advice have also lost large amounts of money. In addition to their monetary losses, these investors' confidence in our capital market has been shaken, leaving many of them distrustful and wary about their future investing in the capital market. Moreover, many of these investors remain exposed to further financial losses as they struggle to repay the home equity lines of credit that Jones convinced them to borrow from to invest in the securities he recommended.

[55] Jones and Wealthstreet engaged in extensive paid promotional advertising that made their names well-known as financial service providers in Alberta, at least in Calgary. Some of those advertising efforts, along with other marketing activities, involved Poffenroth. Jones represented himself as one of the top financial advisors in the world. Investors and potential investors believed him, to their detriment. Not only were those particular investors negatively affected, but others who learn of Jones's illegal securities activities and the harm he caused to his investor clients may well become distrustful of and lose confidence about investing in the Alberta capital market. Such misconduct also prejudices honest, legitimate and law-abiding individuals and companies that seek to raise public money through proper means.

[56] The Respondents caused harm to particular investors and to the Alberta capital market in general. Of the three Respondents, Jones caused by far the most harm – both to particular investors and to the integrity of our capital market as a whole. Wealthstreet was the vehicle used by Jones and an extension of Jones's activities, which harmed both particular investors and the reputation of the Alberta capital market. Due to her limited role with the illegal sales of the Promissory Notes and the timing of her departure from Wealthstreet, the misconduct found against Poffenroth contributed to some of the harm occasioned to particular investors and to the Alberta capital market as a whole.

(v) Previous Decisions

[57] Staff referred us to a few previous decisions that they submitted could have some relevance to the circumstances here. As often is the case, we did not find any of the previous decisions sufficiently factually similar to provide guidance – the most helpful reference was to *Re Smylski*, 2010 ABASC 449. In *Smylski* the individual respondent engaged in some

misconduct similar to that of Jones, ultimately receiving certain permanent market-access bans and an administrative penalty of $600 000. In that case, however, the other respondent was a business entity that was, in essence, Smylski himself. We did not find any of the cases referred to by Staff pertinent to Poffenroth's particular circumstances.

[58] The Trustee pointed to several decisions in which Commission panels declined to award administrative penalties against corporate entities if such an award would or could potentially decrease the likelihood that investors would recover some of their investments – for example, see *Re Delta 3 Capital Corporation Inc.*, 2010 ABASC 465 at para. 48; and *Re Gold-Quest International Corp.*, 2010 ABASC 278 at para. 46:

> . . . We will not order an administrative penalty against Gold-Quest because its money raised through the Gold-Quest Offering is in the hands of a receiver appointed in the [United States action], presumably for the benefit of Gold-Quest investors, and the public interest will be, in our view, amply served by the market-access bans mentioned.

(vi) Mitigating Factors

[59] We discern no mitigating factors in these circumstances in relation to any of the Respondents.

3. Conclusion on Sanction

[60] We found that the Respondents engaged in illegal trades and distributions of securities, received financial benefits and caused corresponding harm to specific investors and the Alberta capital market. We also found that Jones, who had significant capital market and other regulatory experience, engaged in the most serious misconduct in the circumstances before us – unregistered advising – and also engaged in an unfair practice. Finally, we found that the Respondents engaged in conduct contrary to the public interest.

[61] We concluded that the principles of specific and general deterrence call for sanctions in the circumstances and discussed the relevant factors pertaining to each Respondent.

[62] We now turn to the appropriate sanction for each Respondent, which takes into account the total effect of the sanctions ordered in achieving the required levels of specific and general deterrence.

(a) Wealthstreet

[63] Wealthstreet was the vehicle used by Jones to obtain money from investors for the Promissory Notes and for other offerings of securities that Jones was advising investors to purchase. Wealthstreet illegally traded and distributed the Promissory Notes, a serious contravention of Alberta securities laws. Wealthstreet – through Jones – filed a false Exempt Distribution Report for those trades, claiming exemptions that in at least some cases were clearly not available. Wealthstreet, again through Jones, sold the Building, thus rendering itself insolvent and incapable of paying the investors who had decided to reinvest their Promissory Note funds.

[64] Wealthstreet's conduct clearly warrants very significant sanction. In our view the public interest is best served by removing Wealthstreet's access to the Alberta capital market

permanently, including prohibiting the sale or purchase of any of its securities. Such protective and preventative action will ensure that Wealthstreet never again can be used as a vehicle to access investors or the Alberta capital market. We agree with the Trustee and Staff that it is appropriate in the circumstances to include a provision permitting the Trustee to sell the Mosaic units.

[65] We agree with the Trustee that no public interest would be served by our ordering an administrative penalty against Wealthstreet. The Trustee is attempting to return money to the Amended Promissory Note investors, and we agree that as much money as possible should be returned to the investors directly harmed. We do not consider that declining to order an administrative penalty in these circumstances in any way diminishes the general deterrent effect of our decision.

(b) Jones

[66] Jones's misconduct was egregious. He orchestrated the illegal trades and distributions of the Promissory Notes through Wealthstreet. He appointed the clearly unqualified Poffenroth as president of Wealthstreet, presumably to ensure that he could continue and expand his unacceptable securities activities. He illegally advised investors and potential investors regarding investments in securities, and encouraged them to accumulate debt to invest in securities offered by Wealthstreet. He stripped Wealthstreet of its main asset – the Building – so that the unpaid Amended Promissory Note investors were left with no asset that could be sold to satisfy their debts. Investor MLR, convinced by Jones's threats and falsehoods to borrow against her home and then convinced to invest money through Wealthstreet, may now lose her home. Other Wealthstreet investors are in serious financial difficulties as a direct result of Jones's illegal securities activities.

[67] Through all this, and with his prior capital market experience, Jones refused to accept responsibility for his very serious misconduct, suggesting that investor losses were caused not by his actions but by general economic conditions. He also did not take this proceeding seriously; for example, he sporadically attended the hearing, ignored deadlines and failed to make any submissions on the merits or sanctions portions of this proceeding. Given his past misconduct, we remain concerned that, if not properly restrained, Jones would almost certainly engage in similar misconduct and contravene Alberta securities laws in the future.

[68] For all these reasons, we consider it in the public interest to order very severe sanctions against Jones. In the circumstances of Jones, we agree with the sanctions recommended by Staff. We are of the view that Jones must be removed from accessing the Alberta capital market permanently so that he can never again take money from Alberta investors or use a position with an Alberta issuer to take advantage of investors. We are prepared to provide Jones with a very limited carve-out that will allow Jones to contribute to one RRSP account and to RESPs for his children. In addition, to provide the appropriate specific and general deterrence, we believe that it is in the public interest to order an administrative penalty against Jones in an amount that exceeds the amount of money we can determine that he obtained as a result of his breaches of Alberta securities laws. When viewed in its entirety, we believe this package of sanctions will convey to Jones and others who are tempted to engage in similar misconduct that if they take investment money from investors without complying with Alberta securities laws, money they

obtained will be forfeited and their privilege of access to the Alberta capital market removed for an extended time, if not permanently.

(c) Poffenroth

[69] Poffenroth engaged in illegal trades and distributions of securities, which conduct was also contrary to the public interest. However, her involvement was quite limited – she had minimal or no contact with four of the five Promissory Note investors from whom we heard; with other investors, her role was seemingly limited largely to the operations side of the Wealthstreet business. However, she was the president of Wealthstreet and, by her own admissions, heavily involved in at least the marketing and operations side of the business. Poffenroth was not qualified to act as Wealthstreet's president – and she knew it. Her lack of qualification and experience contributed to financial losses by investors. Although Poffenroth exhibits some recognition of the seriousness of her misconduct, we remain concerned that she does not completely accept responsibility for her conduct.

[70] We have two main objectives in fashioning the appropriate sanction order for Poffenroth. First, we need to protect Alberta investors by ensuring that Poffenroth does not, for a lengthy time, act as an officer or director of any issuer, given her past willingness to take on an officer role without the requisite experience or competence. Second, we must communicate to Poffenroth and others that undesirable consequences may result if an individual assumes a corporate officer role with an issuer that raises money from the public but that individual is not qualified or experienced enough to recognize that the issuer's activities are not in compliance with certain legal requirements, such as Alberta securities law requirements. We are of the view that it is in the public interest to remove Poffenroth's access to the Alberta capital market for a time, but we will permit her to trade and purchase securities in restricted and limited circumstances during the period of her trading and purchasing ban.

[71] In considering whether to order an administrative penalty against Poffenroth, it appears that only a portion of the compensation received by her for her duties as Wealthstreet's president can be attributed to her role in the illegal trades and distributions of the Promissory Notes. No allegations were made against Poffenroth relating to Jones's unregistered advising and his accompanying encouragement to investors to engage in inappropriate leveraging activities; therefore, we do not consider the compensation that she may have received as result of those illegal activities by Jones during her tenure as Wealthstreet's president. We also considered that she was not president of Wealthstreet when Jones incorporated 141 and transferred the Building to 141, or when Wealthstreet failed to make the required interest payments and principal repayments to Amended Promissory Note investors. In the result, given her limited involvement in the illegal trades and distributions of the Promissory Notes and her limited time as president of Wealthstreet, we conclude that it is in the public interest to order an administrative penalty against Poffenroth, but in an amount significantly less than the amount appropriate in the case of the Jones and the amount recommended by Staff.

4. Sanction Decision

[72] We are satisfied that the imposition of the following sanctions will provide the necessary levels of specific and general deterrence in the circumstances.

[73] Accordingly, considering that it is in the public interest to do so, we order that:

Wealthstreet

- under sections 198(1)(a), (b) and (c) of the Act, all trading in or purchasing of Wealthstreet securities cease, Wealthstreet cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to Wealthstreet, permanently, except that this order does not preclude the Trustee from disposing of units in Mosaic for the sole purpose of realizing the proceeds for the benefit of the Wealthstreet estate;

Jones

- under sections 198(1)(b) and (c), Jones cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that this order does not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) for one RRSP account in his name and for RESPs (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of his dependent children;

- under sections 198(1)(d) and (e), Jones resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, permanently;

- under section 198(e.1) he is prohibited from advising in securities, permanently;

- under section 198(e.3) Jones is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently; and

- under section 199, Jones pay an administrative penalty of $1 500 000; and

Poffenroth

- under sections 198(1)(b) and (c), Poffenroth cease trading in or purchasing securities, and all of the exemptions contained in Alberta securities laws do not apply to her until (and including) 6 December 2014, except that this order does not preclude her from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in RRSPs, tax-free savings accounts and RESPs (each as defined in the *Income Tax Act* (Canada)) for the benefit of one or more of herself, her spouse and dependent children;

- under sections 198(1)(d) and (e), Poffenroth resign all positions she holds as a director or officer of any issuer, registrant or investment fund manager, and she is prohibited from becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager, until (and including) 6 December 2021;

- under section 198(e.3) Poffenroth is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, until (and including) 6 December 2021; and

- under section 199, Poffenroth pay an administrative penalty of $75 000.

B. Costs

1. General

[74] Staff asked for costs of the investigation and hearing in the amount of $33 465 "from the Respondents", jointly and severally. The Trustee contended that no costs should be awarded against Wealthstreet (and Staff appeared not to object to that submission during the oral hearing). Jones and Poffenroth made no submissions on costs.

[75] A costs order enables the Commission to recover at least some of the investigation costs, hearing costs or both incurred by it in enforcing Alberta securities laws. Were costs not ordered against respondents found to have breached Alberta securities laws or acted contrary to the public interest, law-abiding market participants would essentially be funding enforcement proceedings through their fees paid to the Commission. Costs orders also enable the Commission to encourage procedural efficiency in enforcement proceedings. Thus, in determining the quantum of a costs order, we consider what, if any, efficiency – or inefficiency – a respondent has brought to an enforcement proceeding.

[76] After reviewing the submissions and materials provided by Staff, we conclude that the majority of the costs claimed by Staff are reasonable in the circumstances. There are two exceptions.

[77] First, Staff failed in their allegation that Jones made untrue statements to investors in relation to the Promissory Notes and so are not entitled to recover costs associated with that failed allegation. Second, Staff included a charge for 5701 copied pages at $.50 per page (a total of $2850.50). In our view, this amount is excessive and as such will not be fully recoverable. In the result we reduce the total costs recoverable to $30 000, which we believe is a reasonable amount in this case.

[78] We now consider how to apportion the total costs recoverable among the three Respondents.

2. Wealthstreet

[79] Although Jones was Wealthstreet's founder, director and shareholder, he was not directing Wealthstreet during the investigation and hearing. The Trustee and the counsel for the Trustee were responsible for Wealthstreet's conduct. Wealthstreet was very cooperative with Staff during their investigation, and the evidence given by the Trustee during the Merits Hearing was of great assistance to the panel in understanding Wealthstreet's operations and in following the flow of money Wealthstreet received and disbursed. Given that Wealthstreet was only a vehicle used by Jones (who will be ordered to pay the major portion of the costs of the investigation and hearing) and that the Trustee on behalf of Wealthstreet is actively engaged in taking steps to maximize return for the unsecured creditors – primarily the Amended Promissory

Note investors – we do not consider it appropriate to make a costs order against Wealthstreet. As much as possible of the money realized by the Trustee on behalf of the estate of Wealthstreet should be for the benefit of the investors.

3. Jones

[80] Jones himself was obstructionist and uncooperative during the investigation and hearing. We set out in the Merits Decision some details of his behaviour during the Merits Hearing, including his failure to take this proceeding seriously.

[81] We repeat some of the details here. After failing to disclose as required the names of proposed witnesses and a summary of anticipated evidence from those witnesses, Jones claimed during the Merits Hearing that he wanted to call witnesses, even though he had not even made contact with some of those proposed witnesses. He claimed repeatedly – at that time and others – that he did not understand the process, that he did not have proper telephone or computer access and that Staff had given him too much paper to manage (the paper, we note, included documents Jones himself had prepared or caused to be prepared for Wealthstreet investors). Those claims and excuses were not credible.

[82] Although Jones already planned not to attend the Merits Hearing on a certain afternoon (Thursday 28 April 2011), he had Staff relay a message to the Panel that "an incident" at his home kept him from attending that afternoon and, apparently, also influenced his decision not to attend the following morning. Knowing that Poffenroth was available for him to cross-examine on Friday 29 April 2011, Jones did not attend. Knowing that the Merits Hearing would recommence at 10:00 am on that date, Jones did not contact the Registrar by telephone and email until after the 10:00 am start of the Merits Hearing that day. Had Jones seriously and legitimately wanted to attend that morning, he could have made some attempt to contact the Registrar before the resumption of the Merits Hearing. He also could have made a request for adjournment or for participation by teleconference – such a request, if made, would have been considered with a view to procedural fairness for all parties.

[83] We conclude that Jones, far from contributing to the efficiency of the investigation and hearing, took many steps to hamper the process and the proceedings. He did not cooperate when cooperation was reasonable and warranted. He increased the difficulty of accomplishing administrative tasks for all parties. He did not give the panel the benefit of any submissions to help define or narrow the issues before us, nor did he even state his position clearly for our consideration.

[84] The majority of the allegations made and proved by Staff were against Jones so it is reasonable to assume that the majority of the costs incurred during the investigation and hearing were in relation to Jones's activities. Given that Jones was the guiding mind behind Wealthstreet, we conclude that Jones ought to be responsible for the majority of the investigation and hearing costs that would have been attributable to Wealthstreet. Accordingly, we conclude that approximately three-quarters of the costs sought by Staff against the Respondents are attributable to Jones.

4. Poffenroth

[85] Poffenroth did not appear to either hinder or help the efficiency of the investigation and hearing. She gave an explanation for her conduct, as she was entitled to do. She did not make any written submissions as part of the Merits Hearing, but she did, in her testimony before us, somewhat set out her position on Staff's allegations, which gave us a better picture of her role in the misconduct.

[86] Given the limited role played by Poffenroth in the allegations made and proved by Staff, we conclude that a small portion of the costs incurred during the investigation and hearing were in relation to her misconduct. We also consider that Poffenroth should be responsible for a small portion of the investigation and hearing costs that would have been attributable to Wealthstreet, as she was its president during the time of the illegal trades and distributions of the Promissory Notes. Accordingly, we conclude that approximately one-quarter of the costs sought by Staff against the Respondents are attributable to Poffenroth.

5. Costs Decision

[87] We order, under section 202 of the Act, the payment of investigation and hearing costs totalling $30 000, as follows:

- by Jones, $22 000; and
- by Poffenroth, $8000.

V. CONCLUSION

[88] This proceeding is concluded.

7 December 2011

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Beverley A. Brennan, FCA

"original signed by"
Glen D. Roane