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**Thalbinder Singh Poonian, Shailu Sharon Poonian,
Robert Joseph Leyk, Manjit Singh Sihota and Perminder Sihota**

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Suzanne K. Wiltshire George C. Glover, Jr. Audrey T. Ho	Commissioner Commissioner Commissioner
Date of hearing	October 28, 29, 30, 31, November 1, 4, 5, 12 and 15, 2013	
Submissions completed	February 14, 2014	
Date of Findings¹	August 29, 2014	
Appearing		
C. Paige Leggat Anjalika Rogers	For the Executive Director	
Thalbinder Poonian	For himself and Shailu Sharon Poonian	
Manjit Sihota	For himself and Perminder Sihota	

Findings

Table of Contents

I INTRODUCTION.....	4
II BACKGROUND	4
A. Overview of allegations.....	4
B. Persons involved.....	5
<i>The Respondents</i>	<i>5</i>
<i>The Secondary Participants.....</i>	<i>5</i>
<i>The Phoenix Group.....</i>	<i>7</i>
C. Evidence.....	7

¹ Pursuant to section 171 of the Act, the panel, considering that to do so would not be prejudicial to the public interest, revised the Findings on October 5, 2016 to anonymize the names of the Secondary Participants.

<i>Overall trading activity and price changes during the relevant period</i>	8
1. Share accumulation phase	9
<i>Acquisition of control</i>	9
<i>Funding of second private placement shares</i>	10
2. Price increase phase	11
3. Price maintenance and share liquidation phase	11
<i>OSE share price increase and decline</i>	12
<i>OSE trading activity</i>	12
<i>Share transfers among the Respondents and Secondary Participants</i>	13
<i>Sale of OSE shares to Phoenix clients</i>	13
<i>Arrangement between the Respondents and the Phoenix Group</i>	14
4. The Respondents directed trading and funded purchases of OSE shares in the name of the Secondary Participants	15
<i>Respondents' funding of bank and brokerage accounts of Secondary Participants</i> .	18
<i>Payments to RB</i>	19
<i>Payments to BM, LN, DS, GVP, AP and SP and WB</i>	19
<i>Transfers of funds amongst the Respondents</i>	19
III ANALYSIS AND FINDINGS	20
A. The law	20
B. Analysis	20
<i>Conduct relating to OSE securities</i>	20
<i>Thal Poonian</i>	21
<i>Sharon Poonian</i>	23
<i>Manjit Sihota and Perminder Sihota</i>	23
<i>Leyk</i>	24
<i>Misleading appearance</i>	25
<i>Further submissions of Thal Poonian</i>	28
<i>The Respondents' knowledge</i>	30
<i>Role of Thal Poonian</i>	30
<i>Role of Sharon Poonian</i>	30
<i>Role of Manjit Sihota</i>	31

<i>Role of Perminder Sihota</i>	31
<i>Role of Leyk</i>	32
IV FINDINGS	33
V SUBMISSIONS ON SANCTIONS	33

I INTRODUCTION

- ¶ 1 This is the liability portion of a hearing under sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418.
- ¶ 2 This is a case about the market manipulation of the shares of OSE Corp. (OSE), which traded at all relevant times on the TSX Venture Exchange. On August 2, 2012, the executive director issued a notice of hearing and temporary order under section 161(2) of the Act alleging that Thalbinder Singh Poonian (Thal Poonian), Shailu Sharon Poonian (Sharon Poonian), Robert Joseph Leyk (Leyk), Manjit Singh Sihota (Manjit Sihota) and Perminder Sihota (collectively, the Respondents) engaged in or participated in conduct relating to shares of OSE when they knew, or reasonably should have known, that the conduct resulted in, or contributed to, a misleading appearance of trading activity in, or an artificial price for, OSE shares, contrary to section 57 of the Act (2012 BCSCCOM 306).
- ¶ 3 On September 26, 2012, the Commission varied paragraph 3(b) of the temporary order (2012 BCSECCOM 376). On February 8, 2013, the Commission extended the temporary order, as varied, until a hearing is held and a decision rendered (2013 BCSECCOM 131).
- ¶ 4 Thal Poonian attended the hearing and participated on behalf of himself and his wife Sharon Poonian. He did not testify, but submitted documentary evidence, cross-examined the executive director's witnesses, and made oral and written submissions. Sharon Poonian did not attend the hearing.
- ¶ 5 Manjit Sihota represented himself and his wife Perminder Sihota, and attended both the beginning and the end of the hearing. He did not testify, but made written submissions and also made oral submissions. Perminder Sihota did not attend the hearing, but made written submissions.
- ¶ 6 Leyk did not attend the hearing or make submissions.

II BACKGROUND

A. Overview of allegations

- ¶ 7 The executive director alleges that between September 10, 2007 and March 31, 2009 (the relevant period), the Respondents, and certain relatives, friends and associates of Thal Poonian and Sharon Poonian (collectively, the Secondary Participants)²:
1. acquired a dominant share position in OSE at \$0.10 to \$0.17 per share through two private placements of OSE shares and warrants to purchase OSE shares;
 2. dominated trading and manipulated OSE's share price to a high near \$2.00 by trading through brokerage accounts held by the Respondents or Secondary Participants;
 3. made approximately \$7 million in profit by selling a large number of OSE shares to unsuspecting buyers including sales to clients of Phoenix Credit Risk Management

² See paragraph 12 for a detailed listing of the Secondary Participants.

Consulting Inc. (Phoenix); and

4. paid substantial commissions to persons associated with Phoenix for the referral of Phoenix clients to buy OSE shares.

B. Persons involved

¶ 8 The evidence submitted by the executive director, and not disputed by the Respondents, shows a network of relationships among the Respondents and the Secondary Participants.

The Respondents

¶ 9 The following sets out certain relationships among the Respondents and companies owned or controlled by them:

1. Thal Poonian and Sharon Poonian are husband and wife.
2. Manjit Sihota and Perminder Sihota are husband and wife.
3. The Poonians and the Sihotas are close friends and related. Perminder Sihota is the niece of Thal Poonian's father.
4. Thal Poonian was a director or officer of Great Pacific International Inc. (GPI) and JCP Financial Ltd. (JCP) during the relevant period. He had signing authority over JCP's bank accounts. He was a registrant under the Act for various periods between June 1987 and September 1999.
5. Manjit Sihota was a director of OSE from June 2007 to June 2011, and its president and chief executive officer from February 2008 to June 2011.
6. Perminder Sihota owns a property at Vantage Way, Delta, British Columbia. It was the head office or office location of OSE, JCP, GPI and SNL Enterprises Ltd. (SNL).
7. Leyk was a friend of the Poonians for about 15 years. He was a registrant under the Act for periods between July 1999 and June 2002. He and Thal Poonian were registered salespersons at the same firm for a period of time.
8. Manjit Sihota has known Leyk for 12 to 15 years; they both worked at the Vantage Way premises.
9. Leyk was the sole officer and director of 0805912 B.C. Ltd. (Leyk Co.) at all relevant times.

¶ 10 The Respondents all reside in British Columbia.

The Secondary Participants

¶ 11 The Secondary Participants were OSE shareholders or warrant holders. They were involved directly or indirectly in various purchases, sales or transfers of OSE shares, or

in payments and transfers of money to or from the Respondents, their companies, other Secondary Participants or brokerage accounts of various Respondents and Secondary Participants.

¶ 12 In this decision, the Secondary Participants are AP, SP, RG, KEI, BP, RP, RO, DS, LN, BM, WB, MB, RB, GVP, RB2, VDI and SFC. Most of the Secondary Participants reside or have offices in British Columbia.

¶ 13 The following sets out the relationships among the Secondary Participants and with the Respondents:

1. AP and SP are husband and wife. Thal Poonian is their son.
2. RG is SP's brother and Thal Poonian's uncle. RG was the sole director and officer of KEI at all relevant times. KEI was the name under which RG opened brokerage accounts in which OSE shares were traded.
3. BP is Thal Poonian's relative and husband of RP.
4. RO is Sharon Poonian's sister.
5. DS is the sole director and officer of Xcel Management Consulting Inc. (Xcel), the mailing address of which was at the Vantage Way premises. She worked with Thal Poonian since 2001 or 2002 and Sharon Poonian recruited her to help in the office. Sharon Poonian did work for Xcel.
6. LN is an Ontario resident. She once was a co-worker of Sharon Poonian who has known her since the early or mid-1990s.
7. BM is a friend of Thal Poonian and met Manjit Sihota five or six years ago.
8. WB is a friend of Sharon Poonian and the brother of MB, a Croatian resident. WB had full trading authorization over MB's brokerage account at Canaccord Capital Corporation (Canaccord).
9. RB is a good friend of the Poonians. He was a director of OSE from December 2009 to January 2010.
10. GVP, Thal Poonian and Manjit Sihota were all directors of SNL during the relevant period.
11. RB2 met the Poonians and Manjit Sihota in the 1990s. He was chief financial officer and a director of OSE from September 2008 to June 2011. He was the chief financial officer of SNL from 2008 until at least July 24, 2012 and a director of GPI from June 2004 to at least July 24, 2012.

12. VDI is a British Columbia company with an address at the Vantage Way premises. The officers of VDI were at all relevant times Sharon Poonian, Thal Poonian and RO.
13. SFC is an Ontario corporation with a mailing address at the Vantage Way premises. At all relevant times LN and DS were SFC directors and officers and Perminder Sihota was a SFC director.

The Phoenix Group

- ¶ 14 Phoenix provides debt management services to individuals and helps debtors access funds in their locked-in RRSPs and retirement accounts.
- ¶ 15 Phoenix clients purchased approximately five million shares of OSE, mostly from the Respondents and Secondary Participants.
- ¶ 16 Phoenix Pension Services Inc. (Phoenix Pension), Rathore & Associates Asset Management Inc. (R&A), and 2195043 Ontario Inc. were companies controlled or in some way associated with Phoenix or the individuals referred to in the next paragraph.
- ¶ 17 Jawad Rathore (Rathore), Vincenzo Petrozza (Petrozza) and Omar Maloney (Maloney) were officers, directors or employees of Phoenix, Phoenix Pension and R&A. The spouses of Rathore and Petrozza were directors of 2195043 Ontario Inc.
- ¶ 18 We refer to the companies and individuals described in paragraphs 16 and 17 above collectively as the Phoenix Group.

C. Evidence

- ¶ 19 The executive director presented extensive evidence, including:
- records of, or filed by, OSE such as regulatory filings, news releases, financial statements, information circulars, treasury orders and exempt distribution reports;
 - records from the TSX Venture Exchange (TSX-V) and the Investment Industry Regulatory Organization of Canada (IIROC) regarding OSE shares, including trade summary and surveillance reports, match trade reports matching orders and trades to specific buyers and sellers and High-Low-Close reports;
 - records from OSE's share transfer agents;
 - brokerage records, including account statements for accounts held by the Respondents and the Secondary Participants, account opening documents and third-party securities deposit forms;
 - bank records including account opening documents, account statements, cheques, bank drafts, and deposit and transfer receipts;
 - telephone records for accounts in the name of

- Sharon Poonian and Shailu (aka Sharon) Poonian
- Marco Myatovic (Myatovic), a broker with Canaccord;
- transcripts of sworn interviews, including those of
 - Sharon Poonian and Manjit Sihota
 - LN, RB, GVP, BM and AP
 - Rathore, Petrozza and Maloney;
- emails between Rathore and an email address in the name of “Tim Jenson” used by Thal Poonian;
- a settlement agreement between the Ontario Securities Commission (OSC) and Rathore, Petrozza, Phoenix and others (the Settlement Agreement);
- Land Titles and Company Registry records;
- a hand-writing expert who testified as to the individual whose writing appears on various cheques; and
- testimony from three Phoenix clients who purchased OSE shares and Commission investigators’ notes of interviews with other Phoenix clients who purchased OSE shares.

Overall trading activity and price changes during the relevant period

¶ 20 Between September 10, 2007 and March 31, 2009, the Respondents’ and Secondary Participants’ purchases of OSE shares for a total of \$17,789,851 accounted for 64.47% of the overall buy volume of OSE shares on the TSX-V, and their sales of OSE shares for a total of \$25,122,787 accounted for 88.52% of the overall sell volume. The below table provides more details:

Trades in OSE shares between September 10, 2007 and March 31, 2009

Party	Buy Volume	Purchase cost	Sell Volume	Sell value
Thal Poonian	1,124,200	\$1,475,731	1,354,100	\$2,222,407
Sharon Poonian	1,476,800	\$1,977,448	3,204,000	\$5,127,383
Manjit Sihota	449,900	\$693,330	329,000	\$548,065
Perminder Sihota	337,900	\$545,481	1,273,100	\$1,671,741
Leyk/Leyk Co.	198,500	\$383,109	1,650,000	\$2,273,042
Respondents and Secondary Participants (total)	12,750,800	\$17,789,851	17,507,700	\$25,122,787

¶ 21 The trading price of OSE shares on the TSX-V climbed from \$0.21 on September 7, 2007 to a high near \$2.00 by the summer of 2008. The trading price then dropped to \$0.08 on

March 31, 2009, and continued to fall after March 31, 2009 with average closing prices of \$0.047 for the balance of 2009 and \$0.035 for 2010.

¶ 22 We found it appropriate to examine the evidence over three time periods between May 2007 and March 2009.

1. Share accumulation phase

¶ 23 The first phase (Phase One) began in May 2007 and ended on December 19, 2007. During this period, OSE shares were lightly traded on the TSX-V. The Respondents and the Secondary Participants acquired 88.3% of the outstanding OSE shares. Payment for OSE shares purchased in the names of a number of Secondary Participants was primarily funded by Thal Poonian and Leyk through JCP and Leyk Co.

Acquisition of control

¶ 24 In May 2007, Thal Poonian sought out OSE's president and CEO and arranged the private purchase of a controlling interest in OSE by MB, LN and AP.

¶ 25 Thal Poonian also proposed Manjit Sihota, Leyk and RB2 as nominees to the OSE board and they were elected in July 2007.

¶ 26 On July 24 and 25, 2007, MB was the only seller of OSE shares on the TSX-V. The OSE shares opened on July 24, 2007 at \$0.29 and closed on July 25, 2007 at \$0.15.

¶ 27 After the market closed on July 25, 2007, OSE announced an intended private placement of up to 1.5 million units at \$0.11 per unit (the first private placement). Each unit consisted of one OSE share and a share purchase warrant to purchase one OSE share exercisable at \$0.17 per OSE share. These securities were subject to a four-month hold period.

¶ 28 The OSE share closing price on July 25, 2007 (\$0.15) facilitated the low unit price on the private placement compared to the OSE opening price on July 24, 2007 (\$0.29).

¶ 29 The first private placement closed on September 10, 2007. Leyk and Manjit Sihota signed an OSE treasury order to issue the 1.5 million OSE shares among Leyk, Sharon Poonian, and four Secondary Participants.

¶ 30 After the first private placement, the Respondents and Secondary Participants held 1,694,000 (56.41%) of the 3,003,066 outstanding OSE shares.

¶ 31 On November 1, 2007, OSE announced another private placement (the second private placement) of 10 million units at \$0.10 per unit. Each unit consisted of one OSE share and a share purchase warrant to purchase one OSE share exercisable at \$0.15 per OSE share. These securities were subject to a four-month hold period.

- ¶ 32 On December 17, 2007, Leyk and Manjit Sihota signed a treasury order to issue 9.8 million OSE shares among the Respondents (except Thal Poonian), and 12 of the Secondary Participants.
- ¶ 33 After the second private placement, the Respondents and 13 of the Secondary Participants held 11,486,000 OSE shares (88.33%) of the 13,003,066 outstanding OSE shares.
- ¶ 34 OSE shares were lightly traded on the TSX-V during Phase One. Excluding private sales and private placements, there was a total of 75 trades of 174,176 OSE shares at an average price of less than \$0.26 per share. The Respondents and Secondary Participants traded on two days only on the TSX-V during Phase One.

Funding of second private placement shares

- ¶ 35 Thal Poonian through JCP funded the purchase (totaling \$395,000) of the OSE shares issued to BM, LN, DS, RB2 and the Sihotas under the second private placement. We find this based on bank records that show:
- payment made by each of the four Secondary Participants to OSE for the subscription of OSE shares was offset by a more or less contemporaneous deposit into that person's bank account of a cheque from JCP in exactly the same amount;
 - BM and LN did not have sufficient funds in their accounts to pay for their OSE shares in the absence of the JCP cheques; and
 - two days after the closing of the second private placement, JCP paid directly to OSE \$45,000, which equaled the subscription price for the OSE shares issued to the Sihotas.
- ¶ 36 Leyk Co. funded the purchase (totaling \$295,000) of the OSE shares issued to RG, RO, BP and RP in the second private placement. We make this finding based on bank records that show that Leyk Co. issued directly to OSE a cheque in the same amount as the subscription price for the OSE shares issued to each of these Secondary Participants, and there are notes on the front of several of the cheques indicating that these cheques relate to various Secondary Participants (RG, RO, RP and BP).
- ¶ 37 OSE and Leyk Co. funded the \$25,000 purchase of the OSE shares issued to RB under the second private placement. We make this finding based on bank records that show OSE issued a \$22,000 cheque (signed by Leyk) to RB and Leyk Co. issued a \$3,000 cheque to RB.
- ¶ 38 Thal Poonian suggested that the \$22,000 was a "finder's fee" paid by OSE to RB. We reject this interpretation. RB contradicted this during his interview with Commission staff. RB said he was surprised the payment was called a finder's fee as the people he referred to OSE did not buy OSE shares. The OSE cheque together with the Leyk Co. cheque match the amount payable by RB as subscription price. These payments to RB

were virtually contemporaneous with the deposit of RB's cheque to OSE for the OSE shares issued to him in the second private placement.

2. Price increase phase

- ¶ 39 The second phase (Phase Two) began December 20, 2007 and ended January 9, 2008. During this period, the Respondents and the Secondary Participants dominated trading in OSE shares on the TSX-V and the share price increased by \$1.21 (417%). OSE did not announce any material information that could have accounted for the price increase.
- ¶ 40 Before December 20, 2007, the last board lot trade of OSE shares on the TSX-V took place on November 27, 2007 at \$0.29 per share. On January 9, 2008, OSE shares closed at \$1.50.
- ¶ 41 In the five trading days between December 20, 2007 and January 2, 2008, accounts in the names of Sharon Poonian, Thal Poonian, SP and GVP:
- accounted for 64,500 of the 79,950 OSE shares traded (81%);
 - conducted seven of 11 uptick trades (trades at a higher price than the immediately previous trade) with an average uptick of \$0.06;
 - conducted four trades on both sides of the transaction (wash trades); and
 - on three of the five trading days, conducted trades during the last 30 minutes of the trading day resulting in a high closing price.
- ¶ 42 From January 3, 2008 to January 8, 2008, OSE shares traded on the TSX-V in a narrow range between \$1.00 and \$1.05.
- ¶ 43 On January 9, 2008, the closing price on OSE shares was \$1.50, \$0.50 higher than the previous day's closing price. This increase occurred in the last hour of trading. Accounts in the names of WB and GVP traded in the last hour purchasing 23,500 OSE shares and effecting 12 uptick trades.
- ¶ 44 On January 3 and again on January 9, 2008, IIROC called Leyk to enquire about the unusual price and volume activity in OSE shares on those days. On January 3, Leyk told IIROC that there was no undisclosed material information and he could not explain the interest in OSE. On January 9, OSE issued a news release stating that there were no material changes in its affairs other than the closing of its recent private placement.

3. Price maintenance and share liquidation phase

- ¶ 45 The third phase (Phase Three) began January 10, 2008 and ended on March 31, 2009. During this period, the private placement shares became free trading and the Respondents and Secondary Participants increased their OSE shareholdings by another 3,900,000 shares through exercise of warrants at \$0.17 and \$0.15 per share. They dominated OSE trading on the TSX-V, including through many wash trades.

¶ 46 The OSE share price increased to around \$2.00 by the summer of 2008 and then dropped to about \$1.50 by the end of 2008. Phoenix clients bought substantial numbers of OSE shares, mostly from the Respondents and Secondary Participants during this “sell-off” or “liquidation” phase. The OSE share price declined to \$0.08 by the end of Phase Three.

OSE share price increase and decline

¶ 47 From January 10 to January 31, 2008, the OSE share price increased steadily and closed at \$2.00 per share on January 31, 2008. From February to September 2008, the OSE share price consistently closed at or about \$2.00 per share. From October to December 2008, the OSE share price declined from \$1.98 to \$1.50 and traded at an average price of \$1.74. From January 2009 to March 31, 2009, the OSE share price declined steadily and closed at \$0.08 on March 31, 2009.

¶ 48 There was no corporate information released regarding OSE during Phase Three that accounted for the OSE share price increases and declines. The publicly released OSE corporate information and its effect on OSE share prices can be summarized as follows:

- OSE issued seven news releases, six of which were relatively insignificant announcements regarding acquisitions of oil and gas interests of various kinds and results of drilling progress on the properties including a test well which had encountered water. The seventh news release reported on OSE’s 2008 annual general meeting.
- The first news release referred to the seller of the interests as “an arm’s length oil and gas exploration and development company”. The directors of the seller were in fact Thal Poonian, BM and RB. Other officers and directors of the seller included at various times Sharon Poonian and RB2. DS prepared the seller’s annual filings in 2007-2009. Manjit Sihota in his sworn testimony from his Commission interview stated that OSE based its purchase of these interests solely on Thal Poonian’s recommendation and the price was negotiated between Manjit Sihota and Thal Poonian.
- There was little or no market reaction in price or volume relating to OSE shares following any of the OSE news releases.
- Several of the OSE news releases were issued after the end of Phase Three and could not have affected OSE share prices during Phase Three.

OSE trading activity

¶ 49 During Phase Three, a total of 19,400,689 OSE shares traded on the TSX-V for a total value of \$27,758,150. The accounts of the Respondents and Secondary Participants bought 12,624,300 OSE shares at a cost of \$17,685,309 (65.07% of all buy volume and 64% of buy value) and sold 17,229,200 OSE shares for proceeds of \$24,862,615 (88.81% of all sell volume and 90% of sell value). They sold 4,604,900 more OSE shares than they purchased for net proceeds of \$7,177,305.

- ¶ 50 The predominance of trading by these accounts on both the buy and the sell side indicates that the Respondents and Secondary Participants were on both sides of trades comprising over 50% of the trading volume.
- ¶ 51 On 12 trading days during Phase Three, these accounts were the only buyers and sellers of OSE shares. From September 7, 2008 to March 31, 2009, the Respondents and Secondary Participants were on both sides of 982 trades for 11,558,400 OSE shares.
- ¶ 52 The accounts of the Respondents and Secondary Participants conducted 208 of the 439 uptick trades (47%) during Phase Three.
- ¶ 53 Utilizing IIROC's High-Low-Close reports, a Commission investigator examined opening, mid-point and closing orders during the March 17, 2008 to April 15, 2008 period. The investigator determined that orders from the accounts of the Respondents and Secondary Participants accounted for:
- the highest closing order on 14 of 14 trading days with an average bid of \$2.04;
 - the second highest closing order on 14 of 14 trading days with an average bid of \$2.01;
 - 78% of all purchase orders;
 - 92% of the value of all purchase orders; and
 - an average bid price of \$1.60 for each purchase order compared to an average bid price from other bidders of \$0.08.
- ¶ 54 The investigator found a similar pattern when he analyzed opening orders and mid-point orders.

Share transfers among the Respondents and Secondary Participants

- ¶ 55 Share transfer records also show a significant volume of OSE shares (more than five million) were transferred during Phase Three among the Respondents and Secondary Participants. In particular, Secondary Participants transferred to Thal Poonian 1.2 million OSE shares, to Sharon Poonian close to 1.1 million OSE shares, to Manjit Sihota 150,000 OSE shares, and to SFC's Canaccord account 950,000 OSE shares. Leyk transferred 400,000 shares to Thal Poonian.

Sale of OSE shares to Phoenix clients

- ¶ 56 The Phoenix clients who purchased OSE shares were generally unsophisticated investors facing financial duress. Often, they were referred to Phoenix by collection agencies or creditors. Phoenix gave them debt management advice. In essence, Phoenix arranged for them to unlock their locked-in RRSPs or retirement accounts, and put the money into self-directed RRSP accounts to invest and generate much needed returns. In many cases,

Phoenix advised its clients to invest in OSE shares. Phoenix would set up a three-way conference call with the Phoenix client, a broker and a Phoenix representative so the client could instruct the broker to effect the purchase of OSE shares.

¶ 57 From January 7, 2008 to March 31, 2009, Phoenix clients bought 4,651,800 OSE shares at an average cost of \$1.80 for a total of \$8,357,574. Phoenix clients sold 731,454 OSE shares at an average price of \$1.29 for a total of \$941,044. At the end of this period, Phoenix clients held 3,920,346 OSE shares.

¶ 58 Based on the market price of OSE shares on March 31, 2009, these Phoenix clients suffered estimated book losses of \$7,102,902, excluding commission costs. Account opening forms indicate that 36 of these Phoenix clients had addresses in British Columbia and they suffered estimated book losses of \$1,198,308 as at March 31, 2009.

¶ 59 Of the 4,651,800 shares bought by Phoenix clients between January 7, 2008 and March 31, 2009, 4,322,800 (93%) were sold to them by the Respondents and Secondary Participants. Of that number, 1,776,300 were sold to them by the Respondents:

- Thal Poonian - 636,200 shares
- Sharon Poonian - 830,300 shares
- Perminder Sihota - 128,100 shares
- Leyk (Leyk Co.) - 181,700 shares.

Arrangement between the Respondents and the Phoenix Group

¶ 60 Evidence proving the arrangements between the Respondents and the Phoenix Group included the Settlement Agreement, as well as sworn testimony from Rathore, Petrozza and Maloney in their interviews by staff of the OSC and this Commission. This evidence was corroborated by detailed analyses of bank records of direct and indirect payments to the Phoenix Group by the Respondents and SP and AP and records of emails and telephone calls.

¶ 61 The Respondents paid to the Phoenix Group a commission ranging from 10% to 20% and, in some cases, 28% each time Phoenix arranged for a Phoenix client to buy OSE shares. According to Rathore, Thal Poonian would tell them how much Phoenix clients should bid on OSE shares. Rathore did not conduct any independent review on OSE before recommending its purchase to Phoenix clients.

¶ 62 After trades by Phoenix clients, Phoenix prepared a list of the client purchases and details of the trades and the commissions payable to the Phoenix Group. Rathore communicated with Thal Poonian daily, through the “Tim Jenson” email address at Hotmail used by Thal Poonian or by telephone to a mobile number registered in the name of Sharon Poonian and used by Thal Poonian (Thal Poonian’s Cell).

¶ 63 Rathore understood that Thal Poonian controlled OSE shares through a network of people. Rathore told Commission staff: “any payments received in from Thal I presumed were from Thal or from his companies. It’s pretty evident that he has a bit of a network

and moves money through different people, so I'm not surprised if some of those payments in were made from other people on Thal's behalf."

- ¶ 64 Commission staff entered into evidence approximately 350 emails from Rathore to the Tim Jenson email address. Each email referenced OSE and the name of an individual Phoenix client who purchased OSE shares. The emails also referred to the number of OSE shares purchased, the purchase price, the value of the OSE shares purchased, the brokerage firm used and, in almost all cases, the commission amount in dollars or percentage.
- ¶ 65 Commission staff matched the names of each Phoenix client in these emails against purchases of OSE shares and in every case there was a purchase of OSE shares that matched the name of the Phoenix client in the email and the details of the purchase. One exhibit entered into evidence shows 13 examples of purchases of OSE shares by Phoenix clients that match emails from Rathore to the Tim Jenson email address. In each of the examples, the seller of the OSE shares was either a Respondent or a Secondary Participant.
- ¶ 66 From November 2007 to March 2009, Leyk Co., AP and SP, JCP and Sharon Poonian paid a total of \$2,605,875 to R&A and Phoenix Pension.
- ¶ 67 In many instances, the Sihotas issued cheques from their joint bank account and made transfers to Leyk Co. which were followed on the same day by similar payments from Leyk Co. to R&A. These indirect payments totaled \$307,000.
- ¶ 68 Similarly, there were more than 20 instances where Thal Poonian, Sharon Poonian, JCP or VDI issued cheques or made transfers to Leyk Co. which were followed on the same day by similar payments from Leyk Co. to R&A or Phoenix Pension. These indirect payments totaled more than \$700,000.

4. The Respondents directed trading and funded purchases of OSE shares in the name of the Secondary Participants

- ¶ 69 We find that Thal Poonian directed trading in accounts in the names of Secondary Participants and the Respondents funded many of the purchases of OSE shares by Secondary Participants.
- ¶ 70 All of the Respondents and all of the Secondary Participants (other than BP, RP, RO and RB2) traded OSE shares in one or more accounts with Canaccord, Union Securities Ltd. (Union Securities), Research Capital Corporation (Research Capital) or other registered dealers in British Columbia or on online brokerage facilities.
- ¶ 71 Many of the Respondents and Secondary Participants had accounts with the same individual brokers or brokerage firms. For example, the Poonians and eight of the Secondary Participants had accounts with Myatovic at Canaccord. The Poonians, Perminder Sihota, Leyk Co. and three Secondary Participants had accounts with Doreen Lowe (Lowe), a registered broker at Research Capital. The Poonians, Perminder Sihota

and LN had accounts with the same broker at Union Securities. Manjit Sihota and Leyk Co. had accounts with the same broker at Leede Financial Markets Ltd. AP and LN had accounts with Blackmont Capital Corp. (Blackmont). Sharon Poonian, Manjit Sihota, Manjit and Perminder Sihota (jointly), Leyk, Leyk Co., DS and KEI had accounts at TD Waterhouse.

¶ 72 LN also had an account at RBC Direct Investing.

¶ 73 LN gave the following testimony under oath to an OSC investigator: Thal Poonian suggested that she open accounts at RBC Direct Investing and at Union Securities. Thal Poonian told her that he would trade in her accounts. He traded LN's accounts at RBC Direct Investing, Union Securities, Blackmont and Canaccord. She did no trading herself in any of these accounts. She gave Thal Poonian signed blank cheques on her bank account. Thal Poonian gave her instructions to transfer money from her bank accounts to her Canaccord account. She used her TD Canada Trust debit card to transfer \$43,000 from her bank account to Manjit Sihota and Perminder Sihota on Thal Poonian's direction.

¶ 74 GVP gave the following testimony under oath to Commission staff:

1. There was trading in his Research Capital account but he never traded that account personally. Thal Poonian asked him to open that account because Thal Poonian wanted to put some stock in it. He knew that Thal Poonian or someone else would be trading in that account. Thal Poonian told him that 249,000 OSE shares deposited in his account in June 2008 came from RO. He did not pay for these shares and did not know who deposited these shares in his account.
2. Lowe called him (GVP) in December 2008 and told him there was a debit in his Research Capital account. He phoned Thal Poonian about this and Thal Poonian told him it would be taken care of. Leyk brought him (GVP) a Leyk Co. cheque for \$85,500 payable to him and he gave Leyk in return a cheque or money order payable to Research Capital for the same amount. Leyk took the cheque or money order to Research Capital.
3. On another occasion, Leyk gave him (GVP) an \$88,500 cheque dated January 30, 2008 drawn on the Sihotas' joint account and he in turn gave Leyk a cheque or money order in the same amount which Leyk took to Research Capital.

¶ 75 IIROC staff interviewed GVP. GVP told them he never considered any of the holdings in the Research Capital account to be his but assumed they were Thal Poonian's. He knew nothing about various TD Canada Trust bank drafts deposited into his Research Capital account. He did not present them to Lowe.

¶ 76 BM gave the following testimony under oath to Commission staff:

1. Thal Poonian referred him to Myatovic at Canaccord and asked him (BM) if Thal Poonian could trade in that account. He agreed.
2. Thal Poonian also recommended that he (BM) open a TD Canada Trust bank account.
3. He signed blank cheques drawn on his TD Canada Trust bank account and gave those cheques to DS who had requested the cheques to put money into his Canaccord brokerage account.
4. Except for his signature, he (BM) did not recognize the handwriting on cheques drawn on his TD Canada Trust bank account purportedly written by him to Canaccord and he did not deliver these cheques to Canaccord.
5. Sharon Poonian, Leyk Co. and Manjit Sihota issued cheques to him (BM) and deposited them into his TD Canada Trust bank account in order to fund the cheques drawn on his TD Canada Trust bank account and delivered to Canaccord.
6. He took part in OSE's second private placement after hearing about it from either Leyk or Thal Poonian. He paid a small amount for the OSE shares he purchased in the second OSE private placement and the rest was funded. JCP issued a cheque to him in the amount of \$80,000 to fund his participation in the second private placement. He did not deposit that cheque to his bank account but the cheque was used to pay for OSE shares in his name. He stated that, except for the 50,000 OSE shares he paid for himself, those shares were not his shares.
7. He also participated in OSE's first private placement. He signed over the OSE shares issued to him and did not know where they were going when they were transferred to Thal Poonian on January 15, 2008.

¶ 77 In more than 50 instances during Phase Three, either during or immediately after a telephone call from either Thal Poonian's Cell or another mobile telephone number registered to Shailu (Sharon) Poonian to Myatovic's mobile phone number, Myatovic entered orders to buy or sell OSE shares for the accounts of RB, LN, BM, DS, MB, SP, AP and KEI.

¶ 78 There is insufficient evidence before us to prove who was the other person on the calls with Myatovic using the second mobile phone registered to Shailu (Sharon) Poonian. That is not the case with respect to Thal Poonian's Cell which we find was used by Thal Poonian. We find, based on overwhelming evidence, that Thal Poonian directed all or substantially all of trades made by Myatovic in OSE shares in accounts in the names of these Secondary Participants.

¶ 79 IP address records show that an IP address associated with Sharon Poonian accessed LN's account at RBC Direct Investing at the same time that trades were conducted in the account. Based on the evidence, we find that either Thal Poonian or Sharon Poonian initiated these trades.

- ¶ 80 The staff investigator also linked calls from Thal Poonian's Cell to the Union Securities broker managing Perminder Sihota's account. These calls occurred minutes before orders were placed to sell OSE shares from Perminder Sihota's account.
- ¶ 81 The staff investigator also linked several calls from Thal Poonian's Cell to Lowe's mobile phone immediately before orders to trade OSE shares were entered in Perminder Sihota's account at Research Capital.
- ¶ 82 Perminder Sihota in her sworn interview with Commission staff stated that she had placed the orders herself for purchases and sales of OSE shares in her brokerage accounts at Union Securities and Research Capital. However, telephone records show that calls to the brokers at Union Securities and Research Capital from Thal Poonian's Cell immediately preceded the trades in Perminder Sihota's accounts.
- ¶ 83 We prefer the evidence of the records as it is objective and more consistent with the rest of the evidence. We find from the evidence of the matching of telephone calls and trades that Thal Poonian and not Perminder Sihota made the trades in Perminder Sihota's brokerage accounts and Perminder Sihota allowed herself to be used as a nominee.
- ¶ 84 Reference was made above to various signed blank cheques given by certain Secondary Participants to Thal Poonian or DS. Many of these cheques were filled in and deposited in various accounts.
- ¶ 85 We qualified Dan Purdy, the executive director's witness, as an expert handwriting analyst and in particular an expert on comparison of questioned handwriting to known handwriting on various documents.
- ¶ 86 Mr. Purdy testified that he compared handwriting known to be that of Thal Poonian to handwriting on the front and reverse of various cheques drawn on accounts of certain Secondary Participants. He concluded that in many cases it was "very probable" that the writing on the front and back of the cheques was that of Thal Poonian and, in other instances, was "probable" that the writing was that of Thal Poonian. This expert evidence was not disputed by the Respondents.
- ¶ 87 Sharon Poonian also admitted in her sworn interview before Commission staff that she filled out several cheques signed in blank by certain of the Secondary Participants. Many of these cheques were made payable to various brokers involved in trades of OSE shares in accounts in the names of various Respondents and Secondary Participants.
- Respondents' funding of bank and brokerage accounts of Secondary Participants*
- ¶ 88 There were significant transfers of funds from the Respondents to various Secondary Participants. Leyk Co. transferred a total of \$2,926,300 to the accounts of seven Secondary Participants. The Sihotas transferred a total of \$1,315,500 to the accounts of six Secondary Participants. Sharon Poonian transferred a total of \$1,138,100 to the accounts of six Secondary Participants. Thal Poonian, directly or through JCP,

transferred a total of \$672,000 to the accounts of six Secondary Participants. Each transfer funded a debit balance in the recipient Secondary Participant's brokerage account.

Payments to RB

- ¶ 89 Between March 26, 2008 and March 3, 2009, Leyk Co., Sharon Poonian and Manjit and Perminder Sihota, from their joint bank account, issued 12 cheques totaling \$1,005,300 to RB. Leyk deposited eight of these cheques to RB's bank account. On September 29, 2008 and November 28, 2008, Leyk Co. also purchased two bank drafts totaling \$124,800 payable to RB's Research Capital account. Deposits of 10 cheques and two bank drafts covered debits in RB's brokerage accounts at Research Capital and Canaccord. Between March 26, 2008 and March 3, 2009, RB issued 10 cheques from his joint bank account totaling \$908,500 payable to his accounts at Research Capital and Canaccord. On January 19, 2009, RB issued a cheque for \$95,025 payable to SNL.
- ¶ 90 To illustrate the link between the timing of these transfers and OSE trades, RB's account at Canaccord shows a purchase of 54,000 OSE shares on November 4, 2008 for \$94,920. RB's Canaccord account shows a deposit of \$94,200 on November 14, 2008. Also, RB's bank account received a cheque for \$94,500 from Leyk Co. on November 14, 2008.

Payments to BM, LN, DS, GVP, AP and SP and WB

- ¶ 91 Between the summer of 2008 and March 2009, Thal Poonian, Leyk Co., Sharon Poonian, Manjit and Perminder Sihota, from their joint bank account, VDI and JCP issued over 75 cheques or bank drafts and made transfers to BM, LN, DS, GVP, AP and SP and WB totaling almost \$3.9 million. Frequently, Leyk made the deposits directly into their bank accounts.
- ¶ 92 These deposits were followed almost immediately, in most cases, by deposits in similar amounts into the respective brokerage accounts of these Secondary Participants. Each of the deposits to the brokerage accounts covered a debit balance.

Transfers of funds amongst the Respondents

- ¶ 93 There were also significant transfers of funds amongst the Respondents and their companies:
- between March 2008 and February 2009, the Sihotas issued 13 cheques from their joint bank account totaling \$900,500 to the Poonians;
 - between May 2008 and January 2009, the Sihotas issued 12 cheques from their joint bank account and made one transfer totaling \$747,750 to Leyk Co.;
 - between November 2007 and January 2009, Leyk Co. issued 10 cheques and made four transfers to Sharon Poonian or Thal Poonian totaling \$587,454;
 - between March 2008 and March 2009, Leyk Co. issued six cheques and made one transfer totaling \$209,000 to the Sihotas;

- between March 2008 and February 2009, Sharon Poonian issued seven cheques and made one transfer totaling \$331,900 to the Sihotas;
- between May 2008 and February 2009, Sharon Poonian issued 21 cheques and made one transfer totaling \$1,134,500 to Leyk Co.;
- between February 2008 and March 2009, Thal Poonian issued 12 cheques totaling \$347,500 to Leyk Co.; and
- between November 2008 and March 2009, Thal Poonian issued two cheques totaling \$54,000 to Manjit Sihota.

III ANALYSIS AND FINDINGS

A. The law

¶ 94 The specific wording of the market manipulation prohibition is contained in section 57(a) of the Act as follows:

A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract....

¶ 95 To find a contravention of section 57(a), we must find that:

- the Respondents directly or indirectly engaged in or participated in conduct relating to securities or exchange contracts, in this case, OSE shares;
- the conduct results in or contributes to a misleading appearance of trading activity in, or an artificial price for, OSE shares; and
- the Respondents knew, or reasonably should have known, that the conduct they engaged in would result in or contribute to a misleading appearance of trading activity in, or an artificial price for, OSE shares.

B. Analysis³

Conduct relating to OSE securities

³ For convenience, in these findings, we may refer to conduct as conduct of a Respondent or Secondary Participant when the actual conduct was taken by a company owned or controlled by the relevant Respondent or Secondary Participant. For example, payments made by JCP we may attribute to Thal Poonian. In each case, we are satisfied on the evidence that conduct by such companies was at the direction of the relevant Respondent or Secondary Participant, as the case may be.

- ¶ 96 It is clear that “securities” were involved. OSE shares are “securities” within the definition in the Act as “shares”.
- ¶ 97 The Respondents do not dispute most of the evidence adduced by the executive director. Rather, they dispute the conclusions drawn by the executive director, but provided little to no evidence to support their assertions.
- ¶ 98 Based on the overwhelming evidence referred to in these reasons, we find that each Respondent has, either directly or indirectly, engaged in conduct relating to OSE shares.

Thal Poonian

- ¶ 99 We find that Thal Poonian, directly or through JCP, engaged in the following conduct relating to OSE shares:
- arranging the acquisition of control of OSE through private purchases of a control block of OSE by certain Respondents and Secondary Participants;
 - arranging two private placements of OSE that resulted in the Respondents and Secondary Participants acquiring most of the issued shares in OSE;
 - funding private placement purchases of OSE shares by other Respondents and Secondary Participants, through JCP, a company over which he had bank account signing authority;
 - between September 2007 and March 2009, trading in OSE shares (buying 1,124,200 shares and selling 1,354,100 shares of which 636,200 were sold to Phoenix clients);
 - receiving from Secondary Participants transfers of 1,200,000 OSE shares;
 - trading OSE shares in the brokerage accounts of other Respondents and Secondary Participants (LN, RB, GVP, BM, DS, MB, SP, AP, RG (KEI) and Perminder Sihota);
 - funding accounts in the names of Secondary Participants, Leyk and the Sihotas to cover trading in those accounts, and receiving payments from Leyk Co. and from the Sihotas’ joint account to fund OSE share purchases; and
 - entering into an agreement with Phoenix Group members to pay commissions for inducing Phoenix clients to purchase OSE shares.
- ¶ 100 Thal Poonian denied that the Secondary Participants or the other Respondents were his nominees, or that he directed trading of OSE shares in their brokerage accounts. He submitted that each other Respondent and Secondary Participant acted independently and invested in OSE for his or her personal gain and not as nominees for him or the other Respondents.

- ¶ 101 He relied on the sworn testimony of certain Secondary Participants to Commission staff to support this contention. He also relied on the sworn testimony from Myatovic to IIROC that Myatovic took trading instructions only from account holders, and evidence from RG, DS, AP and WB.
- ¶ 102 We do not find Thal Poonian's submissions persuasive in light of the extensive evidence before us. The testimony from Secondary Participants that he relied on, when read in its entirety, does not support his contentions. On the contrary, we have sworn testimony from LN, GVP and BM that, at Thal Poonian's request, they opened accounts with specific brokers so that Thal Poonian could trade in their accounts, and they accepted transfers of OSE shares and funds in or out of their accounts as directed by Thal Poonian.
- ¶ 103 We have the sworn testimony of Rathore that Thal Poonian had a network of people to move money and Thal Poonian controlled OSE shares. We have evidence that in over 50 instances during Phase Three, an order to trade OSE shares was placed by Myatovic for the accounts of Secondary Participants during or immediately after a telephone call between Myatovic's mobile number and Thal Poonian's Cell or another mobile number registered to Shailu (Sharon) Poonian. We conclude that Thal Poonian directed trading of OSE shares by certain other Respondents and Secondary Participants.
- ¶ 104 The Poonians say their payments to other Respondents and Secondary Participants were either payments for purchases of OSE shares or loan repayments. With one exception, they did not produce any documentary evidence to support this contention, and attempted to support this proposition with a few oblique references in the testimony of some Secondary Participants during Commission interviews.
- ¶ 105 The one document submitted to support this contention was a memorandum of agreement purporting to document a sale of 400,000 OSE shares from Leyk Co. to Thal Poonian for \$748,000. However, this memorandum was dated after the date of the share transfer in question and the actual transfer was from Leyk and not Leyk Co.
- ¶ 106 It is not necessary for us to decide if the memorandum is a fabrication, as the executive director alleges, given the other overwhelming evidence. We do not find it credible that share purchases or loans of the magnitude involved would occur without any documentation. Even if this particular payment was for an OSE share purchase, that does not explain all the other payments from the Poonians.
- ¶ 107 The Poonians also submitted that certain payments to the Phoenix Group were loan repayments rather than commissions for referring Phoenix clients to purchase OSE shares. The Poonians referred to a handful of documents purporting to evidence indebtedness of Leyk Co. to two individuals and a numbered company in the aggregate amount of \$155,000 and repayment thereof. None of the individuals, nor the numbered company, is a member of the Phoenix Group and only one document was signed by one of the purported parties other than Leyk.

¶ 108 While there was limited and inconclusive evidence that there were some loans, we find far more persuasive the contrary evidence, such as Rathore's testimony, the evidence regarding numerous calls between Thal Poonian and members of the Phoenix Group and the Tim Jenson emails. We give no weight to the documents referred to by the Poonians.

¶ 109 We have the sworn testimony of several Secondary Participants that they did not know anything about the cheques issued to them or deposited for them into their brokerage accounts. We also have a great deal of credible evidence that shows many transfers of funds among the Respondents and the Secondary Participants took place generally at or about the time OSE share purchases were made or debit balances in trading accounts were owing, in whole or in part, as a result of these purchases. We conclude that these monies were used, in whole or in part, to fund the purchase of OSE shares by various Respondents and Secondary Participants.

Sharon Poonian

¶ 110 We find that Sharon Poonian engaged in the following conduct relating to OSE shares:

- acquiring 1,700,000 OSE shares through the two private placements and the exercise of warrants;
- between September 2007 and March 2009, purchasing 1,476,800 OSE shares and selling 3,204,000 OSE shares, of which 830,300 shares were sold to Phoenix clients;
- receiving from Secondary Participants a transfer of 1,090,185 OSE shares;
- making payments to the accounts of Manjit Sihota, Perminder Sihota and Leyk Co., and receiving payments from the joint bank account of Manjit and Perminder Sihota and from Leyk Co.'s bank account; and
- paying commissions to the Phoenix Group for the sale of OSE shares.

Manjit Sihota and Perminder Sihota

¶ 111 We find that Manjit Sihota and Perminder Sihota jointly engaged in the following conduct relating to OSE shares:

- funding debit balances in brokerage accounts of various Secondary Participants (RB, BM, LN, DS, GVP and AP) where the debits arose, in whole or in part, from purchases of OSE shares;
- making payments to Thal Poonian and Sharon Poonian and to Leyk Co. and receiving funds from Leyk Co. and Sharon Poonian; and
- paying commissions (through Leyk Co.) to the Phoenix Group for referring Phoenix clients to purchase OSE shares.

¶ 112 In addition, we find that Manjit Sihota engaged in the following conduct relating to OSE shares:

- signing treasury orders to issue OSE shares in the two OSE private placements;
- receiving 250,000 shares in the second private placement;
- trading OSE shares in his brokerage accounts and in a joint brokerage account with Perminder Sihota;
- receiving a transfer of OSE shares that were issued in RB's name; and
- receiving cheques from Leyk Co., Sharon Poonian and Thal Poonian.

¶ 113 In addition, we find that Perminder Sihota engaged in the following conduct relating to OSE shares:

- receiving 200,000 OSE shares in the second private placement;
- acquiring an additional 1,100,000 OSE shares through exercise of warrants from the private placements;
- receiving cheques from Sharon Poonian; and
- allowing OSE shares to be bought and sold in her Research Capital and Union Securities accounts as a nominee of Thal Poonian.

Leyk

¶ 114 We find that Leyk controlled Leyk Co. as its sole director and officer during the relevant period. We find that Leyk, directly and through Leyk Co., engaged in the following conduct relating to OSE shares:

- signing treasury orders issuing OSE shares in the two private placements;
- acquiring OSE shares in both private placements and exercising warrants to acquire additional OSE shares;
- transferring 400,000 OSE shares to Thal Poonian;
- trading OSE shares in his brokerage accounts;
- funding the purchase of OSE shares in the second private placement by various Secondary Participants (RG, RO, BP, RP and RB);

- misleading IIROC staff about the real reason for the unusual trading activity in and price increases of OSE shares in January 2008;
- depositing cheques received from Thal Poonian, Sharon Poonian, Manjit Sihota and Perminder Sihota into bank accounts of various Secondary Participants (GVP, RB, BM, LN, DS, AP and SP);
- funding debit balances in various Secondary Participants' brokerage accounts (Leyk Co. to RB, GVP and AP and SP);
- moving funds among various accounts of the other Respondents;
- receiving and making payments to and from Thal Poonian, Sharon Poonian, Manjit Sihota and Perminder Sihota; and
- paying commissions to the Phoenix Group for referrals to purchase OSE shares by Phoenix clients.

Misleading appearance

¶ 115 We now turn to the issue of whether the conduct of the Respondents resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, OSE shares.

¶ 116 In *Siddiqi*⁴ at paragraph 118, the Commission observed that:

...a person manipulating the market might use a variety of tools to do the job. Some of these tools are not inherently illegitimate trading practices - they only become so when employed with the intention of manipulating the market. It is also necessary to consider the conduct of the alleged manipulator as a whole. Some trading and order activity may not seem manipulative when viewed in isolation, but is clearly so when considered along with all of the manipulator's other conduct.

¶ 117 The *Siddiqi* panel set out certain hallmarks for determining whether there has been an attempt to manipulate the market. They include:

- wash trades (trades with no change of beneficial ownership)
- trades or orders that lead to an artificial price for a security
- trades or orders that create a misleading appearance of trading activity
- trades through nominee accounts or pre-arranged trades
- market domination
- uptick trades
- involvement in opening and closing trades
- high closing.

⁴ *Re Fatir Hassan Siddiqi*, 2005 BCSCCOM 416

- ¶ 118 All of the hallmarks referred to in the preceding paragraph are present in this case.
- ¶ 119 *Wash trades - trades in which there is no change in beneficial ownership.* We find that Thal Poonian directed the trades in a number of the brokerage accounts of the Respondents and Secondary Participants and orchestrated both the buy and sell sides of trades. There were many instances where the Respondents or Secondary Participants were on both sides of a trade. In that sense, those trades were wash trades.
- ¶ 120 *Trades or orders that led to an artificial price for OSE shares.* There was a dramatic increase in the OSE share price between December 20, 2007 and January 9, 2008 (\$0.27 to \$1.50). There were no public announcements by OSE during this period. Leyk twice confirmed to IIROC that there was no undisclosed material information relating to OSE.
- ¶ 121 The Commission panel in *Siddiqi* found that market manipulation had occurred where there was a 30% increase in the stock price over a seven day period in the absence of any public announcements. In the present case, the price of OSE shares rose 417% during the 20 day period from December 20, 2007 to January 9, 2008, without any announcements of material changes in OSE's business or affairs.
- ¶ 122 *Trading through nominee accounts.* Thal Poonian placed orders to trade OSE shares in the accounts of various members of the Respondents and Secondary Participants. In many of these cases, we find that these accounts were funded by the Respondents and that the nominal accountholders had no economic interest in the accounts. Thus, we find there was trading through nominee accounts to give an artificial appearance of market activity in OSE shares.
- ¶ 123 *Pre-arranged trades.* There were pre-arranged trades. According to the Settlement Agreement and the sworn testimony of Rathore, Thal Poonian instructed the Phoenix Group on the timing and price of purchases by Phoenix clients. In many cases, the shares bought by Phoenix clients on the TSX-V were sold by various Respondents and Secondary Participants.
- ¶ 124 *Market domination and misleading appearance of trading activity.* One of the most telling indicators of an artificial volume of trading is market domination. The level of market domination in this case far exceeds the levels found in earlier market manipulation cases such as *Siddiqi* and other cases referenced there.
- ¶ 125 As already noted, the Respondents and Secondary Participants held 88.33% of OSE shares after the two private placements. Between January 10, 2008 and March 31, 2009, the Respondents and Secondary Participants accounted for 65% of the overall purchase volume and 64% of the overall purchase value of OSE shares on the TSX-V during this period. During the same period, they accounted for 89% of the overall sale volume and 90% of the overall sale value. The Respondents and Secondary Participants were on both sides of trades for a total of 11.5 million OSE shares.

- ¶ 126 The evidence also revealed that on certain trading days, the Respondents and Secondary Participants' accounts dominated the order book for OSE shares, often with bid offers far in excess of offers from other bidders.
- ¶ 127 *Uptick trades (a trade at a price that is higher than the price on the immediately preceding trade)*. Between December 20, 2007 and January 2, 2008, trades by the Respondents and Secondary Participants in OSE shares accounted for seven of 11 uptick trades. On January 9, 2008, their trades accounted for 12 uptick trades during the final hour of the trading day resulting in a \$1.50 closing price for OSE shares, an increase of \$0.50 from the previous day's closing price. Between January 10, 2008 and March 31, 2009, their trades accounted for 208 uptick trades.
- ¶ 128 *High closing*. On three of the five trading days between December 20, 2007 and January 2, 2008, trades by the Respondents and Secondary Participants accounted for purchases of OSE shares during the final 30 minutes of trading. In each case, these trades resulted in a higher closing price.
- ¶ 129 In *Re Podorieszsch*, [2004] A.S.C.D. 360, the Alberta Securities Commission said the following about the meaning of "artificial price":

In our view, the meaning [of artificial price] can best be determined by considering it in the context of the [Alberta] Act and the framework of securities regulation established by the Act. ...that framework is designed to protect investors and to foster fair, efficient capital markets and confidence in those markets, all of which turn on the integrity with which the market and market participants operate. Key to that market integrity is that the market be able to operate on real information...in this context, an artificial price can be described as a price that differs from the price that would result from the market operating freely and fairly on the basis of information concerning true market supply and demand...If, however, demand or supply is distorted, then price will likely also be distorted—no longer reflective of real market demand and supply, it will be artificial.

- ¶ 130 The conduct in this case, including market domination in OSE shares combined with use of nominee accounts, aggressive trading on both sides of trades and uptick, high opening and high closing activity, clearly resulted in both artificial trading activity in, and artificial prices for, OSE shares. Each of the Respondents engaged or participated in various aspects of the conduct in question.
- ¶ 131 It is important to look not only at the voluminous detailed evidence, but also to examine the overall picture to determine if market manipulation took place.
- ¶ 132 Effective market manipulation generally entails the existence of certain circumstances. These include:

- control over a significant proportion of the securities of a relatively thinly-traded issuer listed on a credible marketplace with securities trading at the outset at a low price
- the ability to orchestrate trades in those securities that result in a substantial increase in the market price of those securities, through targeted trades in those securities, and maintaining for a significant period of time the price of the securities at or near the highest price attained
- developing or creating a pool of prospective purchasers at or near the high price and inducing them to buy where the sellers are primarily the alleged market manipulators
- insofar as possible, the beneficial ownership by the alleged market manipulators is disguised through multiple accounts, multiple nominees or account names and wash trading
- to the extent that nominees are involved in the disguising of trading activities, their purchases are funded by or through the alleged manipulators.

¶ 133 All of these circumstances exist and were proven on the balance of probabilities standard in this case.

¶ 134 Another way of taking an overview of alleged market manipulation is to look at the recognized stages of a market manipulation. These usually include the accumulation of a dominant controlling position in the issuer and its securities, the period when the market price of the securities is driven up, the period when the high market price for the securities is maintained and the period when the alleged market manipulators dispose of all or a substantial proportion of the securities they have accumulated to outside investors, often including a pool of purchasers created by the alleged market manipulators.

¶ 135 Again, this overall pattern emerges clearly through the overwhelming evidence in this case.

Further submissions of Thal Poonian

¶ 136 Thal Poonian submitted that he and Sharon Poonian traded in OSE shares consistent with news releases by OSE on corporate developments and because they believed in OSE's management (Leyk, Manjit Sihota and RB2).

¶ 137 This submission does not accord with the evidence. As stated earlier, we have no evidence that any OSE news releases or corporate information could reasonably account for the significant movements in share price during the relevant period. The fact that the Poonians sold more OSE shares than they purchased during this period contradicts their suggestion that they believed in OSE management.

- ¶ 138 Thal Poonian submitted that the executive director should have examined OSE activities over a longer time period, namely, from June 2007 until June 2011. He did not submit any evidence that anything occurred after March 31, 2009, that could have assisted the Respondents' case.
- ¶ 139 Thal Poonian submitted that the substantial drop in OSE share prices in February and March 2009, was due to external factors and not the sell-off of OSE shares by the Respondents and Secondary Participants. He blamed the share price decline on: the global market crisis in 2008, the general decline in crude oil prices, the fact that an investigation order had been issued by the Commission on February 4, 2009, and certain brokerage firms refusing to process buy orders following inquiries by IIROC.
- ¶ 140 We do not find merit in these arguments. Indeed, the evidence indicates that the OSE share price increase and decline did not generally follow what was happening in the stock market or in oil prices but was the result of market manipulation.
- ¶ 141 The rapid rise in OSE share price between December 20, 2007 and January 9, 2008 was not mirrored by a general stock market increase nor was the relatively stable OSE share price from January 2008 to January 2009 mirrored by a stable stock market. The TSX-V index declined 72% from June 30, 2008 to December 1, 2008, while OSE share price only declined by 15% (from \$2.06 on June 30, 2008 to \$1.75 on December 1, 2008).
- ¶ 142 While the OSE share price climbed rapidly between December 20, 2007 and January 9, 2008, there was no material increase in crude oil prices. Conversely, from June 2008 to January 2009, crude oil prices fell from \$137 to \$44 per barrel while the market price of OSE shares remained relatively stable, falling from \$2.06 to \$1.80 over the same period. The substantial decline in the market price for OSE shares after January 2009 was not mirrored by a further serious decline in crude oil prices.
- ¶ 143 The investigation order issued by the Commission was not a public document and there was no evidence that it affected the market price of OSE shares. The IIROC inquiries and the fact that several brokerage firms issued "no buy" instructions on OSE shares all took place after March 31, 2009, and could not have affected the market for OSE shares during the relevant period. There is no evidence of a prohibition on buy orders for OSE shares prior to March 31, 2009. To the contrary, one of the firms which later issued a no buy order direction completed a purchase of OSE shares for a client on March 30, 2009.
- ¶ 144 Thal Poonian argued that the Respondents were prejudiced in defending themselves because they were denied full disclosure regarding, among other things, IIROC's investigation into OSE and the brokers Myatovic and Lowe. We had dismissed the Poonians' application for disclosure during the hearing because we did not find the nature of the disclosure sought to be relevant. Accordingly, we do not find any merit in this argument.
- ¶ 145 Thal Poonian also argued that the Poonians suffered a loss in the range of \$1.9 million because they continued to hold about two million OSE shares after the share price fell to

\$0.08 or less. He submitted that this shows they did not manipulate the market. We do not agree. Whether a person is able to successfully liquidate his entire portfolio for a net gain is not determinative of whether he has engaged in market manipulation.

- ¶ 146 We therefore conclude that the conduct of the Respondents resulted in, or contributed to, a misleading appearance of trading activity in, and artificial prices for, OSE shares.

The Respondents' knowledge

- ¶ 147 We turn now to the analysis regarding whether the Respondents knew, or reasonably should have known, that their conduct resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, OSE shares.

- ¶ 148 Section 57(a) does not require proof of intent to manipulate the market - only that the Respondents knew, or reasonably should have known, that their conduct resulted in, or contributed to, a misleading appearance of trading activity in, or an artificial price for, OSE shares (see *Siddiqi*).

Role of Thal Poonian

- ¶ 149 Thal Poonian was the mastermind. He was the person who found OSE and acquired control of its shares and board, nominating Leyk, Manjit Sihota and RB2 as directors. He was the one who set up the arrangement with the Phoenix Group. He was the one who traded OSE shares through nominees. The Secondary Participants and Phoenix Group members who were interviewed by Commission staff all pointed to him as the person who set up the scheme. He tried to disguise his involvement by using the "Tim Jenson" alias in communications with the Phoenix Group.

- ¶ 150 Thal Poonian was an experienced market participant and investor, a corporate executive and a former registered salesperson. He was not ignorant of how the market operated. He and his wife were the common connection among all the other Respondents and the Secondary Participants, which he exploited to implement a sophisticated market manipulation of OSE shares.

- ¶ 151 The inescapable conclusion from his direct involvement in these extensive and repeated activities is, and we find, that Thal Poonian knew, or reasonably should have known, that his conduct in relation to OSE shares resulted in or contributed to a misleading appearance of trading activity in OSE shares and an artificial price for OSE shares.

Role of Sharon Poonian

- ¶ 152 Sharon Poonian was actively and extensively involved in many aspects of the market manipulation. She acquired OSE shares in both private placements, traded OSE shares in her own accounts, received transfers of OSE shares from various Secondary Participants, filled out cheques signed in blank by various Secondary Participants, made payments to accounts of various Secondary Participants to fund purchases of OSE shares or to eliminate debit balances in accounts arising in whole or in part from purchases of OSE shares, and made and received numerous payments of funds used to fuel the manipulation.

¶ 153 Sharon Poonian was an experienced investor, a corporate officer and worked in the Vantage Way premises.

¶ 154 The inescapable conclusion from her direct involvement in these extensive and repeated activities is, and we find, that Sharon Poonian knew, or reasonably should have known, that her conduct in relation to OSE shares resulted in or contributed to a misleading appearance of trading activity in OSE shares and an artificial price for OSE shares.

Role of Manjit Sihota

¶ 155 Manjit Sihota had a long and extensive business, personal and family connection with Thal Poonian and Sharon Poonian. Manjit Sihota was actively and extensively involved in many aspects of the market manipulation. He was a director and President of OSE, received OSE shares and traded them in his personal accounts, signed cheques on his bank accounts and gave them to Thal Poonian in blank (some of these cheques were filled in and used to cover debit balances in brokerage accounts of various Secondary Participants), signed treasury orders to issue OSE shares from the two private placements to the accounts of various Respondents and Secondary Participants, signed cheques issued to Phoenix Group members to pay commissions for inducing Phoenix clients to purchase OSE shares, and made and received numerous payments of funds used to fuel the manipulation.

¶ 156 Manjit Sihota made oral and written submissions. Essentially, he denied the evidence tendered by the executive director and denied knowledge of many aspects of the conduct alleged. But there is no evidence before us to support his submissions as he chose not to submit any oral or documentary evidence.

¶ 157 The inescapable conclusion from his direct involvement in these extensive and repeated activities is, and we find, that Manjit Sihota knew, or reasonably should have known, that his conduct in relation to OSE shares resulted in or contributed to a misleading appearance of trading activity in OSE shares and an artificial price for OSE shares.

Role of Perminder Sihota

¶ 158 In addition to her relationship with the Poonians, Perminder Sihota owned the Vantage Way premises where many of the participants in the market manipulation had offices and reported for work. She received OSE shares in the private placements and traded OSE shares. Most of the cheques and transfers involving the Sihotas were made from and to her joint bank account with Manjit Sihota. Perminder Sihota signed cheques on her joint account with Manjit Sihota paying out funds from their account to cover debit balances in brokerage accounts of various Secondary Participants and to make payments to the Poonians. Commissions were paid to R&A and Phoenix Pension from her joint account through back to back payments through Leyk Co.

¶ 159 Of all of the Respondents, Perminder Sihota was the least involved directly in the conduct of the market manipulation. Indeed, as noted above, in her sworn interview, she stated that the trades in her brokerage accounts were made by her own decision based on

“what’s good for me”. If that were true, it suggests she has a certain sophistication in investing and makes it less plausible that she would have participated in movements of significant monies from her joint bank account without knowing the purpose and effect of this conduct. If it were not true, as we have found, then it means she acted as Thal Poonian’s nominee. Either way, we do not find it plausible that she signed cheques or otherwise allowed significant funds to be transferred out of her joint account with Manjit Sihota to Secondary Participants and the Poonians without knowing the purpose and the effect of her and their conduct.

- ¶ 160 In our view, Perminder Sihota’s sworn interview was designed to mislead investigators as to her roles and the extent of her knowledge in the market manipulation. Again, it is not necessary to prove that Perminder Sihota intended that her conduct result in market manipulation - only that she knew, or reasonably ought to have known, the effect of her conduct.
- ¶ 161 Perminder Sihota made written submissions. Essentially, she denied any knowledge of the transactions involving her and said she signed cheques on her husband’s instruction. But that is not evidence before us since she chose not to submit any oral or documentary evidence. Interestingly, her submissions about her knowledge contradict what she said in her sworn interview with Commission staff.
- ¶ 162 The inescapable conclusion from her direct involvement in these extensive and repeated activities is, and we find, that Perminder Sihota knew, or reasonably should have known, that her conduct in relation to OSE shares resulted in or contributed to a misleading appearance of trading activity in OSE shares and an artificial price for OSE shares.

Role of Leyk

- ¶ 163 Leyk had a long and extensive connection with Thal Poonian. Leyk, both directly and through Leyk Co., was actively and extensively involved in many aspects of the market manipulation. He was a director of OSE, he acquired OSE shares and traded them, he signed cheques to fund private placement shares placed into accounts of Secondary Participants, he issued the treasury orders to issue the OSE shares from the two private placements to the various accounts of the Respondents and Secondary Participants, he was the person principally involved in depositing cheques and making transfers to bank accounts and brokerage accounts to fund purchases of OSE shares in accounts of various Secondary Participants and to cover debit balances in brokerage accounts of Secondary Participants who had purchased OSE shares, he signed cheques to pay the Phoenix Group commissions for inducing Phoenix clients to purchase OSE shares and he misled IIROC investigators about the true reasons for the unusual market volume and price increase.
- ¶ 164 The inescapable conclusion from his direct involvement in these extensive and repeated activities is, and we find, that Leyk knew, or reasonably should have known, that his conduct in relation to OSE shares resulted in or contributed to a misleading appearance of trading activity in OSE shares and an artificial price for OSE shares.

IV FINDINGS

¶ 165 In summary, we find that each of the Respondents breached section 57(a) of the Act by engaging in, or participating in, conduct that they knew, or reasonably should have known, would result in, or contribute to, a misleading appearance of trading activity in, or an artificial price for, OSE shares.

V SUBMISSIONS ON SANCTIONS

¶ 166 We direct the parties to make their submissions on sanctions as follows:

By September 19 The executive director delivers submissions to the respondents and the secretary of the Commission

By October 3 The respondents deliver response submissions to the executive director and the secretary of the Commission

Any party wishing an oral hearing on the issue of sanctions so advises the other parties and the secretary of the Commission

By October 10 The executive director delivers reply submissions (if any) to the respondents and the secretary of the Commission.

¶ 167 August 29, 2014

¶ 168 **For the Commission**

Suzanne K. Wiltshire
Commissioner

George C. Glover, Jr.
Commissioner

Audrey T. Ho
Commissioner