BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Zhu, 2015 BCSECCOM 264 Date: 20150623

Yan Zhu (also known as Rachel Zhu), Guan Qiang Zhang and Bossteam E-Commerce Inc.

Panel[1]	Suzanne K. Wiltshire	Commissioner
	George C. Glover, Jr.	Commissioner
Submissions completed	April 21, 2015	
Date of Decision	June 23, 2015	

Appearing

Neil Cave	For the Executive Director
John Shewfelt Victor Ing	For the Respondents

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The Findings on liability made on August 8, 2014 (2014 BCSECCOM 325) are part of this decision.

[2] This matter concerns fraudulent illegal distributions of securities by Bossteam E-Commerce Inc., Guan Qiang Zhang (also known as Victor Zhang) and Yan Zhu (also known as Rachel Zhu).

[3] The panel found that each of the respondents breached the Act by:

- distributing securities of Bossteam without first having filed a prospectus, contrary to section 61(1);
- engaging in conduct that perpetrated a fraud on those who purchased securities of Bossteam, contrary to section 57(b);
- withholding information concerning the sale of securities of Bossteam in response to a demand for production issued under section 144 of the Act, contrary to section 57.5; and

[1] Commissioner Hanna retired after the Findings were released and took no part in this Decision.

- attempting to conceal or withhold information concerning the sale of securities of Bossteam by instructing others to deny Bossteam had offered such securities to the public and to refer to the concept of online trading as being planned for the future, contrary to section 57.5.

[4] The panel also found that:

- Zhang contravened section 57.5 of the Act by attempting to conceal information concerning the sale of Bossteam securities when he instructed others to stop referring to Shares as shares and instead call them consumer credits; and
- Zhu contravened section 168.1(1)(a) of the Act by submitting or giving false information to a Commission investigator respecting the reporting of her outside business activities with Bossteam to the mutual fund dealer she worked for as a registered representative.

II. Position of the Parties

Executive Director

[5] The executive director seeks the following orders under sections 161(1) and 162 of the Act:

- With respect to Bossteam:
  - that all persons cease trading in, and are prohibited from purchasing, any securities or exchange contracts of Bossteam, under section 161(1)(b)(i),
  - permanently prohibiting Bossteam from trading in or purchasing securities or exchange contracts, under section 161(1)(b)(ii),
  - that any or all of the exemptions set out in the Act, regulations or a decision do not apply to Bossteam, under section 161(1)(c),
  - permanently prohibiting Bossteam from acting in a management or consultative capacity in connection with activities in the securities market and engaging in investor relations activities, under section 161(1)(d), and
  - that Bossteam pay to the Commission the amount of $14 million, under section 161(1)(g) .

- With respect to each of Zhu and Zhang:
  - permanently prohibiting them from trading in or purchasing securities or exchange contracts, under section 161(1)(b),
  - that any or all of the exemptions set out in the Act, regulations or a decision do not apply to them, under section 161(1)(c),
  - permanently prohibiting them from becoming, or acting as, a registrant or promoter, acting in a management or consultative capacity in connection with activities in the securities market, engaging in investor relations activities and being or acting as a director or officer of any issuer, under section 161(1)(d),
  - that they pay to the Commission the amount of $14 million, under section 161(1)(g), and
  - that they pay to the Commission an administrative penalty of $28 million, under section 162, on a joint and several liability basis.

- That the aggregate amount paid to the Commission by all respondents under section 161(1)(g) not exceed $14 million.

Respondents

[6] With respect to the market bans under sections 161(1)(b), (c) and (d), the respondents submit that:

- in the case of Zhang, the market bans should be limited to ten years;
- in the case of Zhu, the market bans should be limited to five years because she is markedly less culpable than Zhang and her liability is essentially vicarious by virtue of her formal status as a director;
- no order should be made under section 161(1)(c) as the respondents did not make use of any exemptions; and
- the bans should be limited as follows:
  - under the section 161(1)(b) bans, an exception be ordered permitting each of Zhu and Zhang to trade securities in her or his own account through a registrant,
  - under the section 161(1)(d) bans, an exception be ordered permitting each of Zhu and Zhang to act as a director or officer of a corporation all the securities of which are owned by her or him or members of her or his immediate family, or by people who are officers, directors or employees of that issuer.

[7] The respondents submit that any order under section 161(1)(g) should be limited to the aggregate amount obtained by the particular respondent.

[8] With respect to administrative penalties under section 162, the respondents submit that the appropriate administrative penalties are:

- Bossteam: $275,000
- Zhang: $275,000
- Zhu: $ 50,000.

III. Analysis

A. Factors

[9] The goal of sanctions is protective and preventative, to prevent future harm: *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37.

[10] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified certain factors relevant to sanction as follows (at page 24):

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:

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

B. Application of the Factors

Seriousness of the conduct

[11] The respondents' misconduct is at the most serious level. The respondents carried out large-scale fraudulent illegal distributions of securities of Bossteam to hundreds of investors for proceeds in excess of $14 million. They then attempted to conceal or withhold information from Commission investigators and withheld information in response to an order for production. Zhu also gave false information to a Commission investigator.

[12] The Commission has often characterized fraud as the most serious conduct prohibited by the Act. In *Manna Trading Corp. Ltd.*, 2009 BCSECCOM 595 at paragraph 18, the hearing panel stated: "Nothing strikes more viciously at the integrity of our capital markets than fraud."

[13] The illegal distributions carried out by the respondents are also inherently serious. As noted by the panel in *Independent Academies Canada Inc. (Re)*, 2014 BCSECCOM 260 (*IAC*) at paragraph 8, the prospectus requirement is fundamental to protecting investors and the integrity of capital markets because it ensures that investors get the information necessary for an informed investment decision.

[14] Once they became aware of the Commission's investigation, the respondents took steps to disguise their activities and avoid detection. We agree with the executive director's submission that this conduct directed at undermining the Commission's investigation is also serious because it created a risk that the respondents would escape enforcement of the Act. In Zhu's case, this extended to giving false information to a Commission investigator regarding the reporting of her outside business activities with Bossteam to the mutual fund dealer she worked for as a registered representative.

[15] The respondents submit that unlike the totally fraudulent schemes such as those in *Manna, Sung Wan (Sean) Kim*, 2010 BCSECCOM 684 and *IAC* cited by the executive director, their violations of the Act "occurred only during the start-up phase of [Bossteam's] operations, were collateral to the legitimate focus of the business and did not continue beyond April 2012". They also submit that there was no fraud directed at any member of the public, or otherwise.

[16] The executive director characterizes the respondents' submissions as downplaying their misconduct – as contending Bossteam was intended to be a lawful business, although its start-up phase necessitated some incidental breaches of the Act.

[17] The executive director points out that if Bossteam's business plan required breaching the Act during its start-up phase, then it was not a legitimate business and even if Bossteam were a legitimate business, this would not be a mitigating factor.

[18] We agree. As we found, the respondents created a number of false impressions based on Bossteam being an online advertising business with fast growing advertising revenues, when Bossteam had little actual advertising revenue. This conduct supported the respondents' scheme to offer and sell securities of Bossteam and caused deprivation to the investors who risked losing all they had paid to purchase Bossteam securities because Bossteam had few paying advertisers and little actual advertising revenue. This conduct perpetrated a fraud on the hundreds of investors who purchased Bossteam securities.

[19] There is no substance to the respondents' claim that Bossteam was a legitimate business. In the first half-year of Bossteam's operations the respondents had raised $14 million from investors through illegal distributions of Bossteam's securities based on the false impressions. The evidence does not demonstrate that such conduct was about to cease at that point. Indeed it appears to have been actions of the executive director in issuing a Notice of Hearing and temporary order on April 30, 2012 that brought Bossteam's illegal distributions to a halt. The respondents' scheme involved large-scale fraudulent illegal distributions to large numbers of investors. There is no valid basis to distinguish it from the fraudulent schemes described in the fraud cases noted above.

Harm to investors; damage to integrity of capital markets

[20] Between November 2011 and April 30, 2012, Bossteam sold slightly in excess of $14 million worth of ad packages, involving more than 7,700 transactions. Bossteam also sold an additional unknown amount of Shares and consumer credits.

[21] The respondents' conduct harmed hundreds of investors. The purchasers of Bossteam's ad packages, Shares and consumer credits risked losing all they had paid because Bossteam had few paying advertisers and little advertising revenue.

[22] The respondents' conduct was also an abuse of the province's capital markets. The respondents conducted a multi-million dollar fraud in the guise of a successful online advertising business designed to attract investors to purchase Bossteam's securities in illegal distributions without the benefit of the disclosure mandated by the Act.

[23] The impact of such conduct extends beyond the investors in Bossteam to the investing public as a whole and undermines the integrity of our capital markets.

Enrichment

[24] Because Bossteam withheld from Commission investigators information concerning monies paid by investors for purchasing Shares and consumer credits, the total amount paid by investors is unknown but is more than $14 million.

[25] The executive director submits that as the only authorized signatories for Bossteam's bank accounts, Zhu and Zhang were the only ones with access to Bossteam's funds and used the funds for their own personal benefit. In particular, they used Bossteam's bank accounts for retail purchases and to make cash withdrawals. As well, Zhu used bank drafts totaling $149,976.15, drawn on Bossteam's Canadian dollar bank account, to acquire a Mercedes car for which Zhu, and later Zhang, were listed as the principal operators.

[26] The evidence establishes that Zhu was in charge of Bossteam's finances, including cash received from investors that Zhu either kept on her person or simply put into a locked drawer at Bossteam's office for which Zhu and one other employee had the key. Bank records show that Zhu made numerous deposits to her personal bank accounts in amounts frequently matching the purchase prices, or multiples of the purchase prices, for the ad packages Bossteam was selling. Zhu testified that she was unable to recall the source for most of the deposits.

[27] She said some deposits may have been gifts from her family in China but she was unsure. Zhu was certain no deposited funds came from her previous employment with a life insurance company and a mutual fund dealer.

[28] The nature of Zhu's evidence in regard to the deposits in her personal accounts was similar to the nature of some of her evidence during the liability hearing. In contentious areas such as the deposits in amounts akin to the purchase price for ad packages, she avoided answering with specifics, merely saying she was unable to recall or unsure on some points while being specific in non-contentious areas such as being certain none of the deposits were from her previous employment. We consider her testimony as to deposits from her family in China unreliable.

[29] We conclude that Zhu was personally enriched by at least $52,646, being the $10,146 deposit Zhu described as remuneration, the deposits in amounts investors paid to purchase ad packages totaling $32,500, and the amount of $10,000 which Zhu testified was a personal loan to her from Bossteam.

[30] With respect to Zhang, Zhu testified that Bossteam paid Zhang's rent and other living expenses. Records show Bossteam paid for Zhang's rent on the apartment that was his residence, that was initially used as Bossteam's office, even after Bossteam began paying rent on another space for office use. Bossteam also paid for electricity for the apartment, Zhang's medical expenses and the lease and subsequent purchase of, and insurance payments for, the Mercedes.

[31] While Zhu described the rental cost of Zhang's apartment as a Bossteam business expense, we do not agree that this was a business expense since the apartment was Zhang's personal residence and, from January on, Bossteam paid rent for another office space for Bossteam's use.

[32] With respect to the Mercedes, records introduced by the respondents during Zhu's testimony show that Zhang was the only one who drove the Mercedes from the time it was leased on November 29, 2011 until he left Canada on April 5, 2012. Zhu testified that the vehicle was parked overnight at Zhang's residence. While Zhang claimed the Mercedes was used only for company business, the records Zhu provided showed he used it only three times for business related to Bossteam.

[33] We agree with the executive director's submission that in reality the Mercedes was Zhang's personal vehicle. Records show that investors' funds were used to lease and then purchase this luxury vehicle stated in the lease agreement to have a value of $134, 042.

[34] Before his departure from Canada on April 5, 2012, Zhu deposited US$24,000 into one of Zhang's personal bank accounts with more deposits being made into this account after his departure for a total of US$118,266.

[35] At the liability hearing, Zhang testified that he could not recall the source of a US$23,000 deposit into his personal account on May 2, 2012 but admitted other deposits came from sales of ad packages. In his affidavit entered into evidence during the sanctions hearing, Zhang admitted that from time to time funds related to Bossteam were deposited into his personal bank account. His explanation for the deposits was that he required cash to cover his travel and related expenses in setting up a new company in Hong Kong.

[36] We note that the deposits to Zhang's personal account were made after he left Canada pursuant to a deportation order. While he may have been engaged in setting up a company in Hong Kong, there is no evidence that Zhang's activities in that regard were of benefit to Bossteam.

[37] We find Zhang was, at a minimum, personally enriched by Bossteam's deposits to his personal accounts in the amount of US$118,266, by payment of rent for his residence in Vancouver and his living and medical expenses, and by the lease and subsequent purchase of the Mercedes and related expenses.

Mitigating factors

[38] The executive director submits that there are no mitigating factors relating to the respondents' conduct.

[39] We have already rejected the respondents' arguments as to their contraventions occurring only during the start-up phase of Bossteam's operations and being only collateral to the legitimate focus of the business.

[40] The executive director submits that even if Bossteam had been a legitimate business, this cannot be a mitigating factor. We agree. If anything, the respondents' submissions only serve to demonstrate their continuing failure to accept that they have done anything wrong.

[41] We conclude there are no mitigating factors.

Aggravating factors

[42] The respondents submit that the executive director's submissions on this factor invite legal error by listing two stand-alone contraventions of the Act as aggravating factors. They argue that if such contraventions are to be the subject of independent penalties, then they cannot also be aggravating factors.

[43] We have not considered stand-alone contraventions as both aggravating factors and also as the subject of independent penalties. Instead, in assessing the appropriate administrative penalty for each respondent we have considered all contraventions by that respondent .

[44] Disregarding the stand-alone contraventions, the executive director lists the following as aggravating factors:

- actions by the respondents to disguise their activity and escape detection by repeatedly changing the address of the website offering Bossteam securities and beginning to refer to Bossteam Shares as consumer credits,
- Zhang testifying falsely at the hearing that Bossteam had not sold any shares, and
- Zhu and Zhang seeking to intimidate investors to dissuade them from cooperating with the Commission's investigation and from testifying against the respondents.

[45] We found that Bossteam had three websites: the Youadworld website which went online on November 18, 2011 with the initial Shares offering; the YouadHK website created in January 2012; and the Youadall website appearing in March 2012, both of which offered consumer credits. The three websites appeared successively at critical points as the Commission investigation progressed. Following the appearance of the YouadHK website, there was no longer a reference to Shares being offered but only to consumer credits.

[46] The executive director suggests that the appearance of the two additional websites and the change of what was in substance always the same securities offering from Shares to consumer credits were attempts by the respondents to disguise their activity and escape detection.

[47] The new websites were created at critical points in the investigation and coincident with the switch from offering Shares to offering consumer credits which we found were just a continuation of the Bossteam Share offering under a different name and in substance indistinguishable from the Shares initially offered by Bossteam. Bossteam materials created at the same point in time also implemented the change from referring to Shares to referring to consumer credits.

[48] The creation of the websites and the change from Shares to consumer credits certainly made the investigation more difficult and time consuming We view this conduct on the part of the respondents as an attempt to disguise their activities and avoid detection and therefore an aggravating factor.

[49] While we found at paragraph 67 of the Findings that the testimony of Zhang relating to whether securities apparently offered for sale by Bossteam had already been issued was not credible, we did not find that it was because Zhang lied as submitted by the executive director. We therefore do not consider that particular testimony to be an aggravating factor.

[50] The executive director made a preliminary application to exclude the public from the hearing during the executive director's case on the grounds that some of the witnesses the executive director proposed to call were becoming reluctant to attend and a large Bossteam presence in the hearing room would have a chilling effect on the testimony of witnesses who did attend. The executive director introduced evidence in support of the application which he submitted was evidence of intimidation to dissuade investors from cooperating with the Commission's investigation and from testifying. We dismissed the application. The hearing proceeded and we were satisfied that the testimony of the witnesses who did appear was not affected by the alleged intimidation. In the result, we find no such aggravating factor.

Past conduct

[51] The executive director has not advanced any history of past regulatory misconduct.

Risk to investors and capital markets posed by the respondents' continued participation in the capital markets of British Columbia; Respondents' fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers

[52] The executive director submits that in perpetrating a multi-million dollar fraud and actively seeking to avoid the Commission's enforcement of the Act, the respondents have demonstrated their contempt for the Commission's regulatory authority and shown that they pose a significant risk of harm to investors and to the capital markets of British Columbia.

[53] The executive director submits that the respondents' misconduct demonstrates they are unfit to ever participate in British Columbia's capital markets in any capacity.

[54] The respondents submit that they pose a relatively small risk.

[55] Given the roles of the respective respondents in the fraudulent illegal distributions of Bossteam securities, we conclude the continued participation of any of the respondents in the capital markets would pose a significant ongoing risk to both investors and our capital markets.

[56] None of them is fit to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers. We note that Zhu was a registered representative under the Act at the time of the contraventions and should have been acutely aware of her responsibility to investors and to the capital markets.

Specific and general deterrence

[57] The sanctions we impose must be sufficient to ensure that the respondents and others will be deterred from engaging in similar misconduct in the future.

[58] The administrative penalties must be significant enough that the respondents and others cannot view them as simply being the cost of doing business.

Previous orders

[59] Citing *IAC*, the executive director submits that in fraud cases, the Commission has consistently imposed permanent orders and significant financial sanctions.

[60] IAC and its directors and officers, Everett and Duke, illegally distributed securities to 126 investors for proceeds of $5.1 million, of which $1.645 million was obtained fraudulently. The panel concluded it was appropriate to make a section 161(1)(g) order against the individual respondents personally since they were directors and officers of the corporate respondents and were the individuals who directed the affairs of those companies. They ordered the respondents under section 161(1)(g) to pay the Commission, on a jointly and severally liability basis, the $5.1 million raised in the illegal distribution plus other amounts obtained in contravention of the Act for a total of $5.4 million. Under section 162, the panel, having found the individual respondents acted jointly and were equally responsible, ordered them to pay, jointly and severally, an administrative penalty of $7 million, being the sum of the amount raised in contravention of the Act, exclusive of the fraud and an amount approximately two times the $1.645 million raised through the fraud. The panel also ordered permanent capital market bans.

[61] In *Kim*, the respondent raised $15.7 million from investors in a "calculated fraud stretching over two and a half years" under the guise of investing their money in futures and options or in U.S. treasury bills. The panel ordered Kim under section 161(1)(g) to pay the Commission $15.7 million, the amount raised from investors. Under section 162 the panel ordered Kim to pay a $31.4 million administrative penalty, stating: "We have determined that Kim obtained $15.7 million from investors. We think an administrative penalty of twice that amount is appropriate in the circumstances." The panel also banned Kim permanently from the capital markets.

[62] In *Manna*, the respondents raised close to $16 million from investors in a "deliberate and well-organized fraud" by inducing investors to loan Manna money by telling them their funds would be placed with experienced foreign currency traders who had a long history of producing high returns. The Manna scheme changed in minor ways and used various entities to perpetrate the fraud. The panel ordered the respondents under section 161(1)(g) to pay the Commission $16 million, the amount raised from investors, and under section 162 to pay administrative penalties ranging from $6 million to $8 million, being equal in the aggregate to double the $13 million upper limit established to have been lost by investors. The panel also banned the respondents permanently from the capital markets.

[63] The respondents submit that it is inappropriate to use decisions, such as those above, involving totally fraudulent enterprises.

[64] We disagree for the reasons previously stated above in our discussion of the seriousness of the respondents' conduct. Similar to the frauds in the decisions above, Bossteam was a well-organized fraud through which the respondents raised at least $14 million in a short period by way of illegal distributions of Bossteam securities.

[65] The respondents in their submissions referred us separately to decisions dealing with capital market bans, section 161(1)(g) orders and administrative penalties. We review those decisions below in our discussion of appropriate orders.

C. Appropriate Orders

Market and Trading Bans

[66] The executive director seeks permanent market and trading bans against each of the respondents.

[67] The respondents submit that Zhang's conduct more closely resembles that of the respondents in *Pacific Ocean Resources Corporation*, 2012 BCSECCOM 104 and the respondent, Walker, in *Walker (Re)*, 2010 BCSECCOM 578.

[68] *Pacific Ocean* involved an illegal distribution that raised over $836,000 from approximately 83 investors. There was no allegation or finding of fraud and no evidence the individual respondent, Dyer, was personally enriched. The present case is not comparable to *Pacific Ocean*. As the executive director notes, the Commission has generally applied permanent bans in fraud cases and we have found the respondents committed fraud.

[69] Although *Walker* was a case involving fraud, as noted by the panel, that case did not involve "large fraudulent illegal distributions to large numbers of unsophisticated investors".

[70] In contrast, the respondents in the present case carried out large-scale fraudulent illegal distributions to hundreds of investors that caused significant harm to investors and damage to the integrity of the capital markets.

[71] While Walker received 10 year bans, the panel noted that Walker had acknowledged his misconduct and expressed remorse. Tamburrino, another individual respondent in the *Walker* case, who believed he had done nothing wrong and declined to accept responsibility for his conduct, received a permanent ban.

[72] The conduct of Zhu and Zhang is more akin to that of Tamburrino than Walker. Zhu and Zhang continue to attempt to diminish their misconduct and to fail to accept responsibility for it. The *Walker* case indicates, if anything, that Zhu and Zhang like Tamburrino should be permanently banned.

[73] The misconduct of Zhu, Zhang and Bossteam in our view is comparable to the misconduct of the respondents in *IAC*, *Kim* and *Manna* and the respondents present similar future risk of harm to investors and our capital markets.

[74] The respondents submit that Zhu was less culpable than Zhang and her ban should therefore be markedly less than Zhang's. They argue that Zhu's liability is essentially vicarious by virtue of her formal status as the sole director of Bossteam and that Zhang was the "operating mind" of Bossteam. The respondents argue Zhu did not have control over Bossteam and her role was no different from that of a senior employee. They also point to her having been ill early in 2012 and therefore in the office only for short periods leading up to her returning to China in mid-March due to her illness.

[75] The executive director submits and we agree that Zhu did not have a mere formal role at Bossteam. Her role was also more than that of a senior employee. She was a co-founder of Bossteam, participated in writing Bossteam's business plan and was Bossteam's sole director and chief financial officer. She was responsible for Bossteam's finances and in that capacity opened bank accounts for Bossteam and had signing authority on those accounts, set up the payroll system, was responsible for payroll, and made arrangements for third party payment providers which enabled Bossteam to distribute its securities online and receive online payments from investors for such securities.

[76] By being the only director, the respondents considered that Zhu would be able to deal with banks and payment providers without needing to involve Zhang.

[77] Notwithstanding her illness, Zhu described her work as being at an overload level on a long-term basis, with a lot of things needing to be done.

[78] Zhu and Zhang had different roles but both of their roles were essential to carrying out the fraudulent illegal distributions of Bossteam's securities. Zhu as the sole director and chief financial officer created the financial structure and worked to ensure the financial success of Bossteam. Zhang was the directing mind and as such was a "de facto" director of Bossteam as well as its chief executive officer. We consider them equally culpable.

[79] Permanent market and trading bans under section 161(1) are appropriate in the case of each of the respondents to protect investors and our capital markets.

[80] Zhu and Zhang request that each of them be permitted to trade securities in his or her own account through a registrant. This request is in keeping with exceptions previously ordered in similar cases and we consider it would not be prejudicial to the public interest to permit Zhu and Zhang to trade securities on that basis. We have made provision for that in our orders.

[81] Zhu and Zhang also request that each of them be permitted to act as a director or officer of any issuer all the securities of which are owned by her or him, or members of her or his immediate family, or by people who are officers, directors or employees of that issuer. They do concede that extending an exception to cover acting as a director or officer of issuers whose securities are owned by officers, directors or employees of the issuer in question goes beyond exceptions previously granted in similar cases.

[82] We consider it would not be prejudicial to the public interest to permit an exception on a more limited basis, in keeping with exceptions previously granted in similar cases. We have made provision for that more limited exception in our orders.

[83] The respondents submit the executive director has given no rationale for why a ban under section 161(1)(c) is appropriate, necessary, or in the public interest and that their contraventions did not involve the use of any exemptions.

[84] We consider a ban under section 161(1)(c) appropriate to effectively fully ban the respondents from our capital markets by ensuring they cannot engage in future in capital market activity through an exemption.

Section 161(1)(g) order

[85] Under section 161(1)(g) of the Act, where a person has not complied with a provision of the Act, the Commission may order that person to pay to the Commission "any amount obtained…, directly or indirectly, as a result of the failure to comply or the contravention".

[86] The executive director submits that the amount obtained as a result of the contraventions is the $14 million illegally raised from investors and that Zhu, Zhang and Bossteam should be ordered to pay that amount, jointly and severally, to the Commission.

[87] The respondents submit that it would be an error of law to order the amount obtained by one respondent to be disgorged by another respondent who did not receive that amount.

[88] The respondents referred us to *Planned Legacies Inc. (Re)*, 2011 ABASC 278, which considered the Alberta statutory equivalent of section 161(1)(g), where the panel stated, at paragraph 71, that the rationale for a disgorgement order reflects the equitable policy of removing all money unlawfully obtained by a respondent so that the respondent does not retain any financial benefit from breaching the Alberta Act.

[89] In that regard, the panel in *Planned Legacies* also referenced *Manna*, at paragraphs 35 and 36, noting that section 161(1)(g) does not have punishment as its objective but rather removes from contravening parties money not rightfully theirs, ensuring that those who contravene securities laws do not profit from their misconduct and the money obtained by contravening the Act is returned.

[90] We note that in *Manna* the panel also found that it is not necessary to trace funds into the hands of the respondents. The panel in *Manna* went on to apply a broad reading of section 161(1)(g) noting that each respondent contravened the Act and that each of their individual contraventions, directly or indirectly, resulted in the investment of US$ 16 million in the Manna scheme, enabling the panel to order each of them to pay that amount to the Commission. The panel then ordered the four individual respondents and the four corporate respondents to pay to the Commission the full amount obtained from investors in that illegal distribution, on a joint and several liability basis.

[91] In the more recent case of *Oriens Travel & Hotel Management Capital (Re)*, 2014 BCSECCOM 352 at paragraph 63, the panel rejected a narrow interpretation that would limit a section 161(1)(g) order to the amount obtained by a particular respondent.

[92] And in *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM, the Commission discussed the principles relevant to section 161(1)(g) orders at paragraphs 42 and 43:

> ¶42 To summarize, these are the principles that are relevant under section 161(1)(g):
>
> a) the focus of the sanction should be on compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;
>
> b) the sanction does not focus on compensation or restitution or act as a punitive or deterrent measure over and above compelling the respondent to pay any amounts obtained from the contravention(s) of the Act;

c) the section should be read broadly to achieve the purposes set out above and should not be read narrowly to either limit orders:
(i) to amounts obtained, directly or indirectly, by that respondent; or
(ii) to a narrower concept of "benefits" or "profits",
although that may be the nature of the order in individual circumstances.

¶43 Principles that apply to all sanction orders would also be applicable to section 161(1)(g) orders, including:
a) a sanction is discretionary and may be applied where the panel determines it to be in the public interest; and
b) a sanction is an equitable remedy and must be applied in the individual circumstances of each case.

[93] The above principles were applied in *Streamline Properties Inc.*, 2015 BCSECCOM 66, a case involving, among other things, illegal distributions and, in the case of one of the individual respondents, fraud. There was no evidence that either of the individual respondents had personally benefitted from their misconduct. Pursuant to section 161(1)(g), the two individual respondents as well as two of their companies were ordered to pay, on a joint and several basis, the full amount obtained from investors.

[94] Following *VerifySmart Corp. (formerly known as Verified Capital Corp), Verified Transactions Corp., Daniel Scammell and Casper de Beer aka Casha de Beer*, 2012 BCSECCOM 176, *Streamline* also concludes that it is appropriate to begin with the general principle that the full amount raised in an illegal distribution should be paid to the Commission under section 161(1)(g) and to then consider if it is equitable, in the public interest and not punitive to order payment of the full amount obtained, as opposed to a lesser amount or no payment at all.

[95] Applying the principles from the above decisions of the Commission, we agree with the executive director's submission that as Zhu and Zhang co-founded and acted in concert with a common purpose in directing and operating Bossteam, the amount obtained, directly or indirectly, as a result of each of the respondents' contraventions is the amount raised in the fraudulent illegal distributions of Bossteam's securities, which is not less than $14 million, and that there is no reason to order a lesser amount in this case.

[96] In coming to this conclusion, we have also considered the decisions in *Michael Kyaw Myint Hua Hu*, 2011 BCSECCOM 514 and *Won Sang Shen Cho*, 2013 BCSECCOM 454 that the respondents cite in support of their submission.

[97] In *Hu* the respondents point out that no section 161(1)(g) order was made in the absence of evidence that the respondent had been enriched. We note that *Hu* was an insider trading case, in which there was no evidence that Hu's money funded the trades and no evidence of his beneficial interest in the trades. *Hu* has no application to the present case where it is clear the respondents raised at least $14 million through fraudulent illegal distributions. The appropriate approach to the determination of the amount obtained in the case of illegal distributions is that set out in *Verify Smart* and followed in *Streamline.*

[98] In *Cho* the respondents point out that the panel ordered payment under section 161(1)(g) of the amount received from investors, less the amount already paid to investors. We note that in *Cho* the respondent had voluntarily returned unfrozen funds to investors and the amount so returned was deducted from the amount raised for the purposes of the section 161(1)(g) order.

[99] There is no evidence in the present case that the respondents returned the purchase price for the securities illegally distributed to investors in Bossteam. While Bossteam may have paid monies to qualified members who clicked on ads on Bossteam's platforms or commissions to qualified members involved in Bossteam's multi-marketing scheme, these were not repayments of funds paid by investors to purchase the securities illegally distributed. There is no basis for a deduction to be made in the present case.

[100] We find it is in the public interest to order under section 161(1)(g), on a joint and several liability basis, that each of the respondents pay to the Commission the amount obtained, directly or indirectly, as a result of their respective contraventions of sections 61(1) and 57(b) of the Act, which amount we find to be not less than $14 million.

Administrative penalty

[101] Section 162 provides that if the Commission "determines that a person has contravened … a provision of this Act or of the regulations,…the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention of this Act or the regulations".

[102] The executive director seeks an administrative penalty against Zhu and Zhang of $28 million, on a joint and several liability basis.

[103] While the respondents made submissions with respect to the assessment of an administrative penalty against Bossteam, the executive director does not seek an administrative penalty against Bossteam and, accordingly, we have not ordered an administrative penalty against Bossteam. We therefore deal with the submissions respecting Zhu and Zhang only.

[104] The respondents submit that the appropriate administrative penalties are:

- in respect of the illegal distributions, $65,000 for Zhang and a lesser amount for Zhu to reflect her purely formal responsibility;

- in respect of fraud, if any penalty is appropriate at all, for Zhang an amount of $60,000, akin to that imposed in *Walker* for a single act of fraud, and a lesser amount for Zhu;
- in respect of the contraventions of section 57.5, a total of $150,000 for Zhang and a lesser amount for Zhu; and
- in respect of Zhu's contravention of section 168.1(1)(a), a nominal penalty of $1000.

[105] The respondents further submit that in all of the circumstances, including the modest financial means of Zhu, an aggregate $50,000 penalty will serve the protective and preventative policy goals of the legislation.

[106] The respondents argue that the approach taken by the Commission in decisions such as *Manna* and *Kim* to the effect that the number of "contraventions" can be multiplied depending upon the number of investors or investments is wrong in law and would constitute a reversible error. They submit that the statutory maximum that could possibly be awarded against the individual respondents for their five respective contraventions is $5 million.

[107] We disagree. The application of section 162 shortly after its amendment in 2006 when the phrase "for each contravention" was added was first considered by the Commission in *Thow*, 2007 BCSECCOM 758. That reasoning was then adopted in *Manna*¸ at paragraphs 49 to 51:

> ¶ 49 Section 162 allows us to order payment of the maximum administrative penalty for each contravention. We found that each of the respondents contravened four sections of the Act (treating the two fraud sections, 57(b) and 57.1(b) as one). The respondents contravened all of those sections in their dealings with hundreds of clients. They also contravened those sections multiple times in their dealings with many clients. There are therefore hundreds, if not thousands, of contraventions for which we could order an administrative penalty.
>
> ¶ 50 Rather than deal with each of the respondents' contraventions separately, we have considered their conduct globally, and are making orders under section 162 that impose an administrative penalty for all of their respective contraventions.
>
> ¶ 51 In amending section 162, the Legislature quadrupled the maximum penalty and authorized the maximum to be applied "per contravention". It seems clear that the Legislature's intent was that the Commission have the power to impose significant administrative penalties in the public interest where appropriate in the circumstances.

[108] In carrying out the fraudulent illegal distributions of Bossteam securities to hundreds of persons for aggregate proceeds in excess of $14 million, Zhu and Zhang contravened sections 61(1) and 57(b) of the Act multiple times. Their activities were at the most serious end of the range of misconduct under the Act, caused serious harm to investors and damaged the integrity of our capital markets.

[109] In addition, Zhu and Zhang contravened section 57.5 of the Act by withholding information and attempting to withhold or conceal information, to impede the investigation. This is also serious misconduct.

[110] Zhu gave false information to a Commission investigator in contravention of section 168.2(1)(a) in relation to her role as a registrant under the Act. This too is serious misconduct.

[111] The respondents argue that the facts and circumstances of each contravention must be considered when deciding what quantum is appropriate for each contravention and that the executive director invites legal error by listing two stand-alone contraventions as "aggravating factors".

[112] We agree with the respondents that a stand-alone contravention must be dealt with as a contravention and not an aggravating factor. However, we disagree that we must decide quantum separately in respect of each contravention. We agree with the approach taken in *Manna* and, rather than assessing an administrative penalty for each contravention, we have considered each of Zhu's and Zhang's conduct globally in making orders that impose a single administrative penalty for each of them covering all her or his respective contraventions.

[113] The respondents also submit that an administrative penalty should be tailored to the financial means of a particular respondent and that there is no realistic prospect of Zhu ever being able to pay a large administrative penalty.

[114] An administrative penalty is an effective general deterrent, even if a respondent's financial circumstances make payment of the penalty difficult. As stated in *Mesidor (Re)*, 2014 BCSCSECCOM 6 at paragraph 47, "The Commission orders administrative penalties to demonstrate the sanctions that can be expected as a result of the misconduct found."

[115] The Commission has determined in past decisions that the ability to pay is not a factor to be considered in determining the administrative penalty and we find it is not a factor in this case.

[116] The Bossteam fraudulent illegal distributions are, like the fraud cases cited by the executive director, at the most serious end of the spectrum. For the reasons already stated we have found Zhu and Zhang equally culpable.

[117] We do not consider it appropriate to order a single administrative penalty payable jointly and severally by Zhu and Zhang. In our view, an administrative penalty is best considered separately for each respondent in the context of their respective conduct.

[118] We conclude the administrative penalties for Zhu's and Zhang's respective breaches of the Act in devising and carrying out the frudulent illegal distributions and for their mutual breaches of section 57.5 of the Act should be the same. In addition, Zhang separately breached section 57.5 and Zhu separately breached section 168.1(1)(a).

[119] Given the magnitude of the fraudulent illegal distributions they carried out through Bossteam in a few short months, their other contraventions of the Act and their continuing failure to acknowledge any wrongdoing, we consider it is appropriate to assess the administrative penalty for each of Zhu and Zhang in an amount approximately equal to the known amount raised. We order that each of them pay an administrative penalty of $14 million.

IV. Orders

[120] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order:

Bossteam

1. under section 161(1)(b)(i), that all persons permanently cease trading in, and are permanently prohibited from purchasing, any securities of Bossteam;

2. under section 161(1)(b)(ii), that Bossteam is permanently prohibited from trading in, or purchasing, securities or exchange contracts;

3. under section 161(1)(c), that any or all of the exemptions set out in the Act, regulations or a decision do not apply to Bossteam, permanently;

4. under section 161(1)(d)(iv), that Bossteam is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

5. under section 161(1)(d)(v), that Bossteam is permanently prohibited from engaging in investor relations activities;

6. under section 161(1)(g) and subject to subparagraph 15 of this paragraph 120, that Bossteam pay to the Commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of its contraventions of the Act, which amount we find to be not less than $14 million;

Zhu and Zhang

7. under section 161(1)(b)(ii), that Zhu and Zhang are permanently prohibited from trading or purchasing securities or exchange contracts, except that each may trade or purchase securities for her or his own account through one brokerage account with a registrant, if she or he gives the registrant a copy of this decision;

8. under section 161(1)(c), that any or all of the exemptions set out in the Act, regulations or a decision do not apply to Zhu or Zhang;

9. under section 161(1)(d)(i) and (ii), that each of Zhu and Zhang resign any position she or he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer or registrant, other than an issuer all the securities of which are owned by her or him, as the case may be, or members of her or his respective immediate family;

10. under section 161(1)(d)(iii), Zhu and Zhang are permanently prohibited from becoming or acting as a registrant or promoter;

11. under section 161(1)(d)(iv), that Zhu and Zhang are permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;

12. under section 161(1)(d)(v), that Zhu and Zhang are permanently prohibited from engaging in investor relations activities;

13. under section 161(1)(g) and subject to subparagraph 15 of this paragraph 120, that each of Zhu and Zhang pay to the Commission any amount obtained, or payment or loss avoided, directly or indirectly as a result of each of their contraventions of the Act, which amount we find to be not less than $14 million; and

14. under section 162, that:
    - Zhu pay to the Commission an administrative penalty of $14 million; and
    - Zhang pay to the Commission an administrative penalty of $14 million.

Maximum Amounts

15. Bossteam, Zhu and Zhang are jointly and severally liable to pay the amounts in subparagraphs 6 and 13 of this paragraph 120.

June 23, 2015

For the Commission

Suzanne K. Wiltshire
Commissioner

George C. Glover, Jr.
Commissioner