Citation: 2015 BCSECCOM 96

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

***Securities Act*, RSBC 1996, c. 418**

**Hearing**

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| **Panel** | Suzanne K. Wiltshire | Commissioner |
| | George C. Glover, Jr. | Commissioner |
| | Audrey T. Ho | Commissioner |
| **Submissions completed** | February 11, 2015 | |
| **Date of Decision** | March 13, 2015 | |

**Appearing**

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| Anjalika Rogers | For the Executive Director |
| Alexandra Luchenko | For Manjit Sihota and Perminder Sihota |
| Thalbinder Poonian | For himself and Shailu Sharon Poonian |

**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 29, 2014 (2014 BCSECCOM 318) are part of this decision.

¶ 2 This matter concerns the market manipulation of the shares of OSE Corp. (OSE) between September 10, 2007 and March 31, 2009 (the relevant period).

¶ 3 The panel found 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, shares of OSE.

## II Position of the Parties

***Executive Director***

¶ 4 The executive director seeks orders under sections 161(1) and 162 of the Act:

- permanently prohibiting the respondents from trading in or purchasing securities,

- permanently prohibiting the respondents 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,
- requiring the respondents to pay, jointly and severally, $7,177,305, being the total amount obtained as a result of their contraventions under the Act, and
- requiring the respondents to pay, jointly and severally, an administrative penalty of $21,530,000.

***Poonians***

¶ 5 The Poonians made written submissions on sanction and Thal Poonian attended the sanction hearing and made brief oral submissions. The Poonians continue to dispute they did anything wrong.

¶ 6 Sharon Poonian submits the appropriate sanctions to be imposed on her are:

- a suspension in the range of two to three years,
- an exception to any prohibition against being, or acting as, a director or officer of an issuer to permit her to be a director and/or officer of private, non-reporting issuers, whether or not she owns all of the issued and outstanding shares of any such issuer, and
- a fine of $1000 and costs of $100, citing inability to pay any larger amounts, to be payable by the time the suspension expires.

¶ 7 Thal Poonian submits the appropriate sanctions to be imposed on him are:

- a suspension in the range of two to three years,
- that he takes and successfully completes the director and officer course for reporting issuers,
- in the event that the panel imposes a prohibition on acting as a director or officer of any issuer, an exception to permit him to act as a director and/or officer of private, non-reporting issuers, whether or not he owns all of the issued and outstanding shares of any such issuer, and
- a fine of $1000 and costs of $100, citing inability to pay any larger amounts, to be payable by the time the suspension expires.

***Sihotas***

¶ 8 Manjit Sihota accepts that he should be prohibited from trading in or purchasing securities and that he should be prohibited from becoming, or acting as, a director or officer of any issuer for an appropriate period, with one exception. He asks that he be permitted to continue to act as a director and officer of Richmond Plywood Corporation Limited, an exception previously granted by the Commission on September 26, 2012 (2012 BCSECCOM 376) to the temporary order in this matter.

¶ 9 In his written submissions, Manjit Sihota expresses sorrow for his actions. He states that, while not an excuse for his conduct, everything he did was at the request of other individuals and that he did not profit from his actions.

¶ 10 In her written submissions, Perminder Sihota submits that she has been punished enough, her character has been smeared and she has lost everything. She asks that she not be punished any further.

¶ 11 She states in her written submissions that she does not take the situation lightly. While wishing she had not been so vulnerable and stupid as to be coerced by people she trusted, she states that she is not making any excuses and takes responsibility for her actions.

***Leyk***

¶ 12 Robert Leyk did not attend the sanctions portion of the hearing or make any written submissions on sanction.

## III Analysis

### A. Factors

¶ 13 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:
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> - 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; damage to integrity of capital markets***

¶ 14 In *Siddiqi (Re)*, 2005 BCSECCOM 575, the Commission at paragraph 12 said that section 57(a) of the Act is "fundamental to investor protection because [it] prohibit[s] conduct that strikes at the heart of market integrity - a market untainted by misleading prices or volumes".

¶ 15 Market manipulation compromises the integrity of the entire market. Its impact extends beyond the victims who lost money to the investing public as a whole. In *De Gouveia, Re*, 2013 ABASC 249 the Alberta Securities Commission concluded that manipulative trading "undermines the integrity of the capital market. It is unfair to investors, and jeopardizes the confidence in the capital market on which legitimate investor interest and capital formation depend".

¶ 16 The respondents' manipulation of the market for OSE shares was sophisticated and extensive. As well as involving all five respondents, the scheme used 17 secondary participants, the Phoenix Group who facilitated creation of the pool of victim investors and a number of brokerage firms to carry out the manipulation. During the relevant period, the respondents and secondary participants as a group purchased on the Toronto Stock Exchange – Venture (TSX-V) over 12 million shares of OSE (more than 64% of overall buy volume) at a cost of more than $17 million and sold on the TSX-V over 17 million shares of OSE (more than 88% of overall sale volume) for gross proceeds of more than $25 million.

¶ 17 The scheme was elaborate, involving layers of deception to conceal the respondents' participation in the manipulation. This included: funding OSE private placement share purchases; directing trading of OSE shares in secondary participants' brokerage accounts and funding purchases of OSE shares in those accounts; transferring shares among the respondents and secondary participants; and arranging for and paying commissions to the Phoenix Group for advising its clients to invest in OSE shares.

¶ 18 A breach of section 57(a) of the Act is serious misconduct that causes damage to the integrity of capital markets and harms investors. The scale of this manipulation places it at the most serious level. The arrangements with the Phoenix Group ensured a large victim investor pool of generally unsophisticated investors facing financial distress who were advised to unlock their locked-in RRSPs or retirement accounts and invest in OSE, making this manipulation even more egregious.

***Harm to investors***

¶ 19 By the end of the relevant period on March 31, 2009, Phoenix clients who had purchased OSE shares during the relevant period suffered unrealized book losses of $7,102,902 (excluding commission costs). The trading price of OSE shares only continued to decline after that date.

¶ 20 Of the 4.6 million OSE shares bought by Phoenix clients, 4.3 million (93%) were sold to them by the respondents and secondary participants. But all 4.6 million shares were purchased during the relevant period at artificially high prices.

¶ 21 Testimony of the three Phoenix investor witnesses and the investor impact statements provided by a number of other Phoenix clients evidence the harm to investors, many of whom suffered financial devastation and emotional distress because of their financial losses as a result of the respondents' manipulation of the shares of OSE. Many of these investors also expressed their unwillingness to ever again invest in the capital markets.

¶ 22 The Poonians submit that there is no evidence that the investor witnesses knew or dealt with any of the respondents during the relevant period and therefore the respondents are not responsible for the losses they incurred.

¶ 23 The fact that the investor witnesses or indeed other investors in OSE did not know or deal directly with the respondents is consistent with the manner in which the manipulation was conducted. The investors in OSE, including the Phoenix clients, purchased in the open market without knowledge of the manipulation or the identity of the persons selling them OSE shares. This does not mean that they did not suffer harm because of the respondents' contraventions of the Act in conducting the manipulation.

¶ 24 Nor, as argued by the Poonians, should the loss to investors be limited to $130,000, the amount the Poonians submit is the maximum loss to British Columbians that can be established from the evidence of the three investor witnesses.

¶ 25 The losses of all investors during the relevant period, both the Phoenix clients who invested and other investors in OSE during the relevant period, are a result of the respondents' contraventions of the Act in conducting the manipulation. The aggregate investor loss is therefore no less than the $7.1 million aggregate unrealized book losses of the Phoenix clients and most likely more since the Phoenix clients purchased only 93% of the shares sold by the respondents and secondary participants.

***Enrichment***

¶ 26 During the third phase of the manipulation (the price maintenance and share liquidation phase running from January 10, 2008 to March 31, 2009), OSE shares were bought and sold from the brokerage accounts of the respondents and secondary participants for an aggregate net trading gain of $7,177,305 million.

¶ 27 The executive director submits that this is the amount of the respondents' enrichment from the manipulation.

¶ 28 The Poonians dispute that they made any money from the OSE manipulation and submit that they lost millions of dollars without further explanation except to reference their "monthly statements". Even if it were true that the Poonians lost money, this is irrelevant to sanction.

¶ 29 The Sihotas simply submit that they did not profit from their actions. While they entered into evidence various documents regarding certain financial transactions in 2012 relating to certain properties, property sales and indebtedness, without more, this evidence is inconclusive as to their overall financial status then or now and does not establish that they did not profit from their participation in the manipulation.

¶ 30 In our view, the aggregate net gain from trading in OSE shares realized in the respondents' and secondary participants' brokerage accounts used to conduct the manipulation is an appropriate way to determine enrichment. While in the end the respondents may not have "profited" for many reasons, including the disruption of the scheme by regulatory authorities, they were enriched by the aggregate net trading gain realized.

¶ 31 The calculation of the aggregate net trading gain should however include the trading activity in the accounts of the respondents and secondary participants during the entire relevant period and not just the trading that occurred in the third phase. As shown in paragraph 20 of the Findings, during the entire relevant period, the respondents' and secondary participants' brokerage accounts realized an aggregate net trading gain of $7,332,936. This is an appropriate measurement of the respondents' enrichment from their contraventions of the Act.

***Mitigating factors***

¶ 32 The executive director submits that there are no mitigating factors relating to the respondents' conduct.

¶ 33 The Poonians have shown no remorse for their actions in connection with the manipulation. They continue to assert that they have done nothing wrong.

¶ 34 The Poonians submit that Thal Poonian has been involved full time in managing public reporting issuers from 2000 to August 2012 dealing with various government organizations, brokerage firms, investment banks, mutual funds, and accounting, law, engineering and other firms without having any issue he was unable to bring to an amicable conclusion. They submit that this should be given weight, as should the co-operation of both of them with the Commission investigation and the fact that their office at the Vantage Way premises was producing real income and wealth for Canadian citizens.

¶ 35 The executive director submits that these are not mitigating factors and we agree.

¶ 36 The Poonians also submit that the Investment Industry Regulatory Organization of Canada's (IIROC) conclusion that the trading price and volume in shares of Great Pacific International Inc. (GPI) were not the product of price manipulation proves that the Poonians acted in a positive manner as required by industry standards and should be taken into account in the sanctions process.

¶ 37 We agree with the executive director's submission that because the IIROC investigation concerned GPI and the executive director made no allegations in respect of GPI, IIROC's conclusion that there was no market manipulation of GPI shares is irrelevant and is not a mitigating factor.

¶ 38 We also note that the executive director acknowledges that none of the respondents has a regulatory history. While the existence of a regulatory history can be an aggravating factor, the absence of such a history is not a mitigating factor.

¶ 39 While the Sihotas in their written sanction submissions have expressed remorse for their actions, they continue to qualify their participation in the manipulation by saying that what they did was at the request of others or that they were influenced by other respondents. We do not consider such expressions of remorse to be mitigating.

¶ 40 The Sihotas, in particular Perminder Sihota, also submit that they have suffered personal hardships. Personal hardships arising as a result of the misconduct are not mitigating factors.

¶ 41 We conclude there are no mitigating factors.

***Past conduct***

¶ 42 The Poonians submit they have never been in trouble with the law and do not have any regulatory histories.

¶ 43 As noted above, the executive director acknowledges none of the respondents has any history of regulatory misconduct.

¶ 44 We conclude that there is no history of past misconduct.

***Risk to investors and capital markets posed by the respondents' continued participation in the capital markets of British Columbia***

¶ 45 The executive director submits that the respondents have demonstrated by their egregious conduct in carrying out the manipulation that they pose a threat to the capital markets of British Columbia going forward.

¶ 46 We agree that the continued participation of any of the respondents in the capital markets would pose a significant ongoing risk to both investors and capital markets.

¶ 47 While we found Perminder Sihota to be "the least involved directly" in the manipulation, we also found she was involved in repeated and extensive activities. Her submission that the circumstances were not in her control because she is married to Manjit Sihota and related to Thal Poonian only serve to demonstrate the ongoing risk she presents.

***Respondents' fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers***

¶ 48 The executive director submits that the respondents' perpetration of the manipulation shows that the respondents are clearly unfit to be registrants or to bear the responsibilities associated with being directors, officers or advisers to issuers.

¶ 49 The Poonians submit in response that they had their own personal money and time invested in each company they were involved in and that OSE was no different. They argue their actions are not indicative of any manipulation or acting contrary to the public interest as proven by the IIROC report's conclusion in the case of GPI.

¶ 50 Investment of time and money in other companies and the outcome of IIROC's investigation into trading in shares of GPI are not relevant to the Poonians' respective roles in the manipulation of the shares of OSE.

¶ 51 Subject to our consideration of Manjit Sihota's request that he be permitted to continue to act as a director and officer of Richmond Plywood Corporation Limited, the OSE manipulation and the roles of the respective respondents in that manipulation are such that none of the respondents is fit to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers.

***Specific and general deterrence***

¶ 52 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.

¶ 53 The executive director submits that the respondents engaged in the most egregious conduct and that to deter them and others the Commission ought to impose severe sanctions.

***Previous orders***

¶ 54 We reviewed the following decisions cited by the parties in considering appropriate financial penalties.

¶ 55 In *Siddiqi* the panel found that Siddiqi had engaged in insider trading and manipulation of the shares of a company. The market manipulation was short-lived taking place over a one-month period and Siddiqi's enrichment was approximately $33,000. The panel noted that persons other than Siddiqi trading in shares of the company at the same time he was trading were likely trading at prices different than they would have been without Siddiqi's activity and would have suffered damages, although there was no way to know the quantum. The panel imposed an administrative penalty of $60,000 (approximately twice the amount of Siddiqi's likely enrichment) and prohibited Siddiqi from trading, acting as a director or officer of an issuer and engaging in investor relations for a period of six years.

¶ 56 In contrast, the OSE manipulation engaged in by the respondents was sophisticated and extensive, took place over many months, involved a number of nominees and other facilitators and targeted a specific pool of largely unsophisticated and vulnerable investors as victims, making it particularly egregious.

¶ 57 In the case of the OSE manipulation, the damages suffered by all investors is not known but the harm to the Phoenix clients who unknowingly bought OSE shares at an artificially inflated price is known. It is their aggregate unrealized loss at the end of the relevant period in the amount of $7,102,902.

¶ 58 The evidence also establishes that the trading of OSE shares in the respondents' and secondary participants' brokerage accounts during the relevant period resulted in an aggregate net trading gain or enrichment of $7,332,936.

¶ 59 The executive director, in citing several fraud cases, submits that such cases are analogous to manipulation cases as both are at the most serious end of the spectrum and appropriate to look to for guidance.

¶ 60 The Poonians object to the use of fraud cases because they do not concern a contravention of section 57(a) of the Act dealing with market manipulation, but rather fraud under section 57(b). However, we agree with the executive director that contraventions of either of sections 57(a) or (b) of the Act can be similarly serious. Each involves some form of deception, which in the case of market manipulation is the misleading appearance of trading activity in, or an artificial price for, a security. Consideration of previous orders in fraud cases is therefore appropriate.

¶ 61 In *Independent Academies Canada Inc. (Re),* 2014 BCSECCOM 260 at paragraph 27, the panel noted that in fraud cases, the Commission has consistently imposed permanent orders and significant financial sanctions. In that case, the panel found the respondents had raised $5,078,189 under an illegal distribution, of which $1.45 million was fraudulent. The panel ordered permanent bans against the individual respondents, payment under section 161(1)(g) of the Act of the full amount obtained of $5,433,189 and a joint and several administrative penalty of $7 million, having found the individual respondents acted jointly and were equally responsible.

¶ 62 Citing *Samji (Re),* 2015 BCSECCOM 29, and *Michaels (Re),* 2014 BCSECCOM 457, two more recent fraud cases, the executive director notes that in serious fraud cases, panels tend to triple the amount to be paid under section 161(1)(g) in arriving at the administrative penalty to be imposed.

### C. Appropriate Orders

***Market and Trading Bans***

¶ 63 Given the extent and duration of the OSE manipulation, the harm to investors and the damage to the integrity of the capital markets, 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.

¶ 64 The Poonians request that each of them be permitted to act as directors or officers of non-reporting issuers whose shares do not trade on any exchange, even if he or she holds less than all of the issued and outstanding shares of the issuer.

¶ 65 We deny the Poonians' request. The OSE manipulation and the Poonians' roles in carrying out that manipulation were such that the panel concludes it is not in the public interest that either of the Poonians be allowed to act as an officer or director of any issuer.

¶ 66 Manjit Sihota asks that he be permitted to continue as a director and officer of Richmond Plywood Corporation Limited, a plywood manufacturing company that is employee-owned and whose shares are exclusively held by employees and ex-employees. Richmond Plywood does not offer shares to the public. The company is exempted from reporting on that basis.

¶ 67 Manjit Sihota submits that his income depends in part on his being able to continue as a director and officer of Richmond Plywood and that there has been no complaint against him in the past in these roles.

¶ 68 Employees, directors and management of Richmond Plywood provided statements for use in connection with these proceedings in support of Manjit Sihota's request. Those statements note his long service and contributions to the company, both as a mill worker and later as a director of the company, and that he serves as an elected director who has often topped the polls, including in his re-election as a director in 2014 for a two-year term.

¶ 69 The executive director objects to any such carve-out.

¶ 70 In view of the employee-owned nature of Richmond Plywood and Manjit Sihota's continued service as a director being contingent on re-election by the employee and ex-employee shareholders of that company, we consider it would not be prejudicial to the public interest to permit Manjit Sihota to act as a director and officer of Richmond Plywood.

***Section 161(1)(g) order***

¶ 71 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".

¶ 72 In *Michaels*, 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.

¶ 73 The executive director submits that the amount obtained as a result of the contraventions is $7,177,305, being the aggregate net trading gain with respect to trades in the shares of OSE in the brokerage accounts of the respondents and secondary participants during the third phase of the manipulation.

¶ 74 The Poonians' submissions do not address section 161(1)(g) directly. We have already considered and rejected their submission that the maximum loss to British Columbians that can be established is $130,000.

¶ 75 The Poonians' submissions that each of them should be fined $1000 because of their inability to pay any larger amount and their suggestion that $20 to $30 million in sanctions as sought by the executive director is bizarre and abusive, might be read as submissions that no order should be made under section 161(1)(g).

¶ 76 The Sihotas submit that no order should be made against them under section 161(1)(g) or, if an order is made, it should be in a significantly smaller amount as their involvement was lesser in extent than that of the other respondents and they are not equally culpable.

¶ 77 While agreeing that it is not necessary to trace funds, the Sihotas argue more of an evidentiary record is required to order disgorgement in the context of five individual respondents. They also suggested that some of the $7.1 million which the executive director has identified as the amount obtained may have flowed to secondary participants.

¶ 78 The Sihotas cite *Michaels* at paragraph 35 which references other Commission decisions as demonstrating that "in other circumstances it may be inappropriate to make a section 161(1)(g) order in the total amount obtained" such as where a party "has not been equally culpable with another party". They argue that their circumstances fall squarely within the guidance in that paragraph. We do not agree that paragraph 35 provides the guidance suggested by the Sihotas. Rather, that paragraph and the preceding paragraph are merely summaries of past Commission decisions applying section 161(1)(g) noting some of the factors considered in those cases. This led the panel in *Michaels* to set out at paragraphs 42 and 43 certain principles applicable to section 161(1)(g) orders. It is in the context of those principles that we have considered the appropriate section 161(1)(g) order.

¶ 79 The Sihotas also dispute the executive director's submissions that the panel should infer the Sihotas profited from their actions. However, there is no need to address whether or not the Sihotas at the end of the day profited. In considering section 161(1)(g), the calculation is not one of profit but of the amount obtained as a result of the contravention.

¶ 80 As outlined in *Michaels*, the focus of a section 161(1)(g) sanction order is on compelling a respondent to pay any amounts obtained as a result of contraventions of the Act and not on compensation or restitution, nor deterrence beyond compelling payment of such amounts.

¶ 81 Section 161(1)(g) is to be read broadly. The amount obtained need not be traced to an individual respondent, nor does it have to be obtained or retained by that respondent. It is not limited to "benefits" or "profits".

¶ 82 All of the respondents' activities, including the Sihotas', contributed to the OSE manipulation. In the case of the Sihotas, those activities included funding secondary participants' brokerage accounts used to trade in OSE shares, making payments to and receiving payments from other respondents, and the indirect payment of commissions to the Phoenix Group for referring Phoenix clients to purchase OSE shares. As well, Manjit Sihota traded OSE shares in his brokerage accounts and a joint account with Perminder Sihota, and Perminder Sihota allowed OSE shares to be traded in her brokerage accounts as a nominee of Thal Poonian.

¶ 83 While the respondents' roles in conducting the manipulation varied, each respondent was directly involved in and contributed to the manipulation.

¶ 84 It is therefore appropriate to make a single disgorgement order jointly and severally against all five respondents for the amount obtained as a result of their contraventions of section 57(a) of the Act.

¶ 85 While we agree the amount obtained may be determined by calculating the aggregate net trading gain, we have concluded that the appropriate period over which such gain is to be calculated is the entire relevant period. The aggregate net trading gain over that time period in the respondents' and secondary participants' brokerage accounts is $7,332,936. We find that this is the amount obtained as a result of the respondents' contraventions of the Act.

¶ 86 We order that the amount of $7,332,936 be paid by the respondents jointly and severally to the Commission.

***Administrative penalty***

¶ 87 The executive director seeks a joint and several administrative penalty against all respondents of $21,530,000, being approximately three times the $7.1 million that the executive director submits is the amount obtained as a result of the respondents' contraventions of the Act.

¶ 88 As noted previously, the Poonians argue that to suggest sanctions in the range of $20 million to $30 million is bizarre and abusive. The Poonians refer to "the Alberta model where they actually analyze the ability to pay and then set the sanctions accordingly" but do not refer to any specific authority for that statement.

¶ 89 The Sihotas submit that the Findings are explicit in respect of the different levels of involvement of each respondent. They argue that to order a single administrative penalty in the amount of $21.5 million for which all respondents would be jointly and severally liable would be contrary to the Findings.

¶ 90 Citing *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273, the Sihotas submit that a $21.5 million administrative penalty is "crushing" and that it would be stretching it to say that the Sihotas' conduct is equivalent to that of the respondents in either *Michaels* or *Samji*.

¶ 91 We agree with the executive director's submission that the level of the Sihotas' involvement in the manipulation was greater than they now portray it.

¶ 92 We conclude that the administrative penalties in total should be in an amount approximately three times the amount obtained as a result of the respondents' contraventions of the Act. The OSE manipulation is, like the fraud cases cited, at the most serious end of the spectrum and made even more egregious by the establishment of a victim pool of investors through the arrangements made with the Phoenix Group.

¶ 93 But we do not agree that it is appropriate to order a single administrative penalty payable jointly and severally by all respondents.

¶ 94 We found each respondent was directly involved in activities that resulted in both artificial trading activity in, and artificial prices for, OSE shares. However, there is some variation in level of involvement as among the respondents. Looking at individual conduct:

- We found Thal Poonian was the mastermind of the scheme. His conduct was the most egregious and the administrative penalty against him should reflect this and his leading role in the manipulation. We order an administrative penalty against him of $10 million.

- At the next level are Robert Leyk, Sharon Poonian and Manjit Sihota. We found all three actively and extensively participated in the manipulation. Their conduct contributed to and was essential to the scheme. The administrative penalty of $3.5 million we order against each of them reflects this.

- The lowest level of involvement is that of Perminder Sihota. We found she too was directly involved in various activities that contributed to and furthered the manipulation, but also that she was "the least involved directly". We note the executive director's submission that Perminder Sihota's effort to cover up for the other respondents is an aggravating factor. The administrative penalty of $1 million we order against her reflects the very serious nature of her misconduct while at the same time taking into account her lesser role in the overall scheme.

¶ 95 In aggregate, the administrative penalties total $21.5 million or approximately three times the amount obtained through contraventions of the Act of $7,332,936.

## IV Orders

¶ 96 Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

1. under section 161(1)(b)(ii), the respondents are permanently prohibited from trading in, or purchasing, securities and exchange contracts;

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

3. under section 161(1)(d)(i), the respondents resign any position held as a director or officer of any issuer, except that Manjit Sihota may continue to act as a director and officer of Richmond Plywood Corporation Limited provided that Richmond Plywood Corporation Limited remains a non-reporting issuer;

4. under section 161d(1)(d)(ii), the respondents are permanently prohibited from becoming or acting as a director of officer of any issuer, except that Manjit Sihota may act as a director and officer of Richmond Plywood Corporation Limited provided that Richmond Plywood Corporation Limited remains a non-reporting issuer;

5. under section 161(1)(d)(iii), the respondents are permanently prohibited from becoming or acting as a registrant or promoter;

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

7. under section 161(1)(d)(v), the respondents are permanently prohibited from engaging in investor relations activities;

8. under section 161(1)(g), the respondents pay to the Commission $7,332,936 and the respondents are jointly and severally liable to pay this amount;

9. under section 162,
   a) Thal Poonian pay to the Commission an administrative penalty of $10 million;
   b) Sharon Poonian pay to the Commission an administrative penalty of $3.5 million;
   c) Robert Leyk pay to the Commission an administrative penalty of $3.5 million;
   d) Manjit Sihota pay to the Commission an administrative penalty of $3.5 million; and
   e) Perminder Sihota pay to the Commission an administrative penalty of $1 million.

¶ 97 March 13, 2015

¶ 98 **For the Commission**

Suzanne K. Wiltshire
Commissioner

George C. Glover, Jr.
Commissioner

Audrey T. Ho
Commissioner