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

Citation: Re BridgeMark, 2022 BCSECCOM 294 20220714

Justin Edgar Liu, Lukor Capital Corp.,
Anthony Kevin Jackson, BridgeMark Financial Corp.
(the reconsideration)

Cameron Robert Paddock, Rockshore Advisors Ltd.
(the section 171 application and section 164.04 application)

Panel	Audrey T. Ho Judith Downes	Commissioner Commissioner
Hearing date	April 6-7, 2022	
Decision date	July 14, 2022	

Appearing

James K. Torrance Paul Smith	For the Executive Director
Patrick J. Sullivan Sara Shuchat	For Anthony Kevin Jackson and BridgeMark Financial Corp. (the Jackson Applicants)
Kenneth McEwan, Q.C. Emily Kirkpatrick	For Justin Edgar Liu and Lukor Capital Corp**.** (the Liu Applicants)
Andrew Crabtree	For Cameron Robert Paddock and Rockshore Advisors Ltd. (the Paddock Applicants)

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Rulings and Reasons

I. Introduction

[1] This hearing was held to deal with three matters:

1. a reconsideration by the Commission of its Freeze Order Decisions (*Re BridgeMark*, 2020 BCSECCOM 254 and *Re BridgeMark*, 2020 BCSECCOM 346), as directed by the British Columbia Court of Appeal under section 167(3) of the Securities Act, RSBC 1996, c. 418,

2. an application by the Paddock Applicants under section 171 of the Act to revoke or vary certain freeze orders issued by the Commission against them, and

3. an application by the Executive Director under section 164.04 of the Act for a preservation order against Paddock's interest in a house.

[2] In this decision, we refer to the Liu Applicants and the Jackson Applicants collectively as the Reconsideration Applicants, and we refer to the Liu Applicants, the Jackson Applicants and the Paddock Applicants collectively as the Applicants.

[3] Before the hearing, the panel chair directed, with the concurrence of the parties, that given the common legal issues and facts involved in the three matters, it was appropriate and efficient to hold a concurrent hearing on all three matters.

II. Background

[4] On November 26, 2018, the executive director issued a temporary order and notice of hearing (2018 BCSECCOM 369) against a large number of individuals and companies including the Applicants and Jackson & Company Professional Corp. (JacksonCo).

[5] The executive director alleged that the non-issuer respondents named in that notice of hearing (including the Applicants and JacksonCo) had engaged in conduct that was abusive to the capital markets. There was no allegation that any of them breached any specific provision of the Act.

[6] Between September 2018 and February 2019, the executive director applied for and the Commission issued a large number of freeze orders with respect to the bank accounts and brokerage accounts of various respondents including the Applicants and JacksonCo. The Commission also registered charges in the Land Title Office against properties of various respondents including some of the Applicants.

[7] In 2020, the Reconsideration Applicants and JacksonCo applied to the Commission, under sections 151(6) and 171 of the Act for orders to revoke (or alternatively, to vary) certain Commission orders freezing their assets.

[8] In the Freeze Order Decisions, after reviewing the evidence entered by the parties, the Commission denied those applications.

[9] The Reconsideration Applicants and JacksonCo sought and obtained leave from the British Columbia Court of Appeal to appeal the Freeze Order Decisions.

[10] On April 28, 2021, the executive director issued an Amended Notice of Hearing (ANOH, 2021 BCSECCOM 164) against the Applicants, JacksonCo and two other respondents. In addition to allegations of conduct contrary to the public interest made in the 2018 notice of hearing, the executive director added allegations of insider trading by the Applicants in the securities of certain issuers that were implicated in the 2018 notice of hearing.

[11] In the ANOH, the executive director alleges that:

1. the Applicants (and other respondents) acted contrary to the public interest when they participated in a scheme (Scheme) in which:

   (a) individuals and companies (the consultants) entered into consulting agreements with certain Canadian Securities Exchange (CSE) listed issuers and received prepaid consulting fees from the issuers but performed little or no consulting work,
   (b) the issuers relied on the consultant exemption to the prospectus requirement in section 2.24 of National Instrument 45-106 (the consultant exemption) to raise funds through private placements and some consultants purchased free trading shares of the issuers through these private placements,
   (c) the issuers retained only a portion of the funds raised because they paid most of the private placement funds to the consultants as prepaid consulting fees shortly before or after the private placements, and
   (d) the placees in those private placements, in most instances, sold their shares shortly after purchase, generally below the private placement price,

2. the Applicants (and other respondents) engaged in insider trading contrary to section 57.2(2) of the Act in the course of participating in the Scheme, by entering into transactions involving securities of certain issuers while in a special relationship with them and with knowledge that the issuers retained only a portion of the funds raised in the private placements, and

3. Liu failed to file insider reports contrary to section 87(2)(a) of the Act and sections 3.2 and 3.3 of National Instrument 55-104, for the purchase and sale of shares in two issuers when he beneficially owned or controlled more than 10% of the outstanding shares of those issuers.

[12] The ANOH was issued after the Reconsideration Applicants filed their factums with the Court of Appeal and just before the executive director's responding factum was due.

[13] The executive director sought to introduce the ANOH on appeal. The Court of Appeal decided the ANOH should not be considered in determining whether or not the appeal

should be allowed but that it may be relevant in a reconsideration of the matter by the Commission.

[14] The Court of Appeal allowed all the appeals and set aside the freeze order issued against JacksonCo. With respect to the freeze orders issued against the Reconsideration Applicants, the Court of Appeal remitted the matter back to the Commission for reconsideration in light of the reasons set out by the Court in *Party A v. British Columbia (Securities Commission)*, 2021 BCCA 358 (the Party A Decision).

III. The reconsideration

A. *Applications for a sealing order and our ruling*

[15] The original section 171 applications by the Reconsideration Applicants had proceeded *in camera*.

[16] Prior to this hearing, the panel chair advised the parties that, since the appeals to the Court of Appeal and the resulting Party A Decision have been made public, the presumption (see section 8.4(a) of the Commission's Hearing Policy 15-601) that the reconsideration and the section 171 application by the Paddock Applicants are open to the public should apply. The panel chair advised the parties to make an application to the panel should they wish to proceed *in camera* on any aspect of the reconsideration or the section 171 application. No such application was made.

[17] Instead, the Reconsideration Applicants each applied for a sealing order over their written submissions.

[18] The panel declined to make such an order, on the basis that it is unnecessary. As a matter of policy, the Commission does not provide access to written submissions filed by a party to a proceeding. Rather, the Commission directs any person requesting such submissions to obtain them from the party who made the submissions (see Hearing Policy 15-601 section 8.4). As such, a sealing order is not necessary.

[19] At the hearing, the Reconsideration Applicants also sought an order to redact private financial information contained in the filed affidavits, hearing transcripts and the decision we will render. Hearing exhibits and hearing transcripts are not generally accessible to the public. If an application for access to the exhibits or transcripts is made and then granted by the Commission, it is the Commission's practice to redact personal information from them prior to their release. Further, the Commission may circulate a copy of the proposed redactions in those documents or a decision to the parties for input prior to releasing any of these documents to the public. Accordingly, the panel did not grant the requested order on the basis that it is not necessary.

B. *The Party A Decision*

[20] The Court of Appeal considered the following issues on appeal from the Freeze Order Decisions:

1. Should there be a minimum threshold required before a section 151(1)(a) asset freeze order can be issued, and what factors are relevant to the exercise of discretion to issue such an order?

2. Who has the onus on an application pursuant to section 171 seeking to revoke or vary a section 151(1)(a) order freezing assets, and what is the onus?

[21] The Court's decision and reasons are set out in the Party A Decision.

[22] On the threshold issue, the Court of Appeal concluded (see paragraph 140) that the purpose of an asset freeze order under section 151(1) of the Act is to preserve property as security for potential monetary claims or penalties that could arise based on alleged contraventions of the Act. As a result, a freeze order under section 151(1)(a) is only available when an investigation is into conduct that is alleged to be in contravention of the Act and of the sort that could give rise to monetary claims or penalties against the asset owner.

[23] The Court set out the process and evidentiary standard the Commission must follow in considering a freeze order:

> [207] It is necessary that the Commission conduct a preliminary assessment of the evidence and conclude that it raises a serious question that the investigation could show breaches of the Act leading to financial consequences in the form of penalties or claims against the owner of the assets. Mere speculation will not be enough. The Commission will rely on its expertise, experience and common sense in assessing the evidence and in drawing any available reasonable inferences arising from the evidence.
>
> [174] There is ample precedent in the law for evidentiary standards that are something less than proof on a balance of probabilities. A common theme is that the decision-maker has to assess the evidence to determine that it is something more than mere speculation or mere suspicion. Evidence, of course, includes direct but also circumstantial evidence, which may lead to reasonable inferences.
> …
>
> [179] This evidentiary standard remains low and flexible and will not unduly constrain the enforcement arm of the Commission….
>
> [208] Additionally, the Commission must be satisfied that the issuance of the asset freeze order is in the public interest by considering all factors relevant to the case at hand. The public interest includes not only protection of the public, but also public confidence in the markets. Public confidence will often require the Commission to take into account the interests of the asset owners and to recognize that an asset freeze order is extremely intrusive.
>
> [209] There can be any number of factors relevant to the public interest in a given case, depending on the circumstances. A non-exhaustive list of factors that

> may be relevant in a given case includes: the seriousness and scope of the allegations; the stage of the investigation and any urgency; the scope and value of the assets to be frozen in relation to the potential claims or penalties; the potential consequences of the order on the asset owner or other parties; and the strength of the evidence in support of the asset freeze order. Other factors may also be relevant, including whether there is a link between the assets and the wrongful conduct, a risk of dissipation of assets, or other security for the potential claims or penalties. These are not mandatory criteria that must be analyzed in a checklist fashion, but simply examples of factors that may be relevant to the public interest analysis.

[24] Where a freeze order was made without notice or participation of the affected party, the Court held that the application is to be treated as a new hearing, with the onus on the executive director to establish that continuation of the asset freeze order is in the public interest.

[25] The Court of Appeal stated:

> [222] I conclude that where a section 151(1)(a) order under review was obtained in circumstances that did not give the asset owner an opportunity to be heard, the executive director will bear the onus on a s. 171 application of establishing that the evidence raises a serious question that the investigation could show breaches of the Act leading to financial consequences against the asset owner and that the public interest will be served by the continuation of the order, taking into account any relevant public interest factors. It will be up to the executive director to decide whether to try to establish this with the same evidence as was placed before the Commission when the original order was made or to also provide additional evidence.
>
> [223] Likewise, in such circumstances, the proper approach for the Commission, on a s. 171 application to revoke or vary an asset freeze order that was obtained without notice to the asset owner, is to take a fresh look at whether continuation of the order is in the public interest based on the evidence and circumstances known at the time of the s. 171 application. The matter should be treated by the Commission as a new hearing, without according deference to the original freeze order made pursuant to s. 151(1)(a).

[26] Applying the above principles, the Court of Appeal concluded that the Commission erred in ignoring the lack of evidence from the executive director that would support a conclusion that there was a serious question that the investigation could show breaches of the Act leading to financial consequences against the appellants, and in imposing an onus on the appellants at the section 171 application.

[27] The Court of Appeal allowed the appeals. It set aside the freeze order against JacksonCo, as the Court found nothing in the scope of the investigation or evidence that raised a serious question that JacksonCo had breached the Act. With respect to the freeze orders

against the Reconsideration Applicants, the Court remitted the matter back to the Commission for consideration in light of its reasons set out in the Party A Decision.

C. *The hearing before us*

[28] In the hearing before us, each party made written and oral submissions, and relied on affidavit evidence.

1. **Preliminary issue - nature of the reconsideration, need for an application to amend the record**

[29] For the reconsideration relating to the Reconsideration Applicants, the executive director relied on certain affidavits of a staff investigator previously entered into evidence in these proceedings.

[30] In addition, the executive director tendered two new affidavits of the staff investigator (new affidavits).

[31] The new affidavits contain evidence that existed and was available to the executive director at the time of the original section 171 applications by the Reconsideration Applicants.

[32] The Jackson Applicants sought leave to rely on certain interview evidence of BK (the CFO of issuer D at the relevant time) and WR (the CEO of issuer A at the relevant time), an affidavit attaching historical property searches in respect of a frozen property, and condensed interim consolidated financial statements of issuer D for the three and nine months ended December 31, 2017. The interview evidence of BK and WR are contained in transcripts of their interviews by Commission staff which are attached as exhibits to one of the new affidavits.

[33] The Liu Applicants relied on affidavit(s) previously entered into evidence in these proceedings.

[34] The Liu Applicants challenge the admissibility of the new affidavits. They submit:

1. The executive director misapprehends the nature of the reconsideration hearing. It is a reconsideration of the Freeze Order Decisions in light of the Party A Decision, not an opportunity to argue his position anew on a different record. A reconsideration is not a hearing *de novo* but rather an analysis of the existing record in light of the legal principles and standards articulated on appeal. As such, the executive director is required to apply to amend or supplement the Freeze Order Decisions record.

2. Any such application must fail because the information in the new affidavits was available to the executive director at the time of the section 171 applications but he elected not to rely on it at that time.

[35] The BridgeMark Applicants adopted the submissions of the Liu Applicants.

[36] The executive director submits:

1. The reconsideration is the first opportunity for this panel to consider the insider trading allegations, or any evidence with respect to those allegations, and the Court of Appeal specifically contemplated that this panel should consider the new allegations. It is illogical to think that the new allegations could be relevant to the panel's reconsideration, but the panel cannot consider the evidence that supports those allegations, without the executive director first bringing a new evidence application.

2. The authorities cited by the Reconsideration Applicants are not applicable because the circumstances here are entirely different.

i. <u>Our analysis</u>

[37] The Court of Appeal remitted this matter back to the Commission for reconsideration *in light of the new insider trading allegations*. The Court said, in paragraph 295-296:

> [295] The executive director sought to introduce on appeal an Amended Notice of Hearing with new allegations against the Liu Appellants, Mr. Jackson and BridgeMark, alleging that they breached the *Act*. The executive director did not bring a new evidence application. It is unclear whether there is new evidence, or whether the executive director, faced with these appeals, has now tried to articulate a way in which the previously known evidence supports allegations that these parties breached the *Act*.
>
> [296] In my view, the new notice of hearing should not be considered in determining whether or not the appeal should be allowed. Nevertheless, in light of the new allegations that the Liu Appellants, Mr. Jackson and BridgeMark have breached the *Act*, I am of the view that remitting the matter to the Commission for reconsideration in light of these reasons is the appropriate remedy. Any amended or new allegations may be relevant on a reconsideration of the s. 171 application, as well as any new evidence from these appellants.

[38] What law is there to establish that the executive director must apply to amend the record?

[39] The Liu Applicants say it is quite straight forward and well known in law that a fresh evidence application is required. They rely on paragraph 23 from the decision of the Ontario Supreme Court in *Mauldin et al.* v. *Cassels Brock & Blackwell LLP et al*., 2013 ONSC 686:

> [23] The Master correctly defined the scope of the hearing as a rehearing of the initial hearing and not a relitigation of the issues that were or could have been raised in the initial hearing. S. Lederman J. had clearly ordered that the matter be remitted to the Master to address the *factor* of the merits of the plaintiffs claim, applying the standard of "a good chance of success" and to *exercise his*

> *discretion accordingly.* The matter was remitted not for a hearing *de novo*, but rather for a reconsideration of the merits of the claim applying the proper test. This was conceded by the plaintiffs in their argument before me.

[40] In *Mauldin*, the appellants had appealed an order of the case management Master requiring the appellants to post security for costs with regard to the next steps in that proceeding. At issue was the appropriate test to be applied in determining the plaintiffs' likelihood of success on the merits of their claims. The appeal judge held that the Master applied too high a standard. The appeal was allowed in part, and the matter was remitted back to the Master for reconsideration.

[41] On reconsideration, applying the test set out by the appeal judge, the Master found that the plaintiffs had failed to establish a good chance of success on the merits, and exercised his discretion to award security for costs payable by the plaintiffs. That decision was further appealed to the Supreme Court of Ontario and the *Mauldin* decision cited by the Liu Applicants relates to this further appeal.

[42] The Ontario Supreme Court noted (in paragraph 17) that in remitting the matter back to the Master for reconsideration,

> "[the appeal judge] clearly directed that the Master was to scrutinize the evidence and findings to determine whether there was a good chance of success on the part of plaintiffs and, if so, to consider that factor in exercising his discretion regarding the making of a just order. Moreover, [the appeal judge] directed that the rehearing be focused on this issue. He did not order a new or fresh hearing, as the plaintiffs urge.

[43] It is in this context that the Ontario Supreme Court made the statement in paragraph 23 relied on by the Liu Applicants.

[44] The *Mauldin* decision provides little guidance to us, as it was driven by specific guidance from the appeal judge on the nature of that reconsideration, which is not applicable here.

[45] Similarly, there is no guidance from *Re Investment Industry Regulatory Organization of Canada*, 2011 BCSECCOM 90 at paragraphs 1-4, which is the other authority relied on by the Liu Applicants. That was a case where the Commission upheld a decision of a disciplinary panel at IIROC. The decision was appealed and the Court of Appeal remitted the matter back to the Commission to decide, or to direct IIROC to decide, whether certain records were reasonably required for an investigation by IIROC. The registrant that was the subject of the proceeding requested a hearing *de novo* before a different panel of the Commission or IIROC. The Commission denied the request and held that the hearing of the matter remitted by the Court of Appeal would proceed by way of a review and not a hearing *de novo*. No reasons were given.

[46] The Commission (see: *Re Application 20210107*, 2021 BCSECCOM 394) has consistently held, as set out in section 7.8 of Commission Hearing Policy 15-601, that on

a review before the Commission, a party who wishes to introduce evidence not considered by the original decision maker must demonstrate that the evidence is both "new and compelling" and should be admitted. The Liu Applicants urge us to adopt the same test in deciding when additional evidence may be adduced on a matter remitted to the Commission for reconsideration by the Court of Appeal.

[47] The Liu Applicants then submit that an application to amend or supplement the record must fail. They say that judicial and administrative authorities indicate that to justify the expansion of the record, a party must demonstrate that the additional evidence is relevant to a decisive issue in the proceeding and it was not possible to provide such evidence during the original hearing.

[48] We do not find the authorities cited by the Liu Applicants to be helpful, as they must be considered in light of the Party A Decision and in particular paragraphs 223 and 296.

[49] It is clear that going forward, for all section 171 applications where the freeze order was obtained without notice to the asset owner, such as the application before us by the Paddock Applicants, the Commission is to conduct a hearing *de novo* where it is to consider all the evidence and circumstances known at the time of the application.

[50] Does the fact that this is a reconsideration mean we should apply a different standard for the Liu Applicants' freeze orders and the Jackson Applicants' freeze orders?

[51] The Court of Appeal remitted the matter back to us for reconsideration "in light of the new allegations of breaches of the Act". The Court contemplated that these new allegations "may be relevant on the reconsideration". It did not give specific directions on how we should conduct this reconsideration.

[52] Given that a freeze order could be obtained to preserve assets as security for potential financial sanctions arising from contraventions of specific provisions of the Act, the new allegations of insider trading (and failure to file insider reports) are relevant to the questions of whether we can order a continuation of the Liu Applicants' freeze orders and the Jackson Applicants' freeze orders, and whether it is in the public interest to do so.

[53] The position taken by the Liu Applicants would mean that we may assess whether it is in the public interest to maintain those freeze orders in light of the new allegations but we may not consider all of the evidence in support of those allegations. That position requires us to conclude that it is appropriate to make our decision based on the evidence as it was originally argued by the executive director in support of different allegations and disallow evidence and circumstances that are relevant to the new allegations but which were not before us at the initial review because the executive director had proceeded on the wrong test and evidentiary standard.

[54] We agree with the executive director that it is illogical for us to decide whether it is in the public interest to continue these freeze orders in light of the new allegations, without

considering all the evidence that is relevant to those allegations, whether previously available or new. We fail to see how that is in the public interest and how that is consistent with the general approach of considering all known evidence and circumstances at the time of the application, as explicitly directed by the Court of Appeal.

[55] Section 7.8 of Commission Hearing Policy 15-601 provides that the Commission may allow a review to proceed as a new hearing, rather than an appeal, where the Commission considers it to be in the public interest.

[56] We conclude that to best follow the principles laid out in the Party A Decision, this reconsideration should proceed by way of a hearing *de novo*. Being able to consider the most current allegations, and all the known evidence and circumstances places us in the best position to determine what is in the public interest at this time.

ii. Our ruling

[57] We find that it is in the public interest for the reconsideration to proceed as a hearing *de novo*. The executive director does not need to apply to amend the record to introduce the new affidavits, and we admit those affidavits into evidence in this proceeding.

[58] We also admit into evidence in these proceedings the BK and WR interview evidence, the affidavit and the financial statements of issuer D tendered by the Jackson Applicants.

2. **The insider trading allegations and the parties' positions**

[59] The essence of the executive director's allegations of insider trading against each of the Reconsideration Applicants is the same. He alleges that with respect to each of the named issuers:

1. the applicable Reconsideration Applicant was in a special relationship with that issuer by virtue of either being a consultant to the issuer or arranging private placement financing for the issuer

2. the applicable Reconsideration Applicant knew that the issuer retained only a portion of the private placement proceeds as the bulk was immediately spent on pre-paid consulting fees

3. the fact that the issuer retained only a portion of the funds raised in the private placement was a material fact or change that was not generally disclosed, and

4. the applicable Reconsideration Applicant entered into transactions involving securities of the issuer while in a special relationship with the issuer and with knowledge of the undisclosed material fact or material change.

[60] The specific allegations against the Reconsideration Applicants relate to the following issuers and private placements:

Applicants	Issuer	Private Placement involved
Liu	A	February/March, 2018 (1st financing)
Liu	C	April 2018
Liu, Jackson, BridgeMark	D	April 2018
Liu	A	July 2018 (2nd financing)
Liu, Lukor	I	July 2018

[61] The executive director says:

1. the issuers were cash starved and relied heavily on financing to fund their operations. The difference between the gross proceeds publicly announced and the amount actually retained by each issuer was material as that information would change existing investor perceptions to an extent sufficient to significantly affect the market price of the issuers' shares, and

2. the Reconsideration Applicants had knowledge of the amounts of the private placements retained by the issuers as they were the ones who brought the consultants to the issuers and made the prepayment of consulting fees a condition of the financing.

[62] The Reconsideration Applicants say that the executive director has not provided sufficient evidence that raises a serious question that the investigation could lead to a finding that they engaged in insider trading in contravention of the Act. Specifically, they say:

1. the fact that the issuers spent most of the funds raised in private placements on prepaid consultant fees was not a material fact or material change,
2. even if it were material, that information was generally disclosed upon the filing of a Form 9 by the issuer,
3. even if it were material, there is no evidence that any of the Reconsideration Applicants had actual knowledge of that information, and
4. even if there were a contravention of the Act, the value of the frozen assets far exceeds the likely amount of the financial sanctions such that the freeze orders are not proportional to the potential sanctions.

i. <u>The law on insider trading</u>

[63] Section 57.2(2) of the Act states:

> A person must not enter into a transaction involving a security of an issuer, … if the person
>
> (a) is in a special relationship with the issuer, and

(b) knows of a material fact or material change with respect to the issuer, which material fact or material change has not been generally disclosed.

[64] Section 3 of the Act at the relevant time provided that, for the purpose of section 57.2… , a person is in a "special relationship" with an issuer if the person

> (a) …
> (b) is engaging in or proposing to engage in any business or professional activity with or on behalf of the issuer …
> (c) is a director, officer or employee of the issuer or of a person described in paragraph …(b),
> (d) knows of a material fact or of a material change with respect to the issuer, having acquired the knowledge while in a relationship described in paragraph (a), (b) or (c) with the issuer.

[65] "Material fact" and "material change" are defined in section 1(1) of the Act to include the following:

"material change" means:

(a) if used in relation to an issuer other than an investment fund, (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of a security of the issuer,

"material fact" means,

> when used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities[.]

[66] In this decision, we sometimes refer to a "material fact" or "material change" as "material information".

[67] As the Commission outlined in its decision in *Canaco Resources Inc. (Re)*, 2013 BCSECCOM 310 (para. 84), the test for materiality is an objective market impact test, assessed from the point of view of the reasonable investor, without the benefit of hindsight. The question is: would a reasonable investor expect that the market price or value of the securities would be affected by the fact or event?

[68] In *Re Canaco Resources Inc.*, the Commission stated, in paragraph 82:

> The definitions of material fact and material change measure the materiality of a fact or event solely by the expected effect that fact or event would have on the market price or value of the issuer's securities. A fact or event is material only if it would reasonably be expected to have a significant effect on the market price or value of the issuer's securities.

[69] The Commission further stated, in paragraph 100, that:

> The analysis of the impact of a fact or event on market price requires the issuer to consider whether the information will change existing investor perception to an extent sufficient to significantly affect market price. The questions the issuer needs to consider are: What is current investor perception of our business and prospects now? Would this information reasonably be expected to change that perception? If so, would the information reasonably be expected to change the perception to an extent sufficient to significantly affect market price?

ii. Form 9 and filing requirements

[70] A Form 9 – Notice of proposed issuance of listed securities, is a CSE prescribed form. At the time of the private placements in question, CSE listed issuers were required to provide certain information related to purchasers in an exempt distribution by posting a Form 9 to the CSE website. Form 9 required disclosure of any prospectus exemption relied on to issue securities under the private placement, such as the consultant exemption. In that way, the Form could alert a reader to the existence of a consulting arrangement between the issuer and a placee. But the Form did not require disclosure of the amount of the consulting fees payable to the placees and when the fees would be payable. The Form also did not require disclosure of the arrangements and fee payments between the issuer and consultants who were not placees.

3. **Analysis**

[71] There is no dispute that a contravention of the insider trading provisions under section 57.2(2) of the Act can lead to financial consequences in the form of penalties or claims.

[72] Although the executive director also alleges a failure to file insider reports against Liu, that was not the focus of the parties' submissions nor our analysis, as that is a breach that typically attracts a low financial sanction and the quantum is unlikely to be proportional to the value of Liu's frozen assets.

[73] At this stage, we are not deciding whether the executive director has proven the insider trading allegations on a balance of probabilities, and we are not making any finding of facts for the purpose of liability under the Act. That will be done following a hearing on the merits. At this time, we are only making a preliminary assessment of whether the evidence before us is sufficient to raise a serious question that the investigation could show a contravention of the insider trading provisions under section 57.2(2) of the Act. To the extent that we formed conclusions and made determinations in this ruling, we did so based on the threshold set out in the Party A Decision and only for the purpose of deciding whether the subject freeze orders should be maintained at this time.

[74] The evidentiary threshold set out in the Party A Decision is low. It must be more than mere speculation or mere suspicion, but it can be less than evidence required to satisfy a balance of probabilities.

[75] In doing our preliminary assessment, we evaluated the evidence relevant to the following

issues with respect to each issuer and each Reconsideration Applicant:

1. Was the fact that the issuer retained only a portion of the private placement proceeds material information?
2. If so, was it generally disclosed through the filing of a Form 9 or by other means prior to the Reconsideration Applicant entering into transactions involving the issuer's securities?
3. Was the Reconsideration Applicant in a special relationship with the issuer?
4. Did the Reconsideration Applicant know of an undisclosed material fact or change?
5. Did the Reconsideration Applicant enter into a transaction in respect of the issuer's securities while in possession of the undisclosed material fact or change and while in a special relationship with the issuer?

i. Was the fact that the issuer retained only a portion of the private placement proceeds material information?

[76] We have summarized in the below table the evidence on the amounts raised by each issuer in each private placement, and the total prepaid consulting fees paid by the issuer shortly before or after completion of the financing.

Issuer	Gross private placement proceeds	Prepaid consulting fees	Net private placement proceeds	% of private placement proceeds retained by issuer
A, 1st financing (non-brokered)	$5,065,000*	$3,150,000	$1,915,000	37.8%
C	$4,280,000	$3,540,500	$739,500	17.3%
D, 1st financing	$5,000,000	$3,250,000	$1,750,000	35%
A, 2nd financing	$8,053,456	$1,859,500	$6,193,956	76.9%
I	$4,651,000	$3,332,500	$1,318,500	28.3%

* Excluding the amount and use of proceeds from the $19.5 million brokered private placement announced at the same time.

[77] The evidence is sufficient to indicate that each issuer contracted for consulting services and paid out a significant portion of the private placement proceeds on consulting fees immediately before or upon completion of the financing, retaining only a portion of the proceeds. That information is not disclosed in any of the private placement news releases. The question we need to answer (on a preliminary assessment basis) is, could that information reasonably be expected to change an investor's perception of the issuer's business and prospects to an extent sufficient to significantly affect the market price or value of the issuer's securities.

[78] Our analysis generally applies to all the issuers. We considered the question globally first, and then we considered the evidence on an issuer by issuer basis to determine if there is anything about a specific issuer that leads us to a different answer.

[79] The issuers were all listed on the CSE. In 2018, they were all operating at a deficit. They were dependent on financing to a great extent to support operations, as it does not appear that they were ready to generate profitable operations.

[80] It seems obvious that for a business that operates at a loss, the amount of cash it has to fund operations and for how long is important information and would reasonably be expected to affect an investor's perception of the business' prospects and value. Whether that information would affect investors' perception to an extent sufficient to significantly affect the market price or value of its securities will depend on the specific circumstances and factors such as: how much money is left relative to the amount raised; does the issuer have other cash on hand or revenue, how much money does the issuer need to sustain operations or its business objectives.

[81] The Reconsideration Applicants submit that there is no regulatory requirement that issuers disclose payments of consulting fees. That is correct. However, issuers are obligated to disclose all material information on a timely basis. The fact that payment of consulting fees is not a specified disclosure requirement is hardly surprising given that what information is material to each issuer will vary depending on the specific facts and circumstance applicable to the issuer at the relevant time.

[82] In the case of issuer D, BK (the CFO of issuer D at the relevant time) told Commission staff that:

1. he spoke with the company's external legal counsel about the consultant exemption, the consulting agreements and the prepayment of consulting services,
2. he sent to legal counsel the form of consulting agreement for review,
3. legal counsel prepared the subscription agreements,
4. the money and cheques for the private placements were delivered to legal counsel to be held in escrow, and
5. issuer D discussed with legal counsel what should be included in the news releases announcing the private placement.

[83] The Jackson Applicants submit that issuer D's external legal counsel (a well-respected national law firm) commented on the news releases with full knowledge of the factual circumstances alleged by the executive director and did not advise issuer D to publicly disclose the amount of proceeds retained. The Jackson Applicants argue that it is problematic for the executive director to allege that they should be aware of something that issuer D's legal counsel did not stipulate should be in the news releases.

[84] The evidence that issuer D's legal counsel did not advise issuer D to include disclosure of the amount retained is not determinative. Materiality is a legal question for this panel to

determine. Furthermore, at this time, the evidence is unclear if issuer D's legal counsel was aware of all the consulting agreements and the total amount of consulting fees paid by issuer D, and what advice was asked of legal counsel and given.

[85] Along the same line, the Liu Applicants submit that the executive director did not provide any evidence on how issuer C and issuer I's news releases were drafted or reviewed, including whether the companies sought and received legal advice. For the same reasons set out in the preceding paragraph, that is not determinative of the issue of whether the information is material.

[86] Next, we examined the evidence regarding each issuer to make a preliminary assessment of whether the fact that the issuer had made significant payments in consulting fees at the time of the private placement and retained only a portion of the private placement proceeds could be a material fact or material change.

[87] As stated above, to do that assessment, we need to consider investors' perception of each issuer's business and prospects at the time of its private placement. Relevant to that consideration is the financial information on the issuer that was available to its investors at that time. However, save for issuer D, the financial statements of the issuers that are in evidence covered a fiscal period that ended after or shortly before the private placement date. That means those financial statements were not available to the issuer's investors at the time of the private placement. However, these statements do include financial information for prior fiscal periods. That prior period information would have been available to investors before the applicable private placement date, as it would be contained in financial statements required to be publicly filed pursuant to continuous disclosure obligations applicable to reporting issuers. We refer to that prior period information in the paragraphs below. Although we did not have the best evidence on the financial information available to investors at the relevant time, given the low threshold applicable to this hearing, the evidence was sufficient to enable us to make a preliminary assessment on investors' perceptions for the purpose of this hearing.

a. <u>Issuer A</u>

First financing

[88] Could the fact that issuer A retained $1,915,000 (approximately 38%) of $5,065,000 in financing proceeds after paying consulting fees be reasonably expected to have a significant effect on the market price or value of its securities?

[89] On March 1, 2018, issuer A announced the completion of a $15,000,000 business acquisition. On March 2, 2018, issuer A issued a news release announcing the completion of two financings totaling $24.5 million. One was a brokered private placement for $19,476,625, the other was a non-brokered private placement for $5,065,000.

[90] The news release stated that proceeds were to be used "to finance the acquisition … and for general working capital purposes." The amount of proceeds after deducting the

business acquisition cost plus a $625,117.50 cash commission for the brokered financing was $8.9 million.

[91] Issuer A's condensed interim financial statements for the nine months ended July 31, 2018 and 2017 state that it had $3,379,856 in cash and $5,584,610 in deficit as at year end October 31, 2017. It had no revenue and a net loss of $442,706 for the nine months ended July 31, 2017.

[92] WR (CEO of issuer A at the relevant time) told Commission investigators that issuer A raised money for continued operations.

[93] The news release left investors with the perception that issuer A had approximately $8,916,500 ($5,065,000 plus the net proceeds from the concurrent brokered financing) cash on hand to fund future operations. The magnitude of the consulting fees was significant – it was almost the same amount as the cash in the company on October 31, 2017. The fact that the issuer had immediately spent 38% (or 35% of the net proceeds of the two financings combined) leaving only 62-65% available for future use could affect an investor's perception of that company's prospects.

[94] We are satisfied on a preliminary assessment basis that the evidence raises a serious question that the information could be a material fact or material change.

Second financing

[95] Could the fact that issuer A retained less than $6,200,000 (approximately 77%) of its roughly $8,000,000 financing after paying consulting fees be reasonably expected to have a significant effect on the market price or value of its securities?

[96] On July 13, 2018, Issuer A issued a news release announcing that it had closed a non-brokered private placement for total proceeds of $8,053,456. The news release stated that proceeds were to be used for "advancement of the [redacted] and [redacted] facilities and general corporate purposes".

[97] The $1,859,500 in consulting fees were more than 50% of the company's cash on October 31, 2017. This evidence without more may not be sufficient to prove materiality on a balance of probabilities. However, on a preliminary assessment basis, it is sufficient to raise a serious question that this information could be a material fact or change.

b. Issuer C

[98] Could the fact that issuer C retained $739,500 (approximately 17%) of its $4,280,000 financing after paying consulting fees be reasonably expected to have a significant effect on the market price or value of its securities?

[99] On April 17, 2018, issuer C issued a news release announcing it has completed a private placement for gross proceeds of $4,280,000. The news release stated that proceeds would be used "to complete facility upgrades, equipment purchases and general working

capital".

[100] Issuer C's condensed consolidated financial statements for the year ended June 30, 2018 indicate that it had less than $40,000 cash as at year end June 30, 2017. For the 2017 fiscal year, it had a $842,345 net loss and a deficit of $3,002,013. It had sales of $454,880 during the 2017 fiscal year but operating expenses of $880,227.

[101] The news release left investors with the perception that the company had $4,280,000 cash on hand to fund future operations. The magnitude of the consulting fees was significant – it was multiples of the issuer's cash at the start of the year, and multiples of annual sales; it was more than 82% of the amount raised. The fact that the issuer had immediately spent more than 82% (none of which apparently on equipment upgrades or purchases) leaving less than 18% available for future use could affect an investor's perception of that company's prospects.

[102] We are satisfied on a preliminary assessment basis that the evidence raises a serious question that the information could be a material fact or material change.

c. Issuer D

[103] Could the fact that issuer D retained $1,750,000 (approximately 35%) of its $5,000,000 financing after paying consulting fees be reasonably expected to have a significant effect on the market price or value of its securities?

[104] On April 24, 2018, issuer D issued a news release announcing its intention to complete a non-brokered private placement of up to $5,000,000. In the news release, its CEO stated that "the capital will be used for G&A purposes and be available as we continue to evaluate a multitude of industry opportunities".

[105] A further news release on April 25, 2018 confirmed receipt of commitments to fulfill the private placement and stated "the company is pleased to welcome a new group of investors, bolster the treasury and add to the companies working capital for future endeavours".

[106] Issuer D's financial statements for the three and nine months ended December 31, 2017 indicate that as at December 31, 2017, it had cash of $13,345,036, a net loss of $6,315,208 for the period, and an accumulated deficit of $18,875,436. A "going concern" note in the financial statements state:

> During the nine months ended December 31, 2017, the Company had not yet achieved profitable operations … The Company will require additional financing in order to conduct its planned business operations, meet its ongoing levels of corporate overhead and discharge its liabilities and commitments as they come due, all of which casts substantial doubt upon the Company's ability to continue as a going concern.

[107] The news release left investors with the perception that the company had $5,000,000 cash on hand to fund future operations. The magnitude of the consulting fees was significant – it was 65% of the amount raised. The news release was clear that some of the funds would be available as the company evaluates industry opportunities. Whether or not the issuer was "cash-starved", it was not profitable and had no revenue as at December 2017. The fact that the issuer had immediately spent 65% leaving only 35% available for future use could affect an investor's perception of that company's prospects and how much is available for future opportunities.

[108] We are satisfied on a preliminary assessment basis that the evidence raises a serious question that the information could be a material fact or material change.

d. Issuer I

[109] Could the fact that issuer I retained $1,318,500 (or approximately 28%) of its $4,651,000 financing after paying consulting fees be reasonably expected to have a significant effect on the market price or value of its securities?

[110] On August 9, 2918, issuer I issued a news release announcing the completion of a private placement for total proceeds of $4,651,000. The news release stated proceeds would be used "for general corporate purposes including G&A and exploration on the Company's projects".

[111] According to the issuer I's consolidated financial statements as at June 30, 2018 and 2017, it had cash of $73,100, no revenue and a net loss of $50,900 on June 30, 2017.

[112] The news release left investors with the perception that the company had $4,651,000 cash on hand to fund future operations. The magnitude of the consulting fees was significant – it was almost 72% of the net amount raised. The fact that the issuer had immediately spent almost 72% leaving only 28% available for future use could affect an investor's perception of that company's prospects and how much is available for future opportunities.

[113] We are satisfied on a preliminary assessment basis that the evidence raises a serious question that the information could be a material fact or material change.

e. Conclusion on materiality

[114] The executive director presented concrete evidence that supported his allegations; they are not mere speculations or suspicions. We are satisfied on a preliminary assessment basis that the evidence is sufficient to raise a serious question that the amount of proceeds retained by each issuer in question could be a material fact or material change for that issuer.

ii. Was the material information generally disclosed by filing a Form 9?

[115] With respect to each financing, a Form 9 was filed on the same day or shortly after the news release announcing completion of the financing.

[116] As noted above, a Form 9 does not disclose the amount of consulting fees paid to the private placement placees listed on the Form nor when payments are due. It also does not disclose consulting fees paid to consultants who did not participate in the private placement even if consulting arrangements were made with them as a condition of the financing.

[117] Accordingly, it is our preliminary assessment that Form 9 does not provide "general disclosure" that the issuers would only retain a small portion of the funds raised in the private placements.

[118] There is no evidence before us that the potentially material information regarding the portion of private placement proceeds that were retained by issuers was generally disclosed prior to the Reconsideration Applicants' impugned transactions in the issuers' securities.

iii. Was each Reconsideration Applicant in a special relationship with the respective issuers?

[119] On a preliminary assessment basis, we are satisfied that the evidence is sufficient to raise a serious question that the investigation could show that Liu and Jackson were involved in arranging financing and consulting services for the issuers, and in some instances participated in the private placements or provided consulting services through Lukor or BridgeMark. In doing so, the investigation could show that they were engaged in or proposing to engage in a business or professional activity with each issuer. By virtue of subsections 3(b) and (c), that would constitute being in a special relationship with the issuer.

[120] With respect to issuer A, on a preliminary assessment basis, the evidence indicates the following:

1. Liu was involved in arranging the issuer's financing and consulting services
2. Liu and Lukor were both engaged by issuer A to provide consulting services at the time of the first financing
3. Liu was a placee in the first financing and sold shares in issuer A between February 20-May 1, 2018
4. By virtue of subsections 3(b) and (c) of the Act, Liu was in a special relationship with issuer A at the time of the first financing, as he and Lukor were engaging in or proposing to engage in business or professional activities with issuer A and Liu was a director of Lukor
5. Liu was a placee in the second financing of issuer A and sold shares in issuer A in July 2018
6. By virtue of subsections 3(b) and (c) of the Act, Liu was in a special relationship with issuer A at the time of the second financing as he was engaging in or proposing to engage in a business or professional activity with issuer A.

[121] With respect to issuer C, on a preliminary assessment basis, the evidence indicates the following:

1. Lukor was engaged by issuer C to provide consulting services at the time of the financing
2. Liu acquired and sold shares in issuer C in April 2018
3. By virtue of subsections 3(b) and (c) of the Act, Liu was in a special relationship with issuer C at the time of the financing, as Lukor was engaging in or proposing to engage in business or professional activities with issuer C and Liu was a director of Lukor.

[122] With respect to issuer D, on a preliminary assessment basis, the evidence indicates the following:

1. Liu was involved in arranging the issuer's financing and consulting services
2. Lukor was engaged by issuer D to provide consulting services at the time of the financing
3. Liu bought and sold shares in issuer D around the time of the financing
4. By virtue of subsections 3(b) and (c) of the Act, Liu was in a special relationship with issuer D at the time of the financing, as he and Lukor were engaging in or proposing to engage in business or professional activities with issuer D and Liu was a director of Lukor.

[123] With respect to issuer D, on a preliminary assessment basis, the evidence indicates the following:

1. Jackson was involved in arranging the issuer's financing and consulting services
2. BridgeMark was both a placee in the private placement and a consultant engaged by issuer D to provide consulting services at the time of the financing
3. BridgeMark transferred its issuer D shares to Jackson who sold them around the time of the financing
4. By virtue of subsections 3(b) and (c) of the Act, Jackson and BridgeMark were both in a special relationship with issuer D at the time of the financing, as they were engaging in or proposing to engage in business or professional activities with issuer D and Jackson was a director of BridgeMark.

[124] With respect to issuer I, on a preliminary assessment basis, the evidence indicates the following:

1. Lukor was both a placee in the private placement and a consultant engaged by issuer I to provide consulting services at the time of the financing
2. Liu acquired and sold shares in issuer I around the time of the financing
3. By virtue of subsections 3(b) and (c) of the Act, Liu and Lukor were both in a special relationship with issuer I at the time of the financing, as they were engaging in or proposing to engage in business or professional activities with issuer I and Liu

was a director of Lukor.

[125] We agree with the executive director that, by virtue of subsection 3(d) of the Act, once a Reconsideration Applicant acquires knowledge of the material information while in the special relationship, he remains in the special relationship with the issuer even after his business or professional activities with the issuer has ended.

iv. Did each Reconsideration Applicant know of the undisclosed material fact or change?

[126] We are satisfied on a preliminary assessment basis that the evidence raises a serious question that Liu and Jackson knew of the amounts of consulting fees paid by each of the issuers at the time of the financing.

[127] We highlight below some of the evidence that supports our conclusion in the preliminary assessment.

a. Evidence - knowledge of Liu and Jackson with respect to issuer A, first financing

[128] WR was issuer A's CEO and President at the time of its private placements. He attended a compelled interview with Commission staff on August 12, 2019. His evidence was provided under oath and he attended with legal counsel.

[129] According to WR, he was introduced to Liu around February 2018 to discuss using Liu to create market awareness campaigns for issuer A. Liu introduced WR to Jackson. Liu and Jackson suggested to him that issuer A hire a group of consultants to help issuer A with developing its cannabis business. WR met some of the proposed consultants at Liu's office. WR said Liu knew them all. Jackson was the one who sent the consulting agreements to issuer A's legal counsel.

[130] The following is an excerpt from WR's interview transcript:

Q. Whose idea was it to pay them all upfront without any work having been delivered?

A. It was the condition of the contract that we were told by Anthony Jackson. It was the conditions of the contract.

Q. That they had to be paid upfront?

A. Had to be paid upfront.

…

Q. Okay. And you prepaid them because that was a condition of Anthony Jackson's?

A. That's what Anthony told us. They were all required to be paid up front.

Q. And how did [issuer A] find these consultants?

A. This was, as I said earlier, it was this group and package was put in front of me by Justin

and the contracts were put in front of us by Anthony Jackson.

[131] Jackson sent an email to issuer A's legal counsel on February 16, 2018, which read as follows:

> As discussed briefly on the phone this morning. Please see attached the consulting agreements as well as the finders fee agreement.
>
> Consultants are as follows:
> - [name redacted] - $250K
> - Cam Paddock Enterprises - $300K
> - [name redacted] - $150K
> - [name redacted] - $200K
> - [name redacted] - $300K
> - [name redacted] - $50K
> - [name redacted] - $50K
> - [name redacted] - $300K
> - Justin Liu - $100K
> - Lukor Capital - $200K
> - Bridgemark Financial - $350K
> - [name redacted] - $375K
> - [name redacted] - $100K
> - [name redacted] - $275K
>
> All amounts above are Plus GST
>
> Finders Fee:
> - [name redacted] - $280K plus Warrants
>
> *There is no GST on the Finders Fee
>
> Thanks
>
> Anthony"

[132] WR was asked about this email.

"Q. … Why did Anthony Jackson send this email?

A. These were the proposed contracts that were brought to us as people that could do work that I was looking for to have done.

Q. Okay. Proposed by whom?

A. It was a group that was proposed by Justin and Anthony.

[133] WR said Jackson was aware of the individual contracts.

[134] Issuer A paid all 14 consultants between March 1-8, 2018 in the amounts listed for them

in the Jackson email. Those payments totaled $3,150,000.

[135] On a preliminary assessment basis, the evidence indicates that Jackson helped to arrange the consulting agreements between issuer A and 14 consultants who were paid a total of $3,150,000 (inclusive of GST) immediately following the first financing. BridgeMark itself was paid on March 2, 2018. Jackson provided the consulting agreements and specified the fee amounts. The evidence is more than sufficient to raise a serious question that Jackson knew that $3,150,000 of the first private placement proceeds would be immediately spent to pay consultants.

[136] WR's evidence is that Liu and Jackson proposed the consulting services to him, that Liu and Jackson shared the same office. WR said Liu knew all the consultants. Liu and Lukor were themselves consultants who received their fees immediately upon the first financing. It is reasonable to infer that Liu was party to introducing the idea of these agreements to issuer A and that Liu knew of the terms of the arrangements. He would certainly know the terms of the agreements involving himself and Lukor. On a preliminary assessment basis, there is sufficient evidence to raise a serious question that Liu also knew that $3,150,000 of the first private placement proceeds would be immediately spent to pay the 14 consultants.

b. <u>Evidence - knowledge of Liu and Jackson with respect to Issue C</u>

[137] The CFO of issuer C told Commission staff that:

1. the issuer had obligations that were coming up and needed some funding
2. Rob Lawrence from the investor group told him to go to Jackson's office and meet with them and they would explain the financing and how they would provide services to the issuers over the next 12 months
3. The financing left the issuer between $700,000-$800,000 with roughly $3.4 million going to consultants as prepaid fees.

[138] Robert Lawrence is a respondent named in the ANOH.

[139] Minutes from issuer C's March 15, 2018 board meeting indicates that Rob Laurence (sic) introduced the issuer to a "Vancouver group" as an available option to raise more funds.

[140] Issuer C paid 11 consultants a total of $3,540,000.

[141] Of the 11 consulting agreements entered into by issuer C that became effective on April 12, 2018:

1. three were with BridgeMark, JacksonCo and Lukor respectively
2. six were with consultants who also appeared on the list that issuer D sent to Jackson on April 24, 2018
3. two were with consultants who appeared on the list that DV sent to issuer D (see paragraph 158 below).

[142] Issuer C's legal counsel told Commission staff that Jackson and Robert Lawrence negotiated three of the 11 consultant agreements.

[143] Within a few weeks after receiving payment from issuer C, one consultant paid almost all of that amount to a company connected to Liu.

[144] Within a few days after Lukor paid $1,070,000 to another consultant who was also a placee, that consultant made payments totalling $1,500,000 to issuer C for its private placement shares.

[145] A placee who received 1,666,666 shares in issuer C in the private placement transferred 1,250,000 shares to Liu a few days later. RW, the director and shareholder of that placee, attended a compelled interview by Commission staff in March 2019, accompanied by legal counsel. RW told Commission staff that the placee transferred those shares to Liu without receiving anything in return.

c. Evidence - knowledge of Liu and Jackson with respect to issuer D

[146] BK was the CFO of issuer D at the time of its private placement(s).

[147] BK attended a voluntary interview by Commission staff on June 24, 2019, with legal counsel.

[148] BK told Commission staff that he was introduced to Liu and Jackson around March 2018 to help with financing of issuer D. BK was told by the person who introduced them that Liu and Jackson participated in a lot of deals for a lot of the introducer's clients, that they had capital and were very interested in the cannabis space. He was told that Liu and Jackson raised tens of millions of dollars with their group of investors.

[149] According to BK, Jackson was dealing with most of the paperwork (the subscription agreements and consulting exemptions), and BK was discussing with Liu more of the marketing and the services.

[150] BK also said that Liu and Jackson told him the financing was part and parcel of the consulting agreements:

> Q. Okay. Maybe you can explain to me before we get into some of these documents. But what was the relationship between the subscription agreements or the financing and the consulting agreements? Did you – what was that relationship?
>
> A. The relationship was that they were providing us with the financing, and the consulting agreements were going to be signed simultaneously. And they were going to – over the course of, you know, months and a year, they were going to provide these services for us. They were going to – that was going to ensure that their – you know, I guess that their investment, from my understanding, is being covered, is being – from a perspective of marketing and people are going to know about this, and …

Q. Okay.

A. It was a condition that they put on us to – you know, to do so. But they said it's worth it. And when asked of [name redacted], they said, "Yes, these guys have worked with our clients before, and, you know, it's expensive, but worth it."

Q. So why was it worth it?

A. From the exposure you get from your shareholders, increasing your shareholder base.
Q. And this is what they were telling you?
A. Yes.
Q. This is what Anthony and Justin were telling you?
A. Yes.
Q. So the financing, it was part and parcel of the consulting agreements?
A. Yes.
Q. So they would give you money, "you" the company –
A. But we had to use consultants to – you know, they said, "But we do this only on the basis if we actually get these consulting agreements signed, because it helps with the marketing and we don't want to – you know, you guys have a great story, and you guys have a great company, but we don't – it's you know, you guys are not very successful at your marketing of your company", et cetera.
Q. And in terms of discussions about timing of when the money was received by [issuer D] to the time the money would be paid out, what discussions did you have with regards to that?
A. They said it was going to be done almost simultaneously, but they didn't seem that they were too fussy about it. So we did place an escrow with our legal counsel, so that way …

[151] BK told Commission staff:

Q. So he didn't give you any updates in terms of how the consultants were doing in terms of the service?

A. No, not what they were doing exactly. Again, it goes back to when we initially asked them, they would just say like, you know, "You'll see the" – you know, sort of to them it was, "You'll see the results", you know, and, "Look, we wouldn't be here in front of you if we didn't do this with, you know, 40 plus companies."

Q. Justin told you that?

A. Yeah. So did, you know, [name redacted], when he mentioned that, "I did this with them." Sure --- I don't know if it's him telling him that story, or if he's actually been privy to that information before, but.

[152] When asked about the placees in the private placement, BK told Commission staff:

> A. Okay, I don't think I have any further questions. With regard to the placees actually, just at the very last page of Exhibit 18, did you speak to any of these individuals, Cam Paddock, [name redacted]?
>
> A. No.
>
> Q. No, you didn't speak to anyone?
>
> A. No.
>
> Q. Okay. You don't know anything about Cam Paddock?
>
> A. I don't.
>
> Q. Or, sorry, in and around the time that the financing was occurring?
>
> A. No, I just – again, these are – the explanation is they gave me – all the people subscribing are part of their group, and either they work with their close associates or they work with in their office.

[153] On April 18, 2018, Liu emailed to BK, with a copy to Jackson:

> "Hey it was great talking to you earlier. This is Anthony he deals with wrapping up the paperwork and contracts you require. Please contact each other so we can get it going."

[154] In evidence is a string of emails from April 18-24, 2018 between BK and Jackson, copied to Liu, with regard to providing subscription agreements and consulting agreements.

[155] On April 23, 2018, Jackson emailed BK, with a copy to Liu, and said "Please see attached the consulting agreements for review. Sub agmts to follow." "Sub agmts" refer to subscription agreements.

[156] On April 24, 2018, BK sent an e-mail to Jackson, with a copy to Liu, attaching 12 documents. The subject of the e-mail was "Re Subscription Agreements". The 12 persons whose names appeared in the document title of these documents included BridgeMark and Lukor. Five other names were also on the consultant list Jackson sent to issuer A for its first financing.

[157] These 12 persons, including BridgeMark and Lukor, were also paid consulting fees totalling $3,750,000.

[158] On June 1, 2018, an individual named DV emailed to BK 13 consulting agreements (for issuer D's second private placement). DV was the president of one of the consultants. DV's parents told Commission staff that DV was the receptionist at JacksonCo. A former BridgeMark employee told Commission staff that DV performed corporate

services for BridgeMark.

[159] Some of the 13 names in these consulting agreements also appeared on one or both of the consultant lists sent by Jackson to issuer A and issuer C.

d. Evidence - knowledge of Liu and Jackson with respect to issuer A, second financing

[160] Between July 4 -16, 2018, issuer A paid 13 consultants a total of $2,069,500. One consultant returned $210,000 to issuer A so the total paid for the purpose of this analysis was $1,859,500.

[161] WR said the funds to pay the consultants came from the private placement.

[162] Of the 13 consultants:

1. one was DV's company (see paragraph 158 regarding evidence of DV's association with the Jackson Applicants),
2. one was also on Jackson's list to issuer A,
3. three were also on Jackson's list to issuer D,
4. four were on DV's list to issuer D,
5. one paid most of the consulting fees it received from issuer A on July 4, 2018 to Lukor on July 9, 2018.

We did not see evidence of association between two consultants and the Liu Applicants or the Jackson Applicants. They received consulting fees totalling $147,000. That amount is not significant relative to the total consulting fees of $2 million and does not affect our assessment.

e. Evidence - knowledge of Liu and Jackson with respect to issuer I

[163] There is evidence of consulting agreements or invoices for consulting services to issuer I totalling $3,332,500. Among these arrangements:

1. one was with Lukor
2. one was with Tavistock, Robert Lawrence's company
3. one was with DV's company
4. one was with a company on Jackson's list to issuer A
5. six were with persons on DV's list to issuer D
6. one was a company that received from Lukor $277,500 on July 30, 2018 and paid $625,000 to issuer I for private placement units the next day.

[164] Within a few days after receiving consulting fees from issuer I, some of these consultants paid that same amount or almost that same amount to Liu or a company connected to Liu. Liu also paid money to four of these consultants a day before they paid the subscription price to issuer I for their private placement units. The amounts Liu paid to them were identical in three cases. In the 4th instance, the amount paid by Liu was a portion of the

subscription price.

[165] We did not see evidence of association between one consultant with the Liu Applicants or Jackson Applicants. That consultant received $210,000. That amount is not significant relative to the total consulting fees of $3,332,500 and does not affect our assessment.

f. Our preliminary assessment on knowledge

[166] There is sufficient evidence to raise a serious question that the investigation could show that Liu and Jackson brought to each issuer a group of people to subscribe in the issuer's private placement with the condition that the issuer would also engage a group of people named by Liu and Jackson (not always the same people as the placees) as consultants and pay significant amounts of consulting fees to those consultants concurrently with the financing. From that, it is reasonable to infer that Liu and Jackson knew of the total amounts of consulting fees paid to the consultants they brought concurrently with the financing.

[167] We base our preliminary assessment on the evidence that:

1. Liu and Jackson worked together to arrange issuers A and D's financings and the consulting agreements
2. Issuer representatives said Liu and Jackson had a group of investors that they brought to financings and that they required prepaid consulting agreements as a condition of the financing
3. There is remarkable similarity among the issuers in terms of all entering into prepaid consulting arrangements concurrently with the financing
4. There is remarkable overlap between the placees and consultants for the different issuers - many could be traced back to consultant lists provided by Jackson with the knowledge of Liu, or by DV who had an association with BridgeMark
5. These financings all took place around the same time, in less than a six month period
6. Save for the description of the services to be provided and the compensation amounts, there is significant similarity in the content of the consulting agreements used by some issuers including the same document number
7. With respect to Liu, his knowledge can also reasonably be inferred from the evidence that indicates he likely funded some of the placees' subscriptions, and received from some of these consultants all or part of the consulting fees paid to them by some of the issuers.

[168] Although there is no direct evidence that Liu was aware of the consulting agreements involving issuer C or I, other than Lukor's own consulting agreements, the evidence is sufficient to raise a serious question that Liu partially funded some placees' subscriptions and received private placement shares issued to another placee. The evidence is also sufficient to raise a serious question that Liu received some of the consulting fees paid to other consultants. Coupled with the evidence of Liu's role in arranging financing for issuers A and D, the evidence that he had done something similar with other companies,

the remarkable similarity in the arrangements and significant overlaps in the persons involved in all these arrangements, the totality of the evidence is sufficient to raise a serious question that Liu was involved with each issuer's financing and knew the amount that each issuer would retain from those financings after paying out consulting fees.

[169] With respect to Jackson, the evidence is sufficient to raise a serious question that Jackson was involved with arranging issuer D's financing and consulting services, and knew the amount that issuer D would retain from those financings after paying out consulting fees.

[170] The evidence indicates that Jackson was the sole director of BridgeMark and Liu was a director of Lukor. It would be reasonable to attribute Jackson's knowledge to BridgeMark and Liu's knowledge to Lukor.

[171] We are satisfied on a preliminary assessment basis that there is sufficient evidence to raise a serious question that:

1. Liu knew that issuers A, C, D and I,
2. Lukor knew that issuer I, and
3. Jackson and BridgeMark each knew that issuer D

would immediately pay consulting fees to consultants and retain a significantly smaller portion of the private placement proceeds.

[172] In the few instances where we do not find direct evidence that Jackson or Liu was aware of a specific consulting agreement, the fees involved were not significant relative to the total fees as to affect our assessment.

v. Did the Reconsideration Applicants enter into a transaction in respect of the issuer's shares while in possession of the undisclosed material fact or change and while in a special relationship with the issuer?

[173] We have summarized the evidence above. In each instance, there is evidence sufficient to raise a serious question that each Reconsideration Applicant, while in a special relationship with the relevant issuer, acquired and/or sold that issuer's shares with knowledge of the amount of private placement proceeds retained by the issuer net of consulting fees and before that information was generally disclosed.

[174] In conclusion, we find on a preliminary assessment basis that there is sufficient evidence to raise a serious question that the investigation could show that each of the Reconsideration Applicants contravened section 57.2(2) of the Act as alleged by the executive director.

4. **Conflation of allegations**

[175] The Reconsideration Applicants argue that the executive director is conflating the two different types of allegations in the ANOH and using the conduct contrary to the public interest allegations to shore up the insider trading allegations. They say it is the alleged

Scheme, not the fact that an issuer retained consultants in the normal course of business, that is the entire basis for the insider trading allegations. In the absence of a Scheme, there is no material non-disclosure.

[176] In our view, this argument is relevant to the issue of proportionality. We address it below when we consider proportionality between the value of the frozen assets and the potential financial sanctions we may order if we find a breach of section 57.2(2).

5. The parties' position on relevant public interest factors

i. Abuse of process argument

[177] The Reconsideration Applicants submit that even if the threshold merits of the insider trading allegations are established, the executive director's conduct amounts to an abuse of process and it is contrary to the public interest to maintain the freeze orders in the face of such conduct.

[178] They allege that the timing of the ANOH strongly indicates it was a strategic step aimed at undermining the Reconsideration Applicants' appeal to the Court of Appeal and shoring up the record in the face of an adverse appellate decision, rather than a necessary or proper step in the enforcement process. They say the insider trading allegations represented an unexplained change in the executive director's position, and a recharacterization of the evidence now that it is seen as tactically advantageous, rather than in response to any genuine change in the evidence or factual matrix, and that conduct amounts to bad faith and an abuse of process.

[179] They say the abuse can be inferred from:

1. the executive director's election not to amend the 2018 notice of hearing or raise the spectre of specific breaches of the Act until the 11th hour;
2. his attempt to belatedly shoehorn additional evidence into the record;
3. the patently contrived nature of the allegations now being advanced – the insider trading allegation is nothing more than a tortured attempt to dress up his allegations of the Scheme as a breach of the Act; and
4. the executive director's insistence on maintaining the same freeze orders notwithstanding that they would be plainly disproportionate.

[180] The executive director says he has been consistent in his position, and points to prior proceedings in this matter where he stated that the investigation remains ongoing, and just because specific breach allegations have not been made, that does not mean they will not be made in the future. He has the discretion to issue or amend a notice of hearing and is not required to explain or justify its timing. To say that a notice of hearing cannot be amended beyond a certain time because a respondent has filed an application is to allow the respondent to dictate the investigative timeline.

[181] The executive director says that by issuing the ANOH, he simply did what every respondent knew he could do after issuing a notice of hearing early in the investigation.

That is, finish the investigation, amend the notice of hearing and proceed to a hearing.

[182] He further says that the Court of Appeal clearly contemplated a scenario of the executive director rearticulating the allegations and recharacterizing the evidence, in paragraph 295 of the Party A Decision,

> It is unclear whether there is new evidence, or whether the executive director, faced with these appeals, has now tried to articulate a way in which the previously known evidence supports allegations that these parties breached the *Act*.

The Court did not say that doing so would be an abuse of process. Instead, in the very next paragraph the Court remitted the matter back to the Commission and stated that the amended allegations may be relevant on reconsideration.

ii. <u>Analysis on abuse of process</u>

[183] To establish abuse of process, the Reconsideration Applicants must prove, on a balance of probabilities, that the proceedings:

1. are oppressive or vexatious, and
2. violate the fundamental principles of justice underlying the community's sense of fair play and decency.

The criteria are cumulative. See: *Paul Azeff et. al.*, 2012 ONSEC 16, at para 282 referring to *R. v. Regan*, 2002 SCC 12 (CanLII, [2002] 1 S.C.R. 297 at para 50.

[184] For there to be abuse of process, the proceedings must be unfair to the point that they are contrary to the interests of justice. See: *Paul Azeff et. al.*, referring to *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307.

[185] In *Re Proprietary Industries Inc.*, [2005] A.S.C.D. No. 1045, aff'd, [2010] A.J. No. 1468 (A.B.C.A), the Alberta Securities Commission held that it is important to allow enforcement staff a fair degree of discretion in conducting investigations and presenting enforcement cases to the commission. The ASC noted that this is consistent with the approach taken by the courts in the context of criminal law, exemplified by the following comments of L'Heureux-Dube J., for the majority in *R. v. Power*, [1994] 1 S.C.R. 601 (at paras. 16-17):

> … courts should be careful before they attempt to 'second-guess' the prosecutor's motives when he or she makes a decision. Where there is conspicuous evidence of improper motives or of bad faith or of an act so wrong that it violates the conscience of the community, such that it would genuinely be unfair and indecent to proceed, then, and only then, should courts intervene to prevent an abuse of process which could bring the administration of justice into disrepute. Cases of this nature will be extremely rare.

[186] The Liu Applicants cited cases that found abuse of process in circumstances of a party's unexplained and inconsistent change in positions during litigation. In this matter, in prior

applications before the panel, the executive director has expressly stated that although he has not made any allegations of breach of specific provisions in the Act, he reserves the option to do so. There is also no inconsistency or contradiction in alleging that the Applicants' conduct violate the insider trading provisions of the Act in addition to being conduct that is contrary to the public interest. These two types of allegations are not inconsistent or mutually exclusive. The executive director has not inconsistently changed or taken contrary positions.

[187] Procedurally, the executive director may amend the ANOH and add further allegations prior to the hearing on the merits. As we conclude in this decision, the executive director has presented more than sufficient evidence to raise a serious question that his investigation could show insider trading by the Reconsideration Applicants. We are satisfied that the insider trading allegations are not frivolous, contrived or vexatious.

[188] The Liu Applicants say that the only motivation for the added allegations is to justify an end, rather than to bring forward good faith allegations as they arise on the evidence.

[189] Does the timing of when the executive director added the insider trading allegations demonstrate that they were made in bad faith or for an improper purpose, and were unfair to the point that it is contrary to the interests of justice?

[190] It appears that the executive director has had in his possession since 2019 - 2020 the bulk of the evidence he now relies on to support the insider trading allegations. The executive director did not explain why he added the new allegations in 2021 just before arguments before the Court of Appeal. It is plausible that the executive director did so only to protect the freeze orders as the Reconsideration Applicants allege. It is equally plausible that the executive director completed evidence gathering and assessment of the case and amended the notice of hearing in the normal course coincidental with the appeal timing, as the executive director alleges.

[191] In *Re Application 20210107*, 2021 BCSECCOM 394, the Commission was asked to revoke an investigation order against the applicants on the basis of abuse of process arising from how the investigation was conducted. One of the grounds relied on by the applicants was that the investigation had taken too long without either exonerating the applicants or issuing a notice of hearing. A few days after the oral hearing of that application and before the panel issued a decision, the executive director's counsel advised the applicants' counsel that the executive director was about to issue a notice of hearing. The applicants alleged that this was further evidence of misconduct and that the pending notice of hearing was a tool to extract a settlement from the applicants. The applicants said there were only two realistic explanations (both improper) for why the notice of hearing was ready so quickly after the hearing. They said that a third explanation (that the executive director in the ordinary course completed the investigation coincidental to the completion of the hearing) was unrealistic.

[192] In its decision, the Commission addressed that issue as follows (paragraph 80):

> In this instance, the Applicants offered three possible explanations for why the notice of hearing was ready so quickly after the hearing. They ask us to prefer the two that make inferences of improper motives on the part of the Executive Director. Issuing a notice of hearing under the Act is an exercise of discretion on the part of the Executive Director. There may be any number of factors considered by the Executive Director in determining when is the appropriate time to exercise that discretion. In this matter, we have very little, if any, evidence about the motivations of the Executive Director, and we find that there is insufficient evidence before us to infer what the Executive Director's motives were. Specifically, we are unable to infer, based on timing alone, any improper motive on the part of the Executive Director. There is simply insufficient evidence to conclude that the first two explanations are more likely than the third. Furthermore, there are potential legitimate explanations for the conduct in question besides bad faith and intentional misconduct; we are not compelled to infer the worst and we have not done so.

[193] The above statements have equal application in this case.

[194] Securities regulatory investigations, by their nature, are often complex. They often occur in multiple stages, where investigators gather information which may lead to further rounds of information collection, with analysis of the gathered information at each stage. All of these steps take time. The case before us is very complex involving many persons with different alleged roles in the alleged conduct. The executive director did not only amend the 2018 notice of hearing to add the insider trading allegations in 2021. At the same time, he also discontinued proceedings against approximately 50 people who were named as respondents in the 2018 notice of hearing. It is plausible that the executive director did not complete his assessment of the case with respect to all the original respondents until 2021 and was not prepared to amend the notice of hearing before then.

[195] The Reconsideration Applicants also say an indication of bad faith is the executive director's position that the freeze orders should be maintained in the original amounts. The executive director provided legal arguments to support his position. His legal position is not vexatious. Whether his arguments are persuasive or not is for this panel to decide. It is not uncommon for litigants to assert legal positions that the decision-maker ultimately finds unpersuasive. That, by itself, does not suggest bad faith.

[196] We do not find sufficient evidence to prefer the Reconsideration Applicants' explanation of the executive director's motivation over the executive director's explanation. There is no conspicuous evidence of improper motive or bad faith.

[197] Lastly, we considered whether the executive director's action is oppressive. It is within the executive director's discretion to decide whether and when he would add allegations. As with criminal matters, we should be careful before we attempt to second guess the executive director's motives when he makes a decision that is within his discretion. There is nothing improper *per se* in adding allegations that could result in greater sanctions, provided those allegations are not contrived. As set out in our analysis above, the insider

trading allegations against the Reconsideration Applicants are not frivolous, the evidence far exceeds the threshold for making freeze orders as set out in the Party A Decision and raises serious issues for consideration. Taken in total, we do not find the timing of the ANOH to be oppressive. Certainly, we do not find anything in the executive director's conduct that approaches the level of violating the conscience of the community.

[198] For these reasons, we do not find the executive director's conduct in issuing the ANOH when he did to be oppressive or vexatious, nor to violate the fundamental principles of justice underlying the community's sense of fair play and decency.

iii. Other relevant public interest factors

[199] We next consider other public interest factors that are relevant to this case.

a. Seriousness and scope of the allegations

[200] Insider trading is serious misconduct that undermines public confidence in the fairness of our marketplaces. See: *Weicker (Re)*, 2015 BCSECCOM 335 CanLII), para 11.

[201] The insider trading allegations against Liu are particularly serious given the allegedly repetitive conduct involving multiple issuers, and weigh more heavily in favour of a freeze order.

b. Stage of the investigation

[202] The investigation is largely complete, and a full hearing on the merits is scheduled to start in November. Given that, it is unnecessary to impose a time limit on the freeze orders.

c. Strength of the evidence

[203] The evidence supporting the executive director's allegations is detailed and more than surpass the standard of raising a serious question.

d. Harm to the asset owners

[204] The Jackson Applicants previously entered affidavit evidence on hardships arising from limitations on their banking and trading activities because the freeze orders froze all their existing bank and brokerage accounts and they had difficulty opening new accounts. That matter was addressed pursuant to the panel's directions under paragraph 65 in *Re BridgeMark*, 2020 BCSECCOM 346.

[205] There is no other specific evidence of hardship suffered by the asset owners. Nevertheless, we recognize that by its nature, a freeze order is extremely intrusive on the asset owners, particularly the asset owners who are not respondents in this matter. In this instance, a third party is a 50% co-owner with Liu in two of the frozen real properties and one frozen bank account. Another third party is a 50% co-owner with Jackson in one frozen real property.

e. Links between the alleged breach and the frozen assets

[206] There is no evidence of connection between the alleged insider trading and the frozen

assets. The real properties were all acquired by the Reconsideration Applicants and their co-owners prior to the alleged insider trading. The Court of Appeal in the Party A Decision clearly stated that it is not necessary to show a link between the frozen assets and the wrongdoing.

f. <u>Risk of dissipation</u>

[207] There is no evidence of any risk of dissipation. On the other hand, by their very nature, the freeze orders that are in place would have prevented the asset owners from dissipating the frozen assets. The Court of Appeal in the Party A Decision clearly stated that it is not necessary to show a risk of dissipation of the assets as a condition of granting a freeze order.

g. <u>Sufficient security for possible claims</u>

[208] There is no evidence of the financial circumstances of the Reconsideration Applicants beyond the value of the frozen assets, and whether there is sufficient security for possible claims without the freeze orders. Although the value of the frozen assets demonstrate that Liu and Jackson own substantial assets, there is no evidence of their other assets and liabilities to enable us to ascertain their financial circumstances.

h. <u>Proportionality between value of frozen assets and potential financial sanctions</u>

[209] If the insider trading allegations were proven, the Commission could order financial sanctions under sections 161(1)(g) and 162 of the Act. Under section 161(1)(g), the Commission may order a person to pay "any amount obtained, or payment or loss avoided" as a result of their contraventions of the Act. Under section 162, the Commission may order an administrative penalty of up to $1,000,000 for each contravention.

[210] The executive director has frozen Liu assets totalling approximately $ and Lukor assets totalling approximately $. He alleges that the Liu Applicants obtained $6,439,229 by contravening section 57.2 of the Act such that financial sanctions may be ordered in an amount exceeding the value of the frozen assets.

[211] The executive director has frozen Jackson assets totalling approximately $ and BridgeMark assets totalling approximately $. He alleges that the BridgeMark Applicants obtained $1,513,162 by contravening section 57.2 of the Act such that financial sanctions may be ordered in an amount exceeding the value of the frozen assets.

[212] The two amounts cited by the executive director as the upper limits of the financial sanctions represent the gross sale proceeds obtained by the Liu Applicants and Jackson Applicants respectively from sales of issuer shares. The executive director did not take into account the cost of those shares nor the fact that the shares were sold at a loss. The executive director argues that each Reconsideration Applicant effectively purchased issuer shares for significantly less than the stated cost because they simultaneously received prepaid consulting fees. Furthermore, each Reconsideration Applicant was able to sell the shares when they did because their shares were acquired pursuant to the

consultant exemption and not subject to a four-month hold period.

[213] The Reconsideration Applicants say that since their shares were sold at a loss, there was no gain or enrichment and no disgorgement order could be made under section 161(1)(g) of the Act. The only financial consequence they could be exposed to is an administrative penalty under section 162 of the Act. The Reconsideration Applicants say that the value of the frozen assets far exceeds the magnitude of the administrative penalties ordered by the Commission in past insider trading cases.

[214] In response, the executive director says that at this stage, the panel should consider the upper limit of "the amount obtained" in a potential order under section 161(1)(g) of the Act. He says the "amount obtained" is the total value of the shares sold by each Reconsideration Applicant while in possession of the material undisclosed information. If the panel considers his position to be an arguable point, the freeze orders are proportional notwithstanding that the panel may ultimately decide differently after a sanction hearing.

[215] In insider trading cases, the Commission has consistently ordered, under section 161(1)(g) of the Act, disgorgement of the amount by which a respondent is enriched by the insider trading, based on the amount of profit made (or loss avoided) by the respondent. That amount is also a key measure in determining the appropriate amount of administrative penalty under section 162 of the Act. See: *Re Weicker*, 2015 BCSECCOM 335. We are not aware of any instance where the Commission had ordered disgorgement of the gross sale proceeds arising from insider trading without regard to the acquisition cost of those shares. The executive director did not provide any analysis on why it is appropriate to deviate from precedents in this instance.

[216] For the purpose of this reconsideration, we see no reason why, in the circumstances of this case, we should deviate from precedents and look at the gross sale proceeds as the magnitude of the potential monetary claims or penalties.

[217] With respect to the executive director's submission that the consulting fees received by the Reconsideration Applicants are relevant in determining "the amount obtained" from insider trading for the purpose of an order under section 161(1)(g) of the Act, we have difficulty reconciling that position with the executive director's further submission that determining whether the consultants performed little or no consulting work is not a prerequisite to our assessment of the insider trading allegations. In our preliminary view, the executive director's position that it is not necessary to conclude little or no consulting work was done may be correct with respect to determining whether there was insider trading in contravention of section 57.2. But that is not the case with respect to ascertaining the amount of enrichment as a result of that contravention.

[218] Without commenting on whether it is supported by the evidence here, we can follow the logic of including the consulting fees in calculating the amount obtained under section 161(1)(g) if the premise is that the consulting arrangements were a pretense, no or little

consulting work was provided, and the consulting fees were a means to increase the amount obtained from trading in the issuers' shares.

[219] But, if the consulting arrangements were not a pretense and the fees were paid for meaningful services provided or to be provided, then a proper characterization of those fees is that they are amounts obtained in consideration for and as a result of consulting services provided or to be provided. We have difficulty seeing how those fees could be characterized as amounts obtained from trading in the issuers' shares while in possession of undisclosed material information.

[220] The executive director did not take us to any evidence on whether consulting services were provided. He indicated that would be addressed at the hearing on the merits. Accordingly, in assessing the magnitude of the potential claims and penalties at this preliminary stage, we took into account the gains or losses incurred by the Reconsideration Applicants from sales of the issuers' shares, but not the consulting fees allegedly paid to them, directly or indirectly. This assessment is based on the evidence and submissions before us at this time. While it is possible that after receiving further evidence and submissions at a hearing on the merits, the executive director persuades us to reach a different conclusion, in this reconsideration we must conduct a preliminary assessment of the evidence before us. We cannot speculate that little or no work was actually provided under the consulting agreements at issue. Without some evidence on that issue, there is no foundation for us to conclude that the consulting fees allegedly received should be included when determining if there is proportionality between the value of the frozen assets and any potential financial sanctions.

[221] The evidence before us indicates that the Liu Applicants sold their shares in issuers A and I at a loss.

[222] With respect to issuer C, the evidence indicates that some of the shares Liu sold at the time of the private placement were transferred to him from another placee in the private placement. RW, the director of that placee, said Liu did not pay any consideration for the transfer. On a preliminary assessment basis, with no cost attributed to Liu for those shares, the evidence indicates that Liu enjoyed a gain of $305,388 from the sale of issuer C shares.

[223] Similarly with respect to issuer D, the evidence indicates that some of the shares Liu sold were transferred to him from another placee in the private placement. There is evidence that Liu paid consideration for that transfer. On a preliminary assessment basis, the evidence indicates that Liu enjoyed a gain of $65,963 from the sale of issuer D shares.

[224] The evidence indicates that the Jackson Applicants sold their shares in issuer D at a loss.

[225] Should the insider trading allegations be proven against the Liu Applicants, the evidence is sufficient to raise a serious question that Liu could be subject to an order under section 161(1)(g) in the range of $371,351, plus an administrative penalty under section 162.

Similarly, the evidence is sufficient to raise a serious question that Lukor could be subject to an administrative penalty under section 162, but not an order under section 161(1)(g) since the only insider trading allegation against it was with respect to issuer I and the issuer I shares were sold at a loss.

[226] Having considered the orders made in past insider trading cases, the repetitive nature of the alleged insider trading, the amount allegedly obtained by Liu, our preliminary assessment of the magnitude of the potential administrative penalty that could be ordered against Liu would be in the range of $375,000. A freeze order in the magnitude of $750,000 would be proportional to the magnitude of the potential financial sanctions that could be ordered against Liu.

[227] For the same reasons as set out in the following paragraphs with respect to the Jackson Applicants, a freeze order in the magnitude of $50,000 would be proportional to the magnitude of the potential financial sanctions that could be ordered against Lukor.

[228] Should the insider trading allegation be proven against the Jackson Applicants, on a preliminary assessment basis, the evidence is not sufficient to raise a serious question that the Jackson Applicants could be subject to an order under section 161(1)(g). However, it is sufficient to raise a serious question that they could be subject to an administrative penalty under section 162.

[229] Having considered the orders made in past insider trading cases, the fact that there is only one allegation of insider trading, and the evidence that the Jackson Applicants suffered a loss from their trading in issuer D's shares, our preliminary assessment of the magnitude of the potential financial sanction that could be ordered against each of the Jackson Applicants would be in the range of $50,000. A freeze order of 50,000 would be proportional to the magnitude of the potential financial sanctions that could be ordered against them.

iv. <u>Consideration of the public interest</u>

[230] We considered whether it is in the public interest at this time to maintain a freeze order of $750,000 against Liu. When we weigh the seriousness of the allegations, the magnitude of the potential financial sanctions, the fact that a freeze order in that amount could be maintained without freezing assets co-owned with third parties, and the other relevant public interest factors canvassed above, notwithstanding the intrusive nature of a freeze order, the public interest favours maintaining a freeze order of that magnitude on Liu's assets.

[231] The value of Liu's assets frozen by freeze orders far exceeds $750,000. We ask Liu and the executive director to try and agree on a joint recommendation to the panel on which assets should be released based on our preliminary assessment, but we expect that the assets with third party co-owners should be among the released assets. If the parties cannot agree on a joint recommendation, they are directed to bring this matter back to the panel for determination.

[232] The value of Lukor's assets frozen by freeze orders is proportional to the magnitude of the potential financial sanctions that could be ordered. We considered whether it is in the public interest at this time to maintain the current freeze orders on Lukor's assets. When we weigh the seriousness of the allegations, the magnitude of the potential financial sanctions, and the other relevant public interest factors canvassed above, notwithstanding the intrusive nature of a freeze order, the public interest favours maintaining the current freeze orders on Lukor's assets.

[233] We considered whether it is in the public interest at this time to maintain a freeze order of $50,000 against Jackson. When we weigh the seriousness of the allegation, the fact that a freeze order in that amount could be maintained without freezing assets co-owned with third parties, the magnitude of the potential financial sanctions, and the other relevant public interest factors canvassed above, notwithstanding the intrusive nature of a freeze order, the public interest favours maintaining a freeze order of that magnitude on Jackson's assets.

[234] The value of Jackson's assets frozen by freeze orders far exceeds $50,000. We ask Jackson and the executive director to try and agree on a joint recommendation to the panel on which assets should be released based on our preliminary assessment, but we expect that the assets with third party co-owners should be among the released assets. If the parties cannot agree on a joint recommendation, they are directed to bring this matter back to the panel for determination.

[235] The value of BridgeMark's assets frozen by freeze orders is proportional to the magnitude of the potential financial sanctions that could be ordered. We considered whether it is in the public interest at this time to maintain the current freeze orders on BridgeMark's assets. When we weigh the seriousness of the allegation, the magnitude of the potential financial sanctions, and the other relevant public interest factors canvassed above, notwithstanding the intrusive nature of a freeze order, the public interest favours maintaining the current freeze orders on BridgeMark's assets.

6. **Our rulings**

[236] We have determined that there is sufficient evidence to raise a serious question that the investigation could show that the Reconsideration Applicants breached section 57.2(2) of the Act as alleged in the ANOH.

[237] We find that it is in the public interest at this time to vary the current freeze orders with respect to Liu, by reducing the total amount of his assets that are frozen to $750,000, and direct the parties to present to the panel a joint recommendation on which assets should be released, and to seek the panel's direction if they cannot agree

[238] We find that it is in the public interest at this time to maintain the current freeze orders with respect to Lukor.

[239] We find that it is in the public interest at this time to vary the current freeze orders with respect to Jackson, by reducing the amount of his assets that are frozen to $50,000, and direct the parties to present to the panel a joint recommendation on which assets should be released, and to seek the panel's direction if they cannot agree.

[240] We find that it is in the public interest at this time to maintain the current freeze orders with respect to BridgeMark.

IV. Section 171 application by the Paddock Applicants

Background

[241] The Paddock Applicants applied, under section 171 of the Act, to revoke (or alternatively, to vary) the freeze orders issued against them (the Paddock Freeze Orders).

[242] The Executive Director opposed the application.

[243] The Paddock Freeze Orders froze approximately $[redacted] in financial assets. A freeze order that charged a real property co-owned by Paddock and [redacted] was removed to allow Paddock to sell that property and buy a new house. The executive director consented to the removal of that charge based upon an agreement with Paddock that he could register a charge against the new house after it was purchased, subject to any application Paddock could bring to remove the charge. No charge has been placed on Paddock's new house or any other real property of his. That is why the executive director is now applying for a preservation order under section 164.04 of the Act over Paddock's interest in the new house.

[244] The executive director alleges that Paddock Applicants obtained approximately $5,683,541 by virtue of their misconduct.

[245] The Paddock Applicants relied on two affidavits previously entered into evidence in these proceedings. The executive director relied on three affidavits of a staff investigator previously entered into evidence in these proceedings, and one affidavit of the staff investigator that formed part of the "new affidavits" in the reconsideration. In addition, the Executive Director tendered three new affidavits of the staff investigator. We admit all of the newly tendered affidavits into evidence in these proceedings.

Analysis

[246] The Paddock Freeze Orders were obtained without notice to the asset owners. In accordance with the Party A Decision, we held a hearing *de novo* where the executive director had the onus of showing that the evidence is sufficient to raise a serious question that the investigation could show breaches of the Act leading to financial consequences against the asset owners by way of monetary claims or penalties under the Act.

[247] As stated earlier with respect to the reconsideration, at this stage, we are not deciding whether the executive director has proven the insider trading allegations on a balance of probabilities, and we are not making any finding of facts for the purpose of liability under

the Act. That will be done following a hearing on the merits. At this time, we are only making a preliminary assessment on whether the evidence before us is sufficient to raise a serious question that the investigation could show a contravention of the insider trading provisions under section 57.2(2) of the Act. To the extent that we formed conclusions and made determinations in this ruling, we did so based on the threshold set out in the Party A Decision and only for the purpose of deciding whether the Paddock Freeze Orders should be maintained at this time.

[248] Similar to the allegations against the Reconsideration Applicants, the executive director alleges that the Paddock Applicants contravened section 57.2(2) of the Act by entering into transactions while in a special relationship with various issuers and with knowledge that those issuers retained only a small portion of funds raised in private placements, which were undisclosed material facts or changes. The allegation against Paddock is with respect to trading in one issuer. The allegation against Rockshore is with respect to trading in five issuers including issuers C and D.

[249] Each party's position and arguments to support or oppose this application are largely similar to those asserted in the Reconsideration. Similarly, the executive director provided considerable evidence on the circumstances around the private placements and consulting arrangements involving the five issuers in question, the issuers' financial circumstances at the time, and the Paddock Applicants' dealings with the issuers' securities at the time.

[250] It is unnecessary at this time to assess the evidence on each element of insider trading, other than the knowledge of the Paddock Applicants, because insider trading is not proven without proving that the person has knowledge of the material information at the relevant time.

[251] We focused on the allegation and evidence regarding the Paddock Applicants' knowledge of a material fact or change involving these issuers. The executive director alleges that

> "The [Paddock] Applicants' knowledge of the material information relating to each issuer is demonstrated by the repeated nature of their conduct. They participated in the private placement financing of each issuer and another prior issuer in the same manner. In each case one of the [Paddock] Applicants was a placee and a pre-paid consultant and the shares obtained in the private placement were promptly sold, in most cases at a loss. The pattern of repeated conduct is set out in the following table. [Table omitted]

[252] We set out in the below table, by issuer, the total private placement proceeds received, the total consulting fees paid, and the consulting fees paid to the Paddock Applicants.

Issuer	**Total private placement proceeds**	**Total consulting fees paid**	**Consulting fees paid to the Paddock Applicants**
Issuer C	$4,280,000	$3,540,500	$360,000
Issuer D, 1st financing	$5,000,000	$3,250,000	$500,000
Issuer E, 1st financing	$4,500,000	$3,821,850	$472,500
Issuer G	$4,500,000	$3,909,500	Nil
Issuer D, 2nd financing	$5,000,000	$3,750,000	$500,000
Issuer H	$6,539,988	$2,886,250	$210,000

[253] The evidence shows that the Paddock Applicants participated as placees and consultants involving multiple issuers. The Paddock Applicants would know that the amount of consulting fees paid to them in each private placement was not being retained by the issuer in question. Although the total consulting fees paid by each issuer relative to the amount raised in the financing was sizable, the amount of fees paid only to the Paddock Applicants was modest relative to the total private placement proceeds. Our preliminary assessment is that, without more, it is difficult to infer that the amount of consulting fees paid to the Paddock Applicants by each issuer relative to the amount of its financing was sufficiently large to be material to the issuer.

[254] There is no evidence before us that the Paddock Applicants knew the total amounts of consulting fees paid to all the other consultants and the total amount of private placement proceeds retained by each issuer. From the evidence of the repeated nature of their conduct and the Paddock Applicants' participations in many of the financings, as well as what BK told Commission staff, our preliminary assessment is that it is reasonable to infer that the Paddock Applicants were part of the same group of placees and consultants that were brought to multiple issuers. But they could be part of that group and know who else was in the group without knowing who was participating as placees or consultants in a particular private placement, and more importantly, the total of the consulting fees that would be paid in a particular private placement.

[255] The evidence presented by the executive director is not frivolous and the repeated nature of the Paddock Applicants' conduct is sufficient to meet the low threshold of raising a serious question that the investigation could show that they knew the total amounts of the consulting fees not retained by each issuer when they bought and sold the issuer's shares. But our preliminary assessment for the purpose of this application is that the evidence before us is not strong.

[256] With regard to the relevant public interest factors, we dismiss the abuse of process allegation for the reasons stated earlier. As with the reconsideration, the insider trading allegations against the Paddock Applicants are very serious. There is no evidence of any links between the alleged breach and the frozen assets, any risk of dissipation, the financial circumstances of the Paddock Applicants beyond the value of the frozen assets and a house co-owned by Paddock, and whether there is sufficient security for possible claims without the freeze orders.

[257] But when we weigh the weak evidence of the Paddock Applicants' knowledge of any material information against the intrusive nature of the freeze orders, for the purpose of this application, the public interest favours revoking the freeze orders at this time.

[258] Accordingly, we find it to be in the public interest at this time to revoke the freeze orders on the assets of the Paddock Applicants. We grant the Paddock Applicants' section 171 application and we revoke freeze orders COR#2019/057 and COR#2018/126.

[259] Our assessment is based on the evidence before us at this time. It is possible that after receiving oral testimony and documentary evidence at a hearing on the merits, the executive director persuades us to reach a different conclusion.

V. The executive director's section 164.04 application

[260] The executive director applied under section 164.04 of the Act for a preservation order over Paddock's interest in a new house, for the reason noted above.

[261] Paddock opposed the application.

[262] The above analysis on revocation of the existing freeze orders apply equally here. For the same reason, we do not find it to be in the public interest at this time to issue a preservation order on Paddock's interest in his new house.

[263] Accordingly, we dismiss the executive director's application under section 164.04 of the Act.

VI. Summary

[264] In summary, we:

1. vary the current freeze orders with respect to Liu, by reducing the amount of Liu's assets that are frozen to $750,000, and direct the parties to present to the panel a joint recommendation on which assets should be released, and to seek the panel's direction if they cannot agree,
2. maintain the current freeze orders with respect to Lukor.
3. vary the current freeze orders with respect to Jackson, by reducing the amount of Jackson's assets that are frozen to $50,000, and direct the parties to present to the panel a joint recommendation on which assets should be released, and to seek the panel's direction if they cannot agree,

4. maintain the current freeze orders with respect to BridgeMark,
5. grant the section 171 application of the Paddock Applicants and revoke freeze orders COR#2019/057 and COR#2018/126, and
6. dismiss the section 164.04 application of the executive director seeking a preservation order on Paddock's interest in a new house.

July 14, 2022

For the Commission

Audrey T. Ho
Commissioner

Judith Downes
Commissioner