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

Citation: Re Pegasus Pharmaceuticals, 2022 BCSECCOM 145 Date: 20220502

Pegasus Pharmaceuticals Group Inc., Careseng Cancer Institute Inc. and Winter Huang (also known as Dong Huang)

Panel	Judith Downes	Commissioner
	Deborah Armour, QC	Commissioner
Hearing Date	March 15, 2022	
Submissions Completed	March 15, 2022	
Date of Decision	May 2, 2022	

Appearing

Mila Pivnenko	For the Executive Director
Owais Ahmed Erin Hatch	For Pegasus Pharmaceuticals Group Inc. and Winter Huang

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of this panel on liability made September 22, 2021 (2021 BCSECCOM 374) are part of this decision.

[2] We found that:

a) Pegasus Pharmaceuticals Group Inc. (Pegasus) contravened section 61 of the Act by distributing 1,433 bonds (Pegasus Bonds) totaling approximately USD$45 million between January 28, 2010 and August 24, 2012 without a prospectus and for which no exemptions from the prospectus requirements of the Act applied,

b) Careseng Cancer Institute Inc. (Careseng) contravened section 61 by engaging in acts in furtherance of a trade by providing guarantees in connection with the distribution of 447 Pegasus Bonds (Careseng Guaranteed Bonds) totaling approximately USD$12.8 million between January 28, 2010 and July 13, 2012 without a prospectus and for which no exemptions from the prospectus requirements of the Act applied, and

c) under section 168.2 of the Act, Huang contravened section 61 by authorizing the contraventions by Pegasus and Careseng of that section of the Act.

[3] The distributions described in paragraphs 2(a) and (b) are collectively referred to as the "illegal distributions".

[4] The executive director, Pegasus and Huang made written and oral submissions on the appropriate sanctions in this case. Careseng has been dissolved and did not make either written or oral submissions.

[5] This is our decision with respect to sanctions.

II. Position of the Parties

[6] The executive director sought the following sanctions:

a) market prohibitions of 12 years under sections 161(1)(b)(ii) and 161(1)(d)(i) to (v) of the Act against Huang,
b) market prohibitions of 12 years and 8 years respectively under sections 161(1)(b)(ii) and 161(1)(d)(v) against Pegasus and Careseng, and
c) administrative penalties under section 162 of $1 million against each of Huang and Pegasus.

[7] The executive director submitted that the market bans should remain in place for the later of the fixed term of the bans and the date the applicable administrative penalty is paid.

[8] Pegasus and Huang submitted the following sanctions were appropriate in this case:

<u>As against Pegasus</u>

(a) a reprimand under section 161(1)(j) of the Act, and
(b) a five-year market prohibition against Pegasus under section 161(1)(b)(ii).

<u>As against Huang</u>

(a) a reprimand under section 161(1)(j),
(b) a five-year prohibition against trading in or purchasing securities or derivatives under section 161(1)(b)(ii), except for a carve-out permitting Huang to trade or purchase for his own account (including one RRSP account and one TFSA account) through a registrant if he gives the registrant a copy of this decision,
(c) five-year market prohibitions under sections 161(1)(d)(i) to (v), and
(d) an administrative penalty under section 162 of no more than $500,000.

[9] The executive director advised in his reply submissions that he did not oppose the carve-out to the trading prohibition proposed by Huang.

III. Analysis

A. Factors

[10] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

B. Application of the factors

Seriousness of conduct, integrity of capital markets

[11] Contraventions of section 61 of the Act are inherently serious. This section is a foundational provision of the Act relating to the protection of investors and preservation of the integrity of the capital markets. The requirement to file a prospectus in connection with distributions of securities is to ensure investors receive the information necessary to make informed investment decisions.

[12] Pegasus and Huang accepted their misconduct was serious and damage was done generally to the integrity of the capital markets as a result. They submitted, however, there was no evidence that they structured their affairs to avoid the provisions of the Act or that they intentionally contravened the Act. Huang submitted he was under the mistaken belief the funds raised by Pegasus were not subject to British Columbia securities laws because all of the investors were resident outside Canada.

[13] In *Re Falls Capital Corp*, 2015 BCSECCOM 422, paragraph 43, the Commission held that ignorance of the law is not a mitigating factor in considering appropriate sanctions.

[14] In 2009, in a separate instance unrelated to the distributions in issue in this case, Commission staff contacted Pegasus to express concerns regarding securities laws compliance issues relating to a debenture offering by Pegasus. At that time, Pegasus engaged a securities lawyer to respond to the Commission's inquiries. The executive director submitted, and we agree, these inquiries should have prompted Pegasus and Huang to conduct due diligence into whether securities laws might apply to the distributions in issue in this case.

[15] We find that neither the unintentional nature of the breach nor Huang's mistaken belief mitigates the seriousness of the misconduct in issue.

Harm to investors

[16] The executive director submitted that the respondents' misconduct resulted in significant financial harm to investors. He said the investors' investments are likely worthless as there is no market for the securities they purchased or any evidence these securities have any present or future value. He submitted that it is virtually certain the investors have lost all their money given Pegasus had total liabilities of $87 million in 2012 and, based on an affidavit of Huang given in 2019, Pegasus had not generated any revenue since 2015 and its only asset is a property in Richmond, British Columbia.

[17] Pegasus and Huang argued that the executive director's assertions were speculative and failed to account for Pegasus' present and future ability to pay back the investors. They provided affidavits attesting to an unfulfilled purchase order as well as plans to develop a new line of products to be sold by a joint venture which is currently on hold. They pointed to investments made by Pegasus in facilities in Dalian, China and Richmond which have the potential to increase revenues. However, certain of the patents relating to processing of products at the Dalian facilities are set to expire and additional funding is required to purchase packaging equipment at the Richmond plant. Pegasus and Huang also pointed to the development of a tele-medicine e-commerce platform which would make Pegasus' natural health products available for online purchase. The platform is not yet in operation.

[18] While the investors' losses have not yet crystallized, the evidence suggests at least the possibility of significant losses for the investors. The potential sources of funds to repay investors identified by Pegasus are all speculative at this stage as the projects from which such revenues are to be derived are on hold, in development or require further investment.

Enrichment of the respondents

[19] There is no evidence the respondents were enriched by their misconduct.

[20] There was evidence that, from January 2011 to August 2012, Huang put more money into Pegasus than he received. During that period he deposited $563,760 into Pegasus' Canadian bank account and received only $12,913 from the account.

[21] Huang also provided affidavits stating that from 2014 to 2019, his family made all of the interest payments on the mortgage registered against Pegasus' Richmond property for a sum totaling $488,000. The executive director argued Huang did not provide any evidence to support the statements in the affidavits and, in the absence of such evidence, Huang's statements were

unsupported assertions that should be given little, if any weight. We disagree. Sworn statements are evidence which can be considered by the panel.

Aggravating factors

[22] There are no aggravating factors.

Mitigating factors

[23] The executive director submitted there are no mitigating factors in this case.

[24] Pegasus and Huang argued there are several mitigating factors.

[25] They submitted the fact the respondents did not contest the illegal distributions once the executive director withdrew allegations with respect to distributions that were limitation-barred is a mitigating factor. They said their concession reduced the time and resources spent on oral liability submissions and the liability decision.

[26] The executive director argued the respondents did not create any efficiencies for the proceedings. He said a full length investigation, an eight-day hearing with counsel for Pegasus and Huang cross-examining the executive director's witnesses and the filing of the executive director' submissions on liability were required before Pegasus and Huang conceded they engaged in the illegal distributions.

[27] We agree that an early admission of wrongdoing may be a mitigating factor. As the panel stated in *Re Inverlake*, 2016 BCSECCOM 258 at paragraphs 32 to 34, an early admission is suggestive of someone who is in less need of deterrence as it connotes an acceptance of responsibility and the possibility of remorse. The panel also said an early admission may result in a less costly and more efficient proceeding for all parties.

[28] In *Re Inverlake*, the respondents made a clear and unequivocal admission of their contraventions of the Act at the investigation stage. Other Commission decisions in which early admissions of misconduct have been considered a mitigating factor include *Re FS Financial Strategies*, 2020 BCSECCOM 121 and *Re Flexfi*, 2018 BCSECCOM 166. In both these cases early admissions allowed the liability and sanction portions of the proceedings to be combined.

[29] We agree with the executive director that the timing of the admissions of misconduct by the respondents in this case resulted in few efficiencies in the cost or length of the proceedings. It was always open to the respondents to admit to the illegal distributions they did not contest and the timing of the admissions is not suggestive of an acceptance of responsibility or the possibility of remorse as outlined in *Re Inverake*.

[30] We find that Pegasus' and Huang's admission of misconduct is not a mitigating factor.

[31] A temporary order (temporary order) was issued against the respondents on August 29, 2016, requiring them to cease trading any securities or exchange contracts until a hearing was held and a decision rendered. Pegasus and Huang stated that they have complied with this order. They

submitted the five and one-half years since its issuance should be credited against any orders made by the panel.

[32] We do not agree. Compliance with a temporary order is merely compliance and not a mitigating factor. It is an expectation the Commission has of everyone subject to an order issued by the Commission. However, the period of compliance may be a factor in determining specific deterrence required in a particular case as it goes to the future risk a respondent poses to our capital markets.

[33] The respondents stated that throughout the period in which freeze orders (issued in 2012) and the notice of hearing (issued in January 2016) have been outstanding, Pegasus has operated under the "cloud" of allegations of fraud and many of its assets were frozen. They said this had a deleterious effect on Pegasus' business. They stated the fraud allegations also have had a significant impact on Huang's reputation. There was no evidence introduced to establish the effect of the fraud allegations on Pegasus or Huang.

[34] The point of these submissions was not stated but given their inclusion in the respondents' submissions regarding mitigating factors, we assume the respondents were arguing the deleterious effect of the freezing of Pegasus' assets and the outstanding fraud allegations are mitigating factors in this case.

[35] We note that it is always open to respondents to apply for a revocation or variation of freeze orders. In fact, in this case, on application by the respondents, a variation order was granted in 2019 with respect to various freeze orders made against Pegasus' bank accounts.

[36] We also note that over two years of the delay in bringing this matter to a hearing was as a result of an adjournment requested by Huang to accommodate his detention in China.

[37] In any event, we do not see why the potential impact of fraud allegations or freeze orders would be a mitigating factor in determining appropriate sanctions for the illegal distributions. Appropriate sanctions are determined in relation to factors relevant to the misconduct in issue, not the alleged consequences of the overall proceedings.

Past misconduct

[38] The respondents do not have any history of regulatory misconduct in British Columbia.

Risk to our capital markets; fitness to be a registrant or director or officer of an issuer

[39] The executive director submitted the respondents pose a risk to investors and the capital markets. He said there is no evidence the respondents undertook any due diligence on whether British Columbia securities laws might apply to the distributions in issue even after they were alerted by Commission staff they might be breaching the Act in connection with a previous distribution. The executive director argued this is indicative of a forward-looking risk to capital markets.

[40] Pegasus and Huang submitted they do not pose a risk to investors or the capital markets. They stated there have been no allegations of any misconduct against them since 2012 and they have

complied with the terms of the temporary order for over five years. They submitted this demonstrates they are able and willing to comply with British Columbia securities laws.

[41] Recklessness or carelessness with respect to compliance with securities laws in the context of illegal distributions represents a significant risk to our capital markets. In *Re Solara Technologies Inc.*, 2010 BCSECCOM 357 at paragraph 23, the panel said:

> Although we did not find that Solara or Beattie knowingly contravened the Act, they were sloppy about ensuring that exemptions were available. Their carelessness and demonstrated failure to ensure compliance with requirements when raising capital suggests the potential for significant risk to our capital markets were they to continue to participate in them unrestricted.

[42] We agree with these comments as they apply to the respondents. However, the respondents' subsequent lengthy compliance with the temporary order is a factor which reduces the risk the respondents pose.

Specific and general deterrence

[43] The sanctions we impose must be sufficient to deter both the respondents and others from engaging in conduct similar to that carried out by the respondents.

[44] Our orders must also be proportionate to the misconduct (and the circumstances surrounding it).

Prior orders in illegal distribution cases

[45] The executive director stated that the quantum of the illegal distributions in this case was the largest ever considered by the Commission. He said while there were no previous decisions of a similar magnitude involving only illegal distributions, there were a number of cases which were instructive when assessing appropriate sanctions in this case.

[46] In *Re JV Raleigh Superior Holdings Inc.*, 2012 BCSECCOM 492, the respondents distributed USD$5.7 million of securities in contravention of section 61 of the Act. The panel imposed a permanent market ban against the respondents. The respondents were also made subject to section 161(1)(g) orders in the amount of the funds raised through the illegal distributions. Administrative penalties of $750,000 and $500,000 respectively were imposed against the individual respondents.

[47] The panel found the respondents' misconduct to be on the level of fraud. One of the individual respondents had a history of securities regulatory misconduct of a similar nature to that before the panel. In addition, the panel found that the respondents were significantly enriched by their misconduct.

[48] In *Re FS Financial Strategies*, the issuer distributed over USD$47 million of securities. The misconduct in issue included contraventions of section 50(1)(d) of the Act related to the raising of $47 million based on misrepresentations and section 61 involving illegal distributions of over $29 million. The respondents were also found to have engaged in unregistered activity thereby breaching section 34 of the Act and a cease trade undertaking. With respect to the latter breach,

the panel said, at paragraph 153, "… it was difficult to envisage a more serious breach than what was done here."

[49] The panel imposed a permanent market ban against the respondents. The corporate respondents were each made subject to a section 161(1)(g) order in the amount of the funds raised through misrepresentations less amounts repaid to investors. Each of the individual respondents received an administrative penalty in the amount of $2 million.

[50] In *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267, the respondents engaged in illegal distributions of $1,535,238 in contravention of section 61 of the Act and illegal trading in $2,675,238 of securities in contravention of section 34.

[51] The panel imposed ten-year market bans against the respondents. They also issued a section 161(1)(g) order, on a joint and several basis, against the respondents in the amount of $380,309. The individual respondent received an administrative penalty in the amount of $100,000.

[52] The panel found there were a number of aggravating factors in that case which included the significant financial losses suffered by investors, the significant enrichment realized by the respondents, the individual respondent's previous registration status and his demonstrated dishonesty.

[53] There are few similarities between the misconduct of the respondents in *Re JV Raleigh, Re FS Financial Strategies* and *Re SBC Financial* and the respondents in the case before us. The misconduct in each of those cases was far more egregious than the misconduct before us. We find them of little assistance in determining appropriate sanctions in this case.

[54] To the extent any of the cases cited by the executive director is relevant to the circumstances before us, it is *Re HRG Healthcare*, 2016 BCSECCOM 5.

[55] In that case, HRG Healthcare distributed securities for proceeds exceeding $5.6 million. HRG Healthcare and the two individual respondents were found liable for illegal distributions in breach of section 61 of the Act in the amounts of $4,009,000, $3,481,000 and $4,009,000 respectively. The respondents were also found to have breached section 168.1(1)(b) in connection with the filing of ten exempt distribution reports relating to the illegal distributions. HRG Healthcare's business failed and the investors lost all of their money.

[56] A permanent market ban was imposed against HRG Healthcare and a seven-year ban against each of the individual respondents. An administrative penalty of $75,000 was levied against each of the individual respondents and a section 161(1)(g) order was made against one of the individual respondents who had been found to have been enriched by his misconduct.

[57] The panel found there was no evidence that the respondents had intentionally structured their affairs to avoid the provisions of the Act. Their conduct was found to be either careless or reckless or both. One of the individual respondents was a significant investor in HRG Healthcare and lost his investment.

[58] The principal misconduct in *Re HRG Healthcare* was the same as the misconduct in this case as was the careless or reckless nature of the misconduct. One of the individual respondents in HRG Healthcare made a significant investment in the corporate respondent as did Huang. Our sanctions in this case must, on the one hand, reflect the significantly greater quantum of the illegal distributions and, on the other hand, the enrichment of one of the individual respondents in *Re HRG Healthcar*e which is not the case here.

[59] The respondents cited a number of decisions which related to illegal distribution misconduct only. The market bans ranged from one to five years and the administrative penalties from $0 to $40,000. However, the respondents in all of those cases engaged in due diligence to a greater or lesser extent as to the application of securities laws to the distributions. For that reason, we do not find those cases to be relevant to our considerations.

IV. Appropriate sanctions

Market prohibitions

[60] The executive director sought market bans of 12 years against each of Pegasus and Huang and eight years against Careseng.

[61] Pegasus and Huang submitted that market bans of five years were more appropriate in the circumstances.

[62] Market bans are appropriate in this case. As noted above, the respondents were careless or reckless with respect to their compliance with securities laws. That behavior signals the potential for significant risk to our capital markets were the respondents to continue to participate in them unrestricted.

[63] The executive director submitted the large quantum of the illegal distributions is an additional risk factor that should be considered in determining the length of the market bans. In *Re Inverlake*, at paragraph 67, the panel found the size of an illegal distribution can be viewed as a risk factor that might suggest a long period of market prohibitions is appropriate.

[64] Huang was found to have authorized Pegasus' and Careseng's misconduct. He was a director of Pegasus and Careseng and the president of Pegasus during the entire period of the misconduct. If he were to remain as a director or officer of these issuers or to become a director or officer of any other issuer or registrant, it would present an ongoing risk to the capital markets.

[65] Given the nature of Huang's misconduct, his ability to engage in trading activities related to securities or derivatives and to act as a registrant or promoter or in other capacities in the capital markets poses a forward-looking risk to those markets.

[66] While the executive director initially opposed a carve-out from any trading ban imposed against Huang, he subsequently agreed to a carve-out that would permit Huang to trade for his own account through a registrant if he gives the registrant a copy of this decision. We see no risk to the public in permitting Huang to engage in trading for his own account on these terms.

[67] Pegasus remains an active corporation. Given its misconduct, its ability to raise monies from the public by issuing securities to fund its operations poses a forward-looking risk to the capital markets.

[68] Careseng also engaged in the illegal distributions, although the quantum of the distributions was less than that engaged in by Pegasus and Huang. Although Careseng has been dissolved, there are provisions in corporate legislation to reinstate dissolved corporations. For that reason, it is in the public interest to impose market bans against Careseng.

[69] Both Pegasus and Huang have complied with the temporary order issued against them for over five years. As noted above, while compliance is not a mitigating factor, it is a factor in assessing the future risk the respondents pose to the capital markets in this particular case.

[70] The respondents submitted that the length of any market ban made should not be tied to the payment of any administrative penalty imposed. They argued the term of any such ban should expire based on the panel's assessment of the risk the particular respondent poses to the capital markets, not their ability to pay the administrative penalty.

[71] The integrity of the capital markets is based on the principle of compliance. There is a legislative and regulatory framework that governs the operation of those markets. If a respondent were allowed to resume participation in the markets after complying with only part of the sanctions imposed on them, it would send the wrong message to the markets as to importance of compliance and undermine the goals of specific and general deterrence underlying our sanctions.

[72] It is always open to the respondents to make a variation application under section 171 of the Act if, after expiry of the term of the market bans, there are circumstances which could cause the Commission to reconsider the sanctions.

[73] The 12-year market ban against Pegasus and Huang proposed by the executive director is more than that imposed against the individual respondents and less than that imposed against the corporate respondent in *Re HRG Healthcare*. In considering the appropriate bans against the respondents, we must consider the quantum of the illegal distributions in this case and the fact that HRG Healthcare's business had failed and the investors had lost all their money.

[74] After considering all of the factors, in the circumstances we find it to be in the public interest and proportionate to the misconduct in issue to impose:

(a) a ten year market ban against each of Pegasus and Huang with the limited carve-out for Huang described above, and

(b) an eight year market ban against Careseng.

Section 161(1)(g) orders

[75] Section 161(1)(g) states that the Commission, after a hearing, may order:

> […] if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention.

[76] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, adopted a two-step approach from *Re SPYru Inc.*, 2015 BCSECCOM 452 at paragraphs 131 and 132, when considering section 161(1)(g) orders:

> [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
>
> [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[77] The executive director is not seeking an order under section 161(1)(g) of the Act against the respondents.

[78] It is clear that Pegasus obtained approximately USD $45 million arising from its misconduct. Pegasus made payments to investors from these proceeds during the period in issue. Therefore, a disgorgement order could be made against Pegasus for the proceeds received from the illegal distributions less the monies paid to investors.

[79] We found that the executive director failed to establish that representations were made to investors regarding how the proceeds from the illegal distributions would be used. There was no evidence to suggest that Pegasus used the funds raised for other than corporate purposes. A disgorgement order against Pegasus would only potentially harm the very investors that were the subject of the misconduct.

[80] After considering all of the factors, we find it is not in the public interest in the circumstances to make a disgorgement order against Pegasus.

[81] There was no evidence that Huang or Careseng obtained, directly or indirectly, any amounts as a result of their contraventions of the Act. Therefore, a section 161(1)(g) order cannot be made against either of them.

Administrative penalties

[82] Section 162 of the Act provides the following:

> (1) If the commission, after a hearing,
>
> (a) determines that a person has contravened,
>
> (i) …a provision of this Act…

(b) considers it to be in the public interest to make the order,

the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention.

[83] The executive director sought administrative penalties against Pegasus and Huang of $1 million each.

[84] Huang agreed that he should be subject to an administrative penalty but argued the appropriate quantum was $500,000. Pegasus submitted that it should not be subject to an administrative penalty.

Administrative penalty against Huang

[85] The executive director submitted that the quantum of the illegal distributions is a factor which should be considered in determining the amount of the administrative penalties in this case. This is supported by the finding of the panel in *Re Oei*, 2018 BCSECCOM 231, at paragraph 124, that the quantum of the misconduct is an element of the seriousness of the contravention and should be considered in determining appropriate orders under section 162.

[86] The executive director submitted Huang's misconduct demonstrated extreme carelessness and undermined the reputation of British Columbia as a safe market to conduct business. He argued Huang's conduct was more serious than that of any individual respondent in previous cases involving breaches of section 61 and justified a penalty of $1 million.

[87] The administrative penalty against Huang proposed by the executive director is significantly larger than that imposed against the individual respondents in *Re HRG Healthcare* and exceeds the relative difference in quantum of the illegal distributions in the two cases. This is difficult to justify given the similarity in the nature of the misconduct.

[88] After considering all of the factors, we find that in the circumstances an order under section 162 against Huang in the amount of $500,000 to be in the public interest and proportionate to the misconduct in issue.

Administrative penalty against Pegasus

Respondents' submissions

[89] Pegasus and Huang submitted that imposition of an administrative penalty against it would not be in the public interest as it would jeopardize Pegasus' ability to generate revenue (and profit) for the benefit of its investors.

[90] Pegasus and Huang argued that specific deterrence against Pegasus is not necessary and general deterrence could be achieved by way of an administrative penalty against Huang.

[91] They pointed out that in none of the cases cited by the executive director as instructive in assessing sanctions in this case was an administrative penalty ordered against the corporate respondents.

[92] In *Re SBC Financial*, the executive director did not seek an administrative penalty against the corporate respondent SBC Financial. The panel agreed with the executive director based on the following analysis at paragraph 80:

> The executive director asked for an order under section 162 in the amount of $75,000 against Bakshi. The executive director did not seek an order under section 162 against SBC. His rationale for this position is that SBC did not act independently from Bakshi and the company has both gone through bankruptcy and been dissolved. If the second issue were persuasive, it would also suggest that we should not make an order under section 161(1)(g) against SBC. We do not find it persuasive. However, we do agree the SCBC cannot be viewed **to have acted independently** from Bakshi and therefore we do not find it necessary, in the circumstances, to make an order under section 162 against SBC. [Emphasis added]

[93] In *Re FS Financial Strategies*, in determining not to impose an administrative penalty against the corporate respondent FS Financial Strategies, the panel said, at paragraph 155:

> Given our disgorgement orders and the fact that the FS Group acted under **the direction and control** of Lim and Low, we do not find it necessary to order administrative penalties against them. [Emphasis added]

[94] The respondents cited a number of other cases to further support their submission that it is not appropriate to make a section 162 order against Pegasus.

[95] *Re Williams*, 2016 BCSECCOM 283 involved a breach of section 57(b) of the Act. The panel did not make a section 162 order against the corporate respondents based on the following analysis at paragraph 80:

> …it would normally be consistent with our sanctions' principles of specific and general deterrence to make an order under section 162 against the Global Entities. However, in this case, as we are of the view that the Global Entities were really just **the alter ego** of Williams and **did not act independently of** Williams, we do not think it necessary to make orders under section 162 against any of the Global Entities. [Emphasis added]

[96] *Re Eaglemark*, 2017 BCSECCOM 42 involved breaches of section 57(b) and section 34 of the Act as well as breaches of outstanding cease trade orders. The panel found that the corporate respondents were under the sole control of the individual respondent and acted as his "alter egos". They cited the quote from *Re Williams* set out above and did not impose administrative penalties against the corporate respondents.

[97] *Re Wong*, 2017 BCSECCOM 57 involved breaches of section 57(b) and section 61 of the Act. The panel did not impose an administrative penalty against the corporate respondents based on the following analysis (at paragraph 131):

> We do not find it serves the public interest or any useful purpose to impose and administrative penalty against any of the corporate respondents. They were **controlled by** the [individual respondents] and **did not act independently from** their directions. There is no need for specific deterrence against the corporate respondents. In our opinion,

> general deterrence can be achieved through administrative penalties against the [individual respondents]. [Emphasis added]

Executive director's submissions

[98] The executive director argued that the decisions relied upon by the respondents were distinguishable as they involve either companies that were "alter egos" of the individual respondents, and therefore did not act independently from them, or were defunct/dissolved.

[99] The executive director submitted that Pegasus was not an "alter ego" of Huang. He said the evidence showed Pegasus was an independent company with employees, business operations and bank accounts separate from Huang's. He argued there was a significant difference between cases where the director is the primary decision-maker at a company and those where the company is an "alter ego" of the individual respondent.

[100] The executive director acknowledged that Huang controlled Pegasus during the period of the misconduct in issue but argued there are aspects of Pegasus' misconduct that needed to be considered independently of Huang for the purposes of specific deterrence.

[101] In particular, the executive director pointed to activities of Pegasus in September and October 2012 in circulating questionnaires to investors to determine, after the fact, whether any of them qualified for prospectus exemptions at the time of their purchase of Pegasus securities. During this period, Huang was detained in China and had limited ability to be involved with Pegasus' affairs.

[102] The executive director seemed to be suggesting that the distribution of these questionnaires was an example of Pegasus engaging in improper conduct independent of Huang.

[103] At the sanctions hearing, the executive director cited *Re Oei*, 2019 BCSECCOM 255 in support of his submission that a separate administrative penalty should be imposed on Pegasus.

[104] In that case, Oei and the corporate respondents were found to have breached section 57(b) of the Act. During the period of the misconduct, Canadian Manu Immigration & Financial Services Inc., one of the corporate respondents, had assets and a business unrelated to the investment scheme carried out by the respondents. The fraudulent scheme did not involve investment in securities of Canadian Manu but in the securities of other corporate respondents.

[105] Oei was a director and officer of Canadian Manu. Unlike Huang, part way through the period of misconduct, he resigned and the other director became the sole director.

[106] Permanent market bans were imposed against the respondents and disgorgement orders made against Oei and Canadian Manu. Administrative penalties of $4.5 million and $1 million respectively were ordered against Oei and Canadian Manu.

Analysis

[107] We do not agree with the executive director that one of the factors to be considered in determining whether a corporate respondent should be made subject to an administrative penalty is whether it is an "alter ego" of the individual respondent.

[108] It is clear from the cases cited above that the terms "alter ego", "control" and "acting independently" are used interchangeably. These terms are all connected to the concept of independence. In our view, the appropriate question in determining whether a separate section 162 order should be made against a corporate respondent in these circumstances is whether the corporate respondent acted independently from the individual respondent.

[109] There is no issue that Huang controlled Pegasus during the period of misconduct. At paragraph 131 of our findings we said:

> Huang was a director of Pegasus and Careseng and President of Pegasus during the entire period relevant to these allegations. He controlled Pegasus, decided which projects Pegasus would pursue, decided how to finance projects and decided how to raise money from investors. He signed the promissory notes and the investment certificates related to the Pegasus Bonds issued in the Illegal Distributions.

[110] We do not agree with the executive director that the distribution of prospectus exemption questionnaires to investors at a time when Huang had limited ability to be involved in Pegasus' affairs was an example of Pegasus engaging in improper conduct independent of Huang which should be considered in determining appropriate sanctions.

[111] Firstly, these activities took place after the period of misconduct in issue.

[112] Additionally, under section 1.9 of *Companion Policy 45-106CP*, a person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the exemption are met. Pegasus throughout these proceedings has maintained it was unaware that the prospectus requirements of British Columbia securities laws applied to the distributions in issue. It is common practice, in situations where issuers become aware after the fact of potential compliance issues relating to prior distributions of their securities, to investigate whether prospectus exemptions may have been available to investors at the time of the distribution. There is nothing improper about Pegasus attempting to determine whether prospectus exemptions applied by distributing the questionnaires.

[113] Finally, the distribution of the questionnaires was primarily an administrative exercise. We do not find the fact that Huang had limited or no involvement in directing this exercise to be an indicator of loss of his primary control and direction over Pegasus.

[114] After considering all of the factors, we find that it is not in the public interest in the circumstances to impose an administrative penalty against Pegasus. We find that Pegasus was controlled by, and did not act independently from, Huang during the period of the misconduct. Unlike *Re Oei*, Huang remained a director of the corporate respondents and controlled them throughout the period of misconduct. Additionally, unlike *Re Oei*, the investments in issue were made primarily in securities of Pegasus. The imposition of an administrative penalty would

impact Pegasus' ability to generate income and profits and harm the very investors who were the victims of the misconduct.

Administrative penalty against Careseng

[115] The executive director did not seek an administrative penalty against Careseng. He noted Careseng had been controlled by Huang during the period of its misconduct and that currently, it has no assets or operations and has been dissolved. He submitted that in these circumstances, it is not in the public interest to issue a separate administrative penalty against Careseng.

[116] We agree and find it is not in the public interest in the circumstances to order an administrative penalty against Careseng.

V. Orders

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

Pegasus

[118] Pegasus is prohibited:

a) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, and

b) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity,

until May 2, 2032.

Careseng

[119] Careseng is prohibited:

a) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, and

a) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity,

until May 2, 2030.

Huang

[120] Under section 161(1)(d)(i), Huang resign any position he holds as a director or officer of an issuer or registrant.

[121] Huang is prohibited until the later of May 2, 2032 and the date he pays the order under paragraph 122:

(a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives, except that he may trade and purchase securities or derivatives for his own account (including one RRSP account and one TFSA account), through a registered dealer or registrant, if he gives the registered dealer or registrant a copy of this decision,

(b) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant,

(c) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter,

(d) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets, and

(e) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of an issuer, security holder or party to a derivative, or another person that is reasonably expected to benefit from the promotional activity.

[122] Huang pay to the Commission an administrative penalty of $500,000 under section 162 of the Act.

May 2, 2022

For the Commission

Judith Downes
Commissioner

Deborah Armour, QC
Commissioner