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

Citation: Durkin, 2023 BCSECCOM 180 Date: 20230418

Timothy Craig Durkin and SHH Holdings Limited

Panel	Gordon Johnson	Vice Chair
	Judith Downes	Commissioner
	Karen Keilty	Commissioner
Submissions completed	February 27, 2023	
Decision date	April 18, 2023	

Parties

Jorie Les	For the Executive Director
Timothy Craig Durkin	For himself and SHH Holdings Limited

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 on January 23, 2023, reported at 2023 BCSECCOM 37, are part of this decision.

[2] We found that:

a) on three separate occasions in 2015, SHH Holdings Limited (Holdings), through Timothy Craig Durkin (Durkin), made representations to the effect that it owned, through a subsidiary, the Sooke Harbour House hotel (Hotel) when it did not have any ownership interest in the Hotel;

b) the representations were knowingly false and were made in breach of section 57(b) of the Act;

c) after receiving those representations, the Investor's company advanced a total of $1 million to Holdings in return for shares of Holdings;

d) the invested funds were deposited into a bank account of SHH Management Limited (Management) as Holdings did not have a bank account and were not recovered by the Investor or her company; and

e) given that Durkin was personally liable for the breach of section 57(b) of the Act, we did not need to consider the operation of section 168.2.

[3] Each of the executive director and the Respondents made written submissions on the appropriate sanctions in this case.

II. Position of the parties

A. Executive director

[4] The executive director submits that the Respondents' misconduct was intentional, serious, and harmed both the Investor and the integrity of the capital markets.

[5] The executive director submits it is in the public interest that we impose the following sanctions:

a) Permanent orders against Durkin under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(i)-(vi) of the Act;

b) Permanent orders against Holdings under sections 161(1)(b)(i), 161(1)(c), and 161(1)(d)(iii), (v), and (vi) of the Act;

c) Disgorgement order of $1 million to Durkin and Holdings jointly and severally under section 161(1)(g) of the Act;

d) Administrative penalty of $750,000 to Durkin under section 162 of the Act; and

e) Costs of $8,000 to be paid by Durkin and Holdings jointly and severally under section 174 of the Act.

B. Respondents

[6] Most of the Respondents' submissions were focused on whether our findings on liability and the prior the findings of the court, in separate civil proceedings, were fair and appropriate. We are not, here, engaged in a reconsideration of our prior findings.

[7] One of the submissions made by the Respondents is that whatever funds were raised from the Investor were used to the benefit of the Hotel. The most relevant of the remaining submissions of the Respondents are contained in the following extracts from the written submission of the Respondents:

> The Respondents are indigent. There are no plans to enter the capital markets and no projects on the horizon. The decision of Basran, J [a BC Supreme Court justice in one of the separate civil proceedings] and his cruel pronouncements have evaporated any possibility of a meaningful livelihood. It has severely impaired family life and health in general. The only fund raising the Respondents are involved is for fees to advance actions before the BC Court of Appeals [sic]. The Respondents will be seeking leave to appeal the decision of the Commission in this matter.
>
> The request for a lifetime ban from the Executive Director is nothing more than a cruel

> grandstand folly. What we suggest is that if in the unlikely event that Durkin is attached to a project that requires a capital funding then he will file a prospectus with the Commission until such time as the Court of Appeals [sic] can hear this matter.

[8] The Respondents did not provide any evidence in support of their submissions. To be more specific, the Respondents did not provide any evidence regarding the use of funds raised from the Investor or regarding the financial circumstances of the Respondents. As a result, we have no basis on which to determine how the Investor's funds were spent or the ability of the Respondents to pay any financial sanctions against them.

III. Analysis

A. Introduction

[9] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

[10] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22 at page 24, 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:
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> - the seriousness of the 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.

[11] We address the factors which are relevant under the following headings.

B. Seriousness of Conduct

[12] Panels of this Commission have repeatedly stated, for example in Re *Bezzaz Holdings*, 2020 BCSECCCOM 263, that fraud is the most serious of the misconduct prohibited by the Act.

[13] In *Re Bai* 2018 BCSECCOM 156 the panel held that fraud "is the most serious misconduct owing to the deceit that will have been perpetrated upon investors", and that "fraud requires that the respondent have had the requisite mental intent (or *mens rea*) with respect to his or her misconduct."

[14] In this case, the Respondents intentionally deceived the Investor about Holdings' ownership of the Hotel. Durkin knew that Holdings had not completed its purchase of the company that owned the Hotel. Despite this, Durkin repeatedly represented to the Investor's advisors that Holdings had completed the purchase, in order to induce the Investor to make a $1 million investment.

[15] Given the serious degree of intention that was present here and the extent to which conduct of the type proven undermines public confidence in financial markets there is a strong basis to impose significant sanctions and a particularly strong reason to prohibit the Respondents from participation in securities markets.

C. Harm to investors

[16] The harm to the Investor in this case was the loss of the entire investment. We found that the $1 million was invested based on the Respondents' deceit, that the Investor's funds were spent, and that none of the $1 million was recovered.

[17] The degree of harm that was caused by the conduct of the Respondents supports the imposition of significant sanctions.

D. Enrichment of Respondents

[18] As the executive director submits, "No specific findings were made regarding the use of the Investor's funds".

[19] In cases where respondents obtain funds through fraudulent representations there is often a related allegation in the notice of hearing to the effect that the respondents spent the funds in a manner contrary to the purpose for which the funds were raised. Such an allegation can be a factor in determining the egregiousness of the respondents' misconduct. There was no such allegation in this notice of hearing. In addition, there was very little evidence identified during the liability hearing as to how the funds raised were used. It was not necessary for the panel to evaluate that issue to resolve the allegations made in the notice of hearing and the panel did not focus at that stage on the use of funds.

[20] The executive director's submissions on sanction point to no evidence of how the funds raised from the Investor were used. While there was evidence that Holdings did not have

a bank account, that the Investor's funds were deposited in one of the bank accounts of Management and that, at the time, Durkin was a director of both companies, we were not pointed to evidence of who controlled the relevant account, or how the proceeds from that bank account was used.

[21] The evidence before us does include the most relevant information regarding the bank transactions processed through Management's account statements. We are able to identify when the funds from the Investor entered the account of Management, and we are able to identify that some of those funds were used to pay for what appear to be personal items such as haircuts and meals. However, the great majority of the funds were transferred out to other accounts or withdrawn in cash or paid by cheque and the identify the recipients of various cheque payments, transfers or cash withdrawals and the related purpose of these and other amounts was not provided to us.

[22] It is clear that the funds were deposited into Management's account on behalf of Holdings, and as such Holdings was enriched by them. While the funds were subsequently dissipated through Management's accounts, we do not have before us evidence to conclude what proportion of the funds, if any, were used to enrich Durkin.

[23] If we had found that the Respondents had directed a significant proportion of the funds received from the Investor for Durkin's personal uses or benefit we would have considered that to support a relatively higher sanction against him. However, we do not want to overstate the importance of this consideration. The reality is that we have no evidence that the funds raised from the Investor were put to uses which benefited the Investor or had any realistic prospect of doing so. That, on its own, is a serious matter.

[24] As set out above in paragraph 8, the submission from the Respondents to the effect that the funds raised were used for the benefit of the Hotel is not supported by reference to any evidence. As a result we do not find any merit in that submission.

E. Aggravating Factors

[25] The executive director submits that the lack of proper record keeping of the Respondents is an aggravating factor in this case. The lack of proper record keeping has been identified as an aggravating factor in the past, for example in *Re Nickford*, 2018 BCSECCOM 57.

[26] In support of the proposition that the Respondents did not keep proper records of what happened to invested funds, the executive director points to the fact that all invested funds were paid to Management, another company for which Durkin was a director. We were shown Management's bank statements for the account in which the investor's funds were deposited and we can see the various entries on those statements representing the depletion of the funds. However, we are unable to identify the purposes for which most of the funds were expended. In addition, we do not have evidence before us to establish

that Management did not keep records of how those funds were spent. As a result, we do not place any material weight on this particular factor.

F. Mitigating factors

[27] There are no mitigating factors present here.

G. Past misconduct

[28] The executive director has not identified any record of prior securities-related offences committed by the Respondents. That factor supports the position of the Respondents that a less significant sanction is justified.

H. Fitness to Participate in Capital Markets and Hold Positions

[29] As we have noted elsewhere in this decision, the seriousness of the Respondents' misconduct and the degree of intentionality that we have identified makes them unfit to hold responsible positions in the securities industry.

[30] Our role is to craft a sanction which is protective of the public interest. The public interest is best served by the development within the securities industry of a culture of compliance and "gatekeeping" against misconduct. Durkin has, by the conduct which has been proven in this proceeding, shown himself to lack the attitudes that are needed to properly fulfill important roles as a director, officer, registrant or holders of similar positions.

I. Specific and general deterrence

[31] The purpose of deterrence is to discourage future misconduct from the individual wrongdoer specifically and society generally. Specific and general deterrence are factors for a panel to consider when determining the appropriate sanctions. The panel in *Re Smith*, 2021 BCSECCOM 486, at para. 22 described specific and general deterrence as:

> Specific deterrence and general deterrence are related but not identical concepts. Specific deterrence discourages this respondent from participating in future misconduct. General deterrence discourages others from participating in misconduct similar to that in the subject case. Both goals are legitimate in the crafting of a sanction which properly balances all of the factors which are relevant in any particular case.

[32] In *Cartaway Resources Corp. (Re)*, 2004 SCC 26, at para. 55, the Supreme Court of Canada stated that, in the capital markets, general deterrence "has a proper role to play in determining whether to make orders in the public interest and, if they choose to do so, the severity of those orders."

[33] Panels need to balance specific deterrence and general deterrence and consider the effect that the misconduct has on the integrity of the public markets when assessing administrative penalties. The sanctions imposed should be sufficient to deter respondents and others from engaging in similar conduct in the future.

[34] As we noted in *Re QcX Gold Corp*., 2022 BCSECCOM 422, referencing a submission from counsel which in turn cited *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273, specific and general deterrence are both important factors and the weight to be given to each will vary with the circumstances of a given case. We noted the following at paragraph 46:

> It can be very challenging for a panel to properly reflect the importance of the factor that sometimes parties who have committed serious breaches of the Act might have very limited resources available to pay a financial sanction. We are seeking to craft an appropriate sanction in order to protect the public. This suggests that significant weight should be placed on the factor of general deterrence. At the same time, there are limits on the public benefit achieved by the imposition of massive penalties which the party who committed the breach has no realistic ability to pay.

[35] As noted in paragraph 8, in the present case we have a submission from the Respondents to the effect that they are indigent, but the Respondents have not supported that submission with any evidence. In addition, even if we had reliable evidence from the Respondents about their lack of funds, we face the reality that it would not be possible to order a sanction which the Respondents could pay in a reasonable time which would not be totally counterproductive in addressing the factor of general deterrence.

[36] Our conclusion regarding this factor is that we should place considerable weight on the importance of general deterrence without ignoring the submission made by the Respondents, while also recognizing that the Respondents did not provide evidence about their financial circumstances.

J. Prior Decisions

[37] The executive director submits that the following decisions are helpful guides to the appropriate types and amounts of sanctions which are appropriate here:

Case Name	Quantum of Fraud	Market Conduct Orders	Administrative Penalty	Disgorgement
Re Bai, 2018 BCSECCOM 156	$1,401,000 (9 investors)	Broad permanent market prohibitions	$1,000,000	$1,291,000 (quantum less amount returned to investors)
Sand, Achs, Gulston (Re), 2022 BCSECCOM 473	$600,000 (2 investors)	Broad permanent market prohibitions	$380,000 each (3 individual respondents)	Gulston $100,000 Sand $120,000 Achs $180,000 (specific amount each benefitted from the wrongdoing)
Re The Falls Capital Corp, 2015 BCSECCOM 422	$517,500	Broad permanent market prohibitions	$500,000	$517,500
Re Furman, 2019 BCSECCOM 214	$452,000 (12 investors)	Broad permanent market prohibitions	$350,000	$410,847
Re Braun, 2019 BCSECCOM 65	$450,000 (2 investors)	Broad permanent market prohibitions	$450,000	$323,500
Re Nickford, 2018 BCSECCOM 57	$318,141 (13 investors)	Cease trade of corporate respondent, broad permanent market prohibitions	$300,000	$318,141

[38] The cases referenced are all relevant. They all involve breaches of section 57(b) of the Act. Each of them supports the imposition of broad, permanent market prohibitions. Together they suggest a range of administrative penalty of between $300,000 and $1,000,000, depending on a number of factors which panels have used to differentiate between the various frauds which were proven in those cases. Some of the factors which have been significant include the amount of loss caused, the number of investors mislead, the duration of the fraud, the degree to which the respondents directed funds to their own benefit and the existence, or not, of other aggravating factors.

[39] In this case the dishonest conduct was directed to the purpose of encouraging a specific investment in a particular venture, which is reasonably comparable to the circumstances

assessed in the *Sand* decision. There is some basis to suggest that the conduct in *Sand* was worse than here due to the degree to which the respondents in *Sand* used the funds they obtained to their own benefit. However, the amount lost by the Investor here was larger than was the case in the *Sand* decision, which we must also take into consideration in determining the appropriate administrative penalty.

[40] The absence of a pattern of conduct by the Respondents to repeat the deceitful comments to a large group of investors provides some basis to distinguish this case from the most serious of frauds, and it suggests that the administrative penalty here should not be at the very top end of the appropriate range.

IV. Conclusions Regarding Appropriate Sanctions

A. Market prohibitions

[41] Based on the conduct which has been proven here we consider that the Respondents represent a continuing risk of harm to the investing public. Only a broad, multi-decade long prohibition will provide a meaningful level of protection to the public. Turning specifically to Durkin, he is 72 years of age. As a result, any meaningful and appropriate period of prohibition will effectively continue throughout the balance of his life. We conclude that a permanent period of prohibition is the proper outcome considering all of the circumstances of this case. The same conclusion applies to the corporate respondent.

[42] With respect to the scope of the market prohibitions sought by the executive director, we agree that each of those proposed prohibitions is appropriate in this case.

B. Administrative Penalties

[43] We have very carefully considered all of the factors relevant to the issue of what administrative penalty should be imposed, with particular emphasis on the factors specifically discussed above.

[44] We identify some key comparators here to be the range of comparable precedents ($300,000 to $1,000,000), the amount recommended by the executive director ($750,000) and the identification of the administrative penalty in *Sand* ($380,000) as the likely most comparable precedent, although with the qualifications that the respondents in *Sand* were found to have diverted investors' funds for their personal benefit and the amount lost here is significantly more than was lost by the investors in *Sand.*

[45] Of the factors which we have identified throughout this decision above, the one that we consider most deserves repetition here is the seriousness of the conduct of the Respondents. The Respondents lied about Holdings ownership of the Hotel to entice the Investor to provide $1,000,000. That is a very serious matter.

[46] We conclude that based on a balancing of all of the factors present here an administrative penalty of $600,000 is appropriate.

C. Section 161(1)(g) orders

[47] 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.

[48] 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.

D. First Step: did the respondents obtain amounts from their contraventions of the Act?

[49] In reaching our conclusions regarding how much was obtained by the respondents, we are mindful of the following statements in *Poonian*:

> [130] In establishing the link between the "amount obtained" and the person subject to the order by using the words "directly or indirectly", the Legislature ensured the purpose of s. 161(1)(g) was not frustrated by difficulties presented by complex schemes. As stated, "directly or indirectly" modifies "obtain".
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> [131] In my view, the use of these explicit words indicates that the amount need not be obtained directly by the person who has contravened the Act (who is also the person against whom the order to pay is made). In addition, it could be obtained indirectly. By using those words, the Legislature intended "amount obtained" to capture amounts the wrongdoer obtained through indirect means (e.g., through agents, nominees, alter egos), as opposed to direct means (i.e., where the money is received directly into that wrongdoer's "pockets" or accounts). This is especially operative in certain types of wrongdoing such as illegal distributions (e.g., nonexempt trading without prospectus or registration) where, by the nature of the activity (fundraising), the money flows not to the wrongdoer (e.g., the promoter), but to some other entity (e.g., the corporate issuer of securities). If s. 161(1)(g) is to function properly and achieve its goal of deterrence by the divesting of ill-gotten amounts, then the amounts obtained by the issuer must also be capable of being disgorged.

[50] Satisfaction of the first part of the *Poonian* test can be relatively straightforward in cases where a respondent directly received the funds in question. In most such cases the onus

will then shift to the respondent to show that the amounts in question were not "obtained" by that respondent.

[51] The situation can be much more complex where, as is the case here, the respondents were not the parties who received the funds. Where that is the situation it remains open to the executive director to establish through evidence that the party to whom the funds were paid was the nominee or alter ego of the respondent or that the funds were otherwise directly or indirectly obtained by the respondent. The onus is on the executive director to establish on a balance of probabilities that the funds in question were obtained by the respondent against whom a section 161(1)(g) order is sought.

[52] In the present case the submission of the executive director regarding the first step in the *Poonian* analysis is as follows:

> Durkin and Holdings received $1 million from the Investor as a result of their fraud. None of these funds have been repaid to the Investor. Durkin and Holdings therefore directly obtained $1 million from their contravention of the Act. Accordingly, a section 161(1)(g) order in the amount of $1 million is available.

[53] The executive director does not address the issue that the funds from the investor were paid to Management, not to either of the Respondents.

[54] The evidence is that the funds obtained through the breach of the Act were paid by the Investor's company under a subscription agreement dated December 9, 2015. The funds were payable under that subscription agreement to the "Corporation". The "Corporation" was defined within the subscription agreement as Holdings, which was issuing the shares for which the Investor's payments were being made. As events unfolded the payments made by the Investor pursuant to the subscription agreement were paid to Management and deposited into its bank account.

[55] While we do not have evidence of the precise nature of the arrangement which existed between Holdings and Management, we do have evidence from Durkin that Holdings did not have a bank account and that Holdings' banking transactions were done through segregated accounts of Management. Based on this, the payment to and deposit of the Investor's funds into Management's bank account was made in accordance with Holdings' usual practice for banking transactions and we can determine that the Investor's funds were received by Management on Holding's behalf. As a result, we conclude that Holdings "obtained" the Investor's funds pursuant to the first part of the *Poonian* test.

[56] The evidence is not so clear with respect to Durkin. We were shown evidence that Durkin was a director (but not the sole director) of Holdings. We received significant evidence, all consistent with the submissions made by Durkin, establishing that he made the critical decisions which led to the breach of the Act. However, we were not pointed to evidence showing that Durkin obtained a benefit from the breach of the Act. We did see evidence of that certain payments from the bank account of Management appear to be personal in nature, but we have no way to reasonably assess the proportion of the payments which

were personal in nature. More importantly, the payments in question, for uses such as haircuts and meals, may not have been for Durkin's benefit.

[57] Similarly, it is not clear to what extent Durkin owned an interest in in Holdings. The shareholders agreement which Durkin offered to the Investor and which the Investor recalls signing indicates that Management held a minority interest in Holdings. However, it was not identified to us what interest Durkin owns in Management.

[58] We conclude that the first part of the *Poonian* test has not been met with respect to Durkin.

E. Second Step: Is it in the public interest to make a section 161(1)(g) order?

[59] Given the deliberate nature of the fraud and the satisfactory evidence that Holdings benefited from the fraudulent conduct, we conclude that it is in the public interest to make a section 161(1)(g) order against Holdings in the full amount of the $1,000,000 which Holdings obtained by it breach of the Act.

[60] We recognize that orders for payment under Section 161(1)(g) orders should not create any double recovery against Holdings. We are aware that the Investor is advancing collection proceedings against the Respondents through the courts. The evidence so far is that no amounts have been collected. We are making our order using language which obligates the executive director to only collect amounts from Holdings net of any amounts collected by or on behalf of the Investor. That might create some administrative burden on the executive director. However, in seeking this remedy under section 161(1)(g) of the Act the executive director has volunteered to accept that burden.

F. Costs

[61] We are persuaded by the following comments extracted from paragraph 73 of the sanctions decision in *Re DFRF Enterprises and others*, 2022 BCSECCOM 405:

> Costs are not normally sought against respondents who choose to defend themselves at a hearing, and are rarely imposed by the Commission. That does not imply that costs should never be sought, or mean that the Commission will never award them. But quantification and attribution of costs is challenging, and awarded costs will usually be significantly less than financial sanctions and disgorgement orders and cost orders should not be automatic. They need to be justified in the circumstances of each proceeding. We do not see compelling reasons to make cost awards here and we decline to do so.

[62] The Act permits the award of costs on a discretionary basis and there are no doubt some circumstances in which an award of costs will be justified. This is not such a case. We do not see any basis to depart from the analysis in DFRF.

V. Orders

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

Durkin

(a) under section 161(1)(d)(i), Durkin resign any position he holds as a director or officer of an issuer or registrant;

(b) Durkin is permanently prohibited:

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

(ii) under section 161(c), from relying on any exemptions set out in the Act, the regulations, or a decision;

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

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

(v) 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;

(vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:

(A) an issuer, security holder or party to a derivative, or
(B) another person that is reasonably expected to benefit from the promotional activity;

(vii) under section 161(1)(d)(vi), from engaging in promotional activities on his own behalf in respect of circumstances that would reasonably be expected; and

(c) Durkin pay to the Commission an administrative penalty of $600,000 under section 162.

Holdings

(d) under section 161(1)(b)(i), all persons cease trading in, and are permanently prohibited from purchasing, any securities or exchange contracts of Holdings;

(e) Holdings is permanently prohibited:

(i) under section 161(1)(c), from relying on any exemptions set out in the Act, the regulations, or a decision;

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

(iii) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:

(A) an issuer, security holder or party to a derivative, or
(B) another person that is reasonably expected to benefit from the promotional activity; and

(iv) under section 161(1)(d)(vi), from engaging in promotional activities on Holdings' own behalf in respect of circumstances that would reasonably be expected to benefit Holdings.

(f) under section 161(1)(g), Holdings pay to the Commission $1,000,000 less any amounts paid under judgment rendered on January 11, 2022 in British Columbia Supreme Court, Victoria Registry No. 180716.

April 18, 2023

For the Commission

Gordon Johnson
Vice Chair

Judith Downes
Commissioner

Karen Keilty
Commissioner