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

Citation: Re DFRF Enterprises and others, 2023 BCSECCOM 98 Date: 20230228

DFRF Enterprises LLC (DFRF Massachusetts),
DFRF Enterprises, LLC (DFRF Florida),
Daniel Fernandes Rojo Filho, Heriberto C. Perez Valdes,
Sabrina Ling Huei Wei, Justin Colin Villarin
and James Bernard Law

Panel	Gordon Johnson	Vice Chair
	Audrey T. Ho	Commissioner
	James Kershaw	Commissioner
Submissions completed	December 20, 2022	
Decision date	February 28, 2023	

Appearing

Paul Smith	For the Executive Director
Sabrina Ling Huei Wei	For herself
Justin Colin Villarin	For himself
James Bernard Law	For himself

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The findings of this panel on liability made on October 4, 2022, 2022 BCSECCOM 405 are part of this decision.

[2] By November 15, 2022 initial submissions regarding sanctions had been received from all parties. Soon after that point, one of the BC Respondents submitted that there had been a misunderstanding about the types of evidence which might be helpful to the panel in assessing the financial circumstances of the respondents. Given that the BC Respondents were representing themselves and that an extension of the deadline to deliver evidence would not cause undue delay or other prejudice, the BC Respondents were provided with a second opportunity to deliver evidence in support of their positions. One respondent took advantage of that opportunity and the executive director took advantage of the opportunity to submit a second reply.

[3] The executive director has organized his submissions by reference to the factors identified in *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22. That approach is commonly followed in sanctions decisions. No suggestion has been made that the approach is not appropriate here and we have organized this decision around the list of factors identified in *Eron*. Using that structure assists us in assessing all of the relevant factors in context, consistent with *Re Davis,* 2016 BCSECCOM 375. Our goal is to craft a sanction which is proportionate to the misconduct that has been proven and which reflects our objective of protecting investors, promoting the fairness and efficiency of capital markets and preserving public confidence in those markets.

II. Positions of the parties

[4] The executive director's submissions include the following quotation from *Eron* at page 24:

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

[5] The executive director makes various submissions regarding the conduct of Filho and Valdes. Given the clarity of our findings that Filho created and orchestrated a significant Ponzi scheme using the two DFRF entities, and that Valdes supported him, we do not need to summarize the submissions in detail. We address the conduct of those particular respondents to the extent necessary.

[6] The executive director references several specific findings made against the BC Respondents and asserts that although Wei's culpability was less than Filho's, her conduct was serious and included a leadership role in the mass solicitation effort which occurred in British Columbia.

[7] The executive director submits that Law's conduct was serious because he spoke at presentations designed to maximize investments from investors and added his credibility to Filho's scheme.

[8] The executive director submits that Villarin's conduct was serious because he convinced people to invest in DFRF and knowingly suppressed the truth about Filho's fraud.

[9] The executive director relies upon *Re Manna Trading Corp. Ltd.*, 2009 BCSECCOM 595, to support the proposition that "nothing strikes more viciously at the integrity of our capital markets than fraud." The executive director relies on *Re Bai*, 2018 BCSECCOM 156, in support of the proposition that fraud is the most serious type of misconduct because of the nature of the *mens rea* which is inherent in a finding of fraud**.**

[10] The executive director submits that Villarin's conduct downplaying the information suggesting that a fraud was being conducted and the fact he previously had been registered to sell insurance products and mutual funds are aggravating factors against Villarin. The executive director submits that Wei's conduct downplaying the Commission's investor alert was an aggravating factor against Wei. The executive director submits, relying on *Re Williams*, 2016 BCSECCOM 283, that the fact the entire investment scheme was a Ponzi scheme is an aggravating factor against all respondents.

[11] The executive director notes that the combined total lost by investors connected to British Columbia was approximately US$1,152,000 and that the fraud of any person who raises capital from investors impacts on the trust that potential investors may have in honest and credible capital raisers.

[12] The executive director submits that all of the respondents committed securities fraud and cannot be trusted to participate in the public markets. He submits that a significant sanction is required to achieve the objectives of ensuring that the respondents and others will be deterred from engaging in similar conduct.

[13] The executive director submits that our sanctions order should be proportionate to the misconduct and the circumstances of each participant.

[14] The executive director directed us to precedents involving fraudulent Ponzi schemes in which administrative penalties of many millions of dollars were imposed against the individuals who created and implemented the frauds. In those cases the administrative penalties generally exceeded the funds raised by the fraudulent conduct. That is presented as the upper range of the administrative penalties that we might impose. The executive director referenced lesser administrative penalties in the $100,000 to $150,000 range in *Re Natural Bee Works Apiaries Inc.*, 2019 ONSEC 31, and *Re Bezzaz Holdings*, 2020 BCSECCOM 263, imposed on people who participated in the fraud of another person but lacked actual knowledge of the fraud or did not benefit from it.

[15] The executive seeks broad and permanent section 161(1) prohibitions under section 161(6) against Filho, DFRF and Valdes.

[16] In addition to broad and permanent market prohibitions against the BC Respondents, the executive director seeks the following sanctions against

Wei:

- permanent broad market prohibitions;
- a $600,000 administrative penalty; and
- a $660,422 disgorgement order, being the Canadian dollar equivalent of the amount she directly or indirectly obtained when she directed several DFRF investors to wire funds to an account she exclusively controlled

Law:

- permanent broad market prohibitions or for a minimum period of 15 years; and
- a $100,000 administrative penalty

Villarin:

- permanent broad market prohibitions or for a minimum period of 15 years;
- a $100,000 administrative penalty; and
- a $15,718 disgorgement order, being the Canadian dollar equivalent amount that he directly or indirectly obtained from the DFRF entities and from DFRF investors who sent interact e-transfer to his personal bank account.

[17] In addition, the executive director seeks a joint and several order under section 174 of the Act that the BC Respondents jointly and severally pay $38,000 for the costs related to the hearing.

[18] Wei emphasizes that very few people who heard presentations from Wei made investments after hearing her speak and in those cases the amounts of new funds invested were very limited. Wei submits that the vast majority of people who participated in Filho's Ponzi scheme did so based on pre-existing relationships they had with the leaders of DFRF Canada and not based on communications from Wei.

[19] Wei submits that orders under section 161(1)(g) are not supportable for a number of reasons including:

a) Wei did not obtain or retain the benefit of the payments in question,
b) the investors whose funds were re-directed towards Pony Mountain related entities received the membership interests in DFRF that they expected to receive, and

c) funds received by Wei may have been used to reimburse Wei for expenses (referencing *Re Keller*, 2022 BCSECCOM 29).

[20] Wei notes that she provided a detailed accounting to show the flow of funds received into the account she had signing authority over, that she attempted to recover funds from DFRF after the fraud was publicly reported, that she did not receive any compensation, that she has no prior record of securities infractions, and that she has personally suffered as a result of Filho's conduct.

[21] Wei submits that she lacks sufficient funds to pay a significant financial sanction and Wei has provided some evidence in support of that proposition. Her evidence consists of an affidavit attaching a financial statement showing her monthly income and expenses and her current debts and liabilities. The liabilities referenced are very substantial, amounting to many millions of dollars. Wei also provided some records supporting the existence of some of her debts and an affidavit from a creditor supporting the existence of some of her debts.

[22] Villarin's submissions emphasize the arguments he made during the liability hearing to the effect that he was duped by Filho's fraud and he did not have actual knowledge of the fraud. Villarin submits that his efforts to downplay the red flags to other investors is explained by his lack of belief that a fraud was occurring. Villarin says that he has "learned a big lesson," that he has suffered significant personal and reputational loss as a result of his involvement in DFRF and that he is "embarrassed to have been duped into defending a company that I hoped was real."

[23] Villarin submits that he has no financial resources to pay a large financial sanction. Villarin did not provide evidence regarding his financial situation.

[24] Law's submissions begin with some acceptance of responsibility. He says "I do not take the results of the DFRF debacle lightly in any way shape or form. My involvement will always be an embarrassment and a stain upon my conscience."

[25] Law submits that he did not sponsor any members into DFRF and he did not collect any compensation of any kind. Law submits that his intent in getting involved was mostly social and reflected a desire to help his friends. He submits that he did make it clear to others that the statements he made reflected his prior personal experiences unrelated to DFRF.

[26] Law submits that he has no history of misconduct.

[27] Law submits that his involvement in the Filho fraud, and even in presentations such as the Fairmont Pacific Rim Hotel Presentation, was limited. Law challenges the findings in the Decision regarding the extent of his actual and intended role during such presentations.

[28] Law references the finding that there was not sufficient evidence to conclude that he had actual knowledge of the Filho fraud, which separates Law from the other respondents.

Law also distinguishes himself from the former respondents who settled before the hearing. Law characterizes the conduct of those former respondents as more serious than his own, especially when it is acknowledged that the former respondents introduced numerous investors to the Filho fraud and Law did not.

[29] Law submits that he has limited financial means and provided his 2019 CRA Notice of Assessment to substantiate his submission. Law submits that he currently works as a handyman and lives in his mother's basement.

[30] Law proposes that any order against him be limited to a three year market ban, a $1,500 administrative penalty and an order to pay $1,000 in costs.

III. Analysis

A. Introduction

[31] It is important to note that we did not conclude that each element of fraud (the *mens rea* and *actus reus*) was proven against all respondents. We found that each element of fraud was proven against Filho. We found that Valdez aided Filho and that DFRF was used in the fraud. We found that Wei and Villarin participated in Filho's fraud, initially during a period when they should reasonably have known Filho's conduct was fraudulent and later with actual knowledge that Filho's conduct was fraudulent. We found that Law participated in Filho's fraud when he should reasonably have known Filho's conduct was fraudulent. Those findings against the BC Respondents are very serious, as we note below, but they are different from the findings of fraud which were made against Filho.

B. Application of the factors

Seriousness of conduct

[32] It is a very serious matter when a respondent participates in a fraud at a time when he or she should reasonably have known of the fraud. It is a more serious matter when a respondent participates in a fraud with knowledge of the fraud. It is an even more serious matter to organize and conduct a fraud with the deceitful intent that is an inherent element of fraud.

[33] Although Law's conduct was the least serious of all respondents because it was not shown that Law had knowledge of the fraud, Law's conduct was still quite serious. We acknowledge Law's submissions regarding the absence of any financial benefit to him arising from his support of DFRF and we agree that Law's submission is consistent with the evidence. However, we do not accept certain other of Law's submissions related to the seriousness of Law's conduct. Having reviewed the presentation made by Law and having heard from him that his other presentations were consistent in content, we simply do not accept Law's contention that he was careful to differentiate Law's historical experience from what investors could expect from DFRF. As we explained in more detail in the Findings, the words actually spoken by Law would naturally be taken by any audience as an endorsement for the description that gold was so plentiful in the region where DFRF was claiming to earn its revenue that the enormous returns DFRF appeared to be offering were plausible. It is that particular conduct by Law which is the most serious and leads to our orders against him.

[34] The DFRF fraud created many dozens of victims in British Columbia after the first moment when Law should reasonably have known that he was participating in a fraud. Ponzi schemes such as the Filho fraud not only cause losses to individual investors, they undermine the public's faith in financial markets. We agree with the executive director's submissions, noted above, on the applicability of *Re Bai* and *Re Manna Trading Corp*. regarding the seriousness of fraud and Ponzi schemes on markets. There is no suggestion that Law intended those serious outcomes, but his breach of the Act contributed to those outcomes.

[35] Villarin's conduct was more serious than Law's because, for most of the relevant period, Villarin had actual knowledge of the fraud. We recognize that Villarin continues to assert his lack of knowledge. However, the Findings are clear on this point and, in this case, there is neither a procedural basis nor an evidentiary basis to reconsider those findings. Villarin had the requisite knowledge.

[36] This requisite knowledge is a full answer to Villarin's submission that his lack of knowledge explains why he was willing to convince investors to dismiss warnings and concerns about the Filho fraud. Villarin's role in Filho's fraud was in some respects clerical. However, he assisted those who had more of a leadership role in Filho's fraud, his actions were persistent throughout the relevant period, he personally recruited a number of investors who invested in DFRF and he sought payment of commissions from DFRF for his work. In fact, as is discussed further below, in one instance Villarin received a bonus of US$10,000 from Filho and, in another case, Villarin refused to return $2,000 to an investor because Villarin claimed those funds himself for commissions which DFRF had promised to pay him.

[37] In common with Law, and to a greater extent because of his higher level of knowledge, Villarin's conduct is serious because of the harm which resulted to individual investors and because fraudulent Ponzi schemes undermine confidence in financial markets.

[38] Wei's conduct was more serious than either Law's conduct or Villarin's conduct. As our Findings establish, Wei took on the role of a leader and coordinator for the DFRF fraud in British Columbia. She did so during a period when she should reasonably have known of the fraud and she continued after she had actual knowledge of the fraud. That is very serious conduct, and our prior comments regarding how it impacted not simply the individual investors involved but put at risk the public's confidence in the financial markets also apply in the case of Wei.

[39] Wei's submissions regarding sanctions focus, as they did to a significant degree in the liability phase, on the limited ability of the executive director to attribute specific investment decisions to presentations made by Wei. These submissions have some weight. Certainly the case against Wei would have been more serious if it had been established that a significant proportion of DFRF investors invested based directly on presentations made by Wei. However, these submissions miss the main point. Wei helped refine what British Columbia based presentations should look like. She organized presenters, she coordinated with Filho and his accomplices, she placed herself at the front

of the room as an authority figure, and she emphasized her own credibility in support of Filho's efforts to extract investment funds from British Columbia based investors.

[40] Wei's conduct was quite serious, even without a finding that Wei personally and directly influenced a significant number of investors' decisions to invest in DFRF.

[41] All of Filho, Valdez and DFRF acted together to conduct an international fraud which harmed many investors, including British Columbia based investors. Their conduct was brazen, calculated and persistent. The intent to deceive and to victimize anyone who could be motivated to invest was evident.

[42] We could continue with the characterization of the conduct of Filho, Valdez and DFRF but there is no need to do so. Our Findings throughout establish what has happened and establish that, to the extent permitted by section 161(6) of the Act, it is in the public interest that British Columbia markets and investors be shielded from Filho, Valdez and DFRF in the future.

Harm to investors

[43] The combined loss to British Columbia based investors totaled in the order of US$1,152,000. Some small portion of that loss may have been completely unconnected to the BC Respondents. Some small portion of that loss must have occurred before the BC Respondents became involved or had sufficient knowledge to have been in breach of the Act. However, the great majority of the losses incurred by British Columbia based investors were facilitated by the BC Respondents' conduct which we have found amounted to breaches of the Act..

[44] Several dozen investors have suffered financial losses. Many have lost faith in themselves and in financial markets in British Columbia. In addition, as some of the testimony of investors established, many who were victimized recommended DFRF to friends and family, who also lost money. There are significant impacts to people that go beyond just the economic losses, as family and other personal relationships have suffered as a result.

Enrichment of the respondents

[45] Filho benefited from the fraud. We do not know to what extent, if any, he shared the proceeds of the fraud with Valdez.

[46] There is no evidence that Law benefited from the fraud.

[47] Villarin kept an amount of $2,000 from an investor and Villarin was paid a bonus by Filho of US$10,000.

[48] Turning to Wei, the executive director submits that Wei received all funds deposited to the account over which she had signing authority. This panel found that Wei did not benefit from all those funds; rather, it found that $90,000 of those funds were paid either to Wei or on Wei's behalf to others in satisfaction of certain obligations of Wei. As a result, Wei personally benefited to that extent.

Aggravating factors

[49] We have addressed many factors above which might be considered aggravating factors regarding the seriousness of the conduct of the respondents. We will not repeat all those factors here.

[50] We note that Villarin had been previously registered to sell insurance products and mutual funds. We find, consistent with *Re Williams*, that prior registration is an aggravating factor.

Mitigating factors

[51] There are no mitigating factors. We have carefully considered all of the arguments of the BC Respondents and taken them into account. We have addressed the most significant arguments of these respondents above, under other headings.

Past Conduct

[52] None of the BC Respondents have breached the Act in the past.

Specific and general deterrence

[53] 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.

[54] 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."

[55] 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.

Prior decisions

[56] The executive director referred us to a number of previous cases involving Ponzi schemes, detailing the nature of sanctions imposed by securities commissions on both the perpetrators of Ponzi schemes, as well as "finders" who have not been found to have engaged in fraud. Generally speaking, the executive director emphasizes that fraud cases based on Ponzi schemes usually attract broad and permanent market prohibitions, and

significant administrative sanctions similar in magnitude to the amount of money raised. Among others, the executive director referred us to *Re Williams* and *Re Bezzaz*.

[57] Regarding the respondents Wei, Law and Villarin, the executive director submits that the most relevant cases are the Ontario Securities Commission sanction decision against Tawlia Chickalo in *Natural Bee Works Apiaries Inc. (Re)*, 2019 ONSEC 31(CanLII), and this Commission's sanction decision against Kevin Liao in *Re Bezzaz*. In *Natural Bee Works*, the OSC sanctioned Chickalo for participating in the fraud of another person by repeating the claims of another, in a similar manner as the BC Respondents in this matter. The OSC made permanent market orders against Chickalo, even though her conduct was less egregious than the main perpetrator. The OSC further made a disgorgement order in the amount received by Chickalo and imposed a $150,000 administrative sanction on Chickalo.

[58] The executive director submits that *Bezzaz* is particularly relevant with respect to Villarin and Law. The respondent Liao earned commissions, breached section 34 of the Act by selling securities to investors, and breached section 57(b) of the Act for a single $50,000 transaction. The Commission deemed his conduct less egregious than the perpetrator of the Ponzi scheme as Liao had no knowledge of the Ponzi scheme and did not directly benefit from the misappropriation of investor funds. The Commission imposed market prohibitions on Liao for 15 years, disgorgement of the compensation he received, as well as a $100,000 administrative penalty.

[59] Law submits that the former respondents who settled prior to the hearing were given substantially lower sanctions than those sought by the executive director in these proceedings, ranging from 8 to 10 year market prohibitions, disgorgement orders, and monetary sanctions of $6,500 on the low end, and $35,000 on the high. He further submits that the executive director is not seeking an administrative sanction against Filho and Valdes, the main perpetrators of the underlying fraud, even though the Commission has in the past imposed monetary sanctions against persons who did not appear at the hearing, citing *Re Basi* 2011 BCSECCCOM 573. Law submits that any sanction imposed against him should be proportionate to that imposed against Filho and Valdes in these proceedings, or in the alternative, a monetary penalty of $1,500.

[60] Wei submits that after weighing her conduct relative to those of the former respondents who settled before the hearing, an appropriate set of sanctions against her would be: three-year broad market bans, no disgorgement order, $6,500 in administrative penalty, and $12,000 in costs.

Legal test for reciprocating orders

[61] As outlined in the liability decision, section 161(6)(b) allows the Commission to rely on findings of courts in other jurisdictions made against persons who have contravened the laws of that jurisdiction respecting the trade of securities or derivatives. Where the requirements of section 161(6)(b) are met, and it is in the public interest, the Commission may issue orders without the need for inefficient parallel or duplicative proceedings in British Columbia or before the Commission.

[62] Requirements of section 161(6)(b) include affording the parties an opportunity to be heard. Filho, Valdes and DFRF did not participate in this hearing.

[63] It is noteworthy in this instance to point out the restriction inherent in applications for orders under section 161(6) of the Act. The Commission does not have the jurisdiction to impose monetary sanctions under section 162 of the Act on a respondent as part of a reciprocal order under section 161(6). Remedies are limited to those under section 161 of the Act. As a result, the executive director has not asked for, nor could we impose, a monetary sanction against Filho, Valdes and DFRF in these proceedings.

[64] Filho was found guilty by a court in the United States of orchestrating a sophisticated securities fraud, using the two DFRF entities, that significantly harmed investors in British Columbia. Valdes helped him in carrying out this fraud. As the purpose of section 161(6) is to ensure that those who take advantage of the investing public in other jurisdictions are prevented from doing so in British Columbia, we find that it is appropriate to order permanent market prohibitions against Filho, Valdes, and the DFRF entities.

C. Section 161(1)(g) orders and costs

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

> if a person has not complied with this Act, ... that the person pay to the commission any amount obtained ... directly or indirectly, as a result of the failure to comply or the contravention.

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

> 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).
>
> 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.

[67] The Court of Appeal in *Poonian* also summarized some principles that are relevant to section 161(1)(g) orders, including the following:

> (a) The purpose of s. 161(1)(g) is to deter persons from contravening the Act by removing the incentive to contravene, i.e., by ensuring the person does not retain the "benefit" of their wrongdoing.
>
> (b) The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the Act, such as the claims process set up under Part 3 of the Securities Regulation or the s. 157 compliance proceedings in the Act.

(c) There is no "profit" notion, and the "amount obtained" does not require the Commission to allow for deductions of expenses, costs, or amounts other persons paid to the Commission. It does, however, permit deductions for amounts returned to the victim(s).

(d) The "amount obtained" must be obtained by that respondent, directly or indirectly, as a result of the failure to comply with or contravention of the Act. This generally prohibits the making of a joint and several order because such an order would require someone to pay an amount that person did not obtain as a result of that person's contravention.

[68] Finally, the Court of Appeal in *Poonian*, approved an approach to determining the amounts obtained, directly or indirectly, by a respondent that requires the executive director to provide evidence of an "approximate" amount, following which the burden of proof switches to the respondent to disprove the reasonableness of this number.

[69] Regarding Wei, the executive director submits that it is appropriate to make a disgorgement order in the amount of $481,428, as this is the amount of money wired to an account in Vancouver by investors that Wei had control over. The funds were for purchases of DFRF memberships and the payees were credited by DFRF as memberships. We agree with the executive director that, in applying the test outlined above, the question at issue is whether Wei "obtained" this amount as a result of her contravention of section 57(b) of the Act, and, if so, is it in the public interest to make an order in that amount.

[70] We agree with most of the analysis of the executive director. The money at issue was wired to an account where Wei was the only person with signing authority and had control over the transactions in that account. We agree that in the first step of the two step analysis outlined in *Poonian*, these facts are sufficient to establish that Wei obtained, either directly or indirectly, this amount. But while there may be circumstances in future where similar facts warrant an order under section 161(1)(g), we find that in this instance, it is not in the public interest to make an order of that magnitude under the second step of the *Poonian* analysis. As described in the Findings, DFRF authorized Wei to redirect these funds as she did, and the payees did receive the DFRF membership interests to be purchased with the funds. Wei did not benefit personally from these funds, in that she did not acquire, spend or otherwise use them personally. In these circumstances we do not find that it is in the public interest for Wei to disgorge this amount.

[71] However, we do find that is in the public interest to order under section 161(1)(g) that Wei pay $90,000, which is the portion of the $481,428 that Wei took from the account to use for her own purposes including for the purposes of reducing personal obligations to others. We agree with the executive director that regardless of whether these $90,000 in withdrawals were authorized by Filho or DFRF, they still represent funds that Wei obtained as a result of her contravention of the Act.

[72] Similarly, Villarin received US$10,000 as a bonus payment for recruiting DFRF investors, and a $2,000 e-transfer for a DFRF membership directly from an individual investor. Both these amounts were obtained as a result of Villarin's contravention of the

Act, and it is in the public interest to order that he disgorge those amounts under section 161(1)(g). We find that the aggregate amount of that order, based on the Canadian dollar equivalent at the time of the submissions, is $15,718.

[73] Finally, there remains before us the issue of costs against the BC Respondents. Although the hearing was long and sometimes strayed into irrelevant issues, the BC Respondents were self-represented and appeared to do their best to focus on the issues at hand. In addition, not all of the allegations were proven. Specifically, the second fraud allegation against Wei was not proven, the full amount of disgorgement sought by the executive director against Wei is not being allowed. Knowledge of the fraud was not proven against Law. 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.

D. Appropriate sanctions

Market prohibitions

[74] We have outlined above, as well as in the liability decision, the seriousness of Wei's conduct.

[75] We found that Wei, an intelligent and financially savvy businesswoman, used her background and experience to influence the perceptions of both DFRF investors and prospective investors. She facilitated the DFRF fraud in British Columbia in a significant and material way. Starting in January 1, 2015, Wei was a leader in this province of the mass solicitation effort directed at unwitting investors. When subsequently faced with evidence that DFRF was a fraud, Wei continued with her promotion of the investment opportunity.

[76] In previous cases, this Commission has frequently imposed permanent market prohibitions on persons who engaged in fraud. The rationale is that fraud is the most serious misconduct outlined in the Act. The fraud in this matter was widespread and had permanent detrimental effects on numerous investors in the province.

[77] Throughout these proceedings, Wei denied her leadership role and failed to recognize how her activities advanced the fraud in British Columbia. We conclude that British Columbians will be put at risk if Wei were permitted to participate in our capital markets. However, we do not see any risk to the public to allow her to buy and trade securities for her own account as she requests.

[78] Given the foregoing, we find that it is in the public interest to order broad and permanent market prohibitions against Wei.

[79] While we found that Law's activities related to DFRF were more limited than Wei's, he similarly used his background and experience to present himself as a knowledgeable insider of DFRF. He represented that he had substantial knowledge and experience with respect to gold extraction and mining operations in Africa, lending credibility to a fraudulent investment opportunity.

[80] Throughout these proceedings, Law never acknowledged the impact that his willingness to be positioned as a person with specific knowledge and expertise likely had on those who, when inspired by his words and stories, grew more confident in the likelihood that their positive outlook on an investment in DFRF was well-founded.

[81] We have considered in this context whether less than permanent market prohibitions for Law would be appropriate. We conclude that risk to British Columbians will be reduced if Law is prohibited from participating in our capital markets for a material period of time. His involvement in the DFRF scheme was an important element to defraud as many residents of British Columbia as could be convinced.

[82] We agree with the submissions of the executive director that the sanctions imposed on Liao in *Bezazz* are informative. The Commission imposed a 15-year market ban on Liao. However, we find Law's conduct to be more egregious than Liao's conduct. Liao's breach of section 57(b) was in relation to $50,000 raised from a single investor, while Law's conduct contributed significantly to a US$1,152,000 fraud in British Columbia. We find it to be in the public interest to prohibit Law from participating in the capital markets of British Columbia for 20 years.

[83] Villarin played a significant role from the beginning of the DFRF fraud in British Columbia. He both supported the promotional efforts of others, and directly promoted DFRF to specific investors. His conduct was more serious than that of Law, as outlined above, given his actual knowledge of the fraud, his direct solicitation of investors, and his compensation from DFRF for those efforts.

[84] We conclude that risk to British Columbians will be reduced if Villarin is prohibited from participating in our capital markets for a material period of time. Given our findings and the factors outlined above, we find it in the public interest to prohibit Villarin from participating in the capital markets of British Columbia for 25 years.

Administrative penalties

[85] The executive director submits that any administrative sanction ordered against Wei should factor in the entire US$1,152,000 raised in British Columbia because Wei led the DFRF promotion in this province. The executive director submits that the appropriate penalty for Wei's conduct, given all the circumstances, is $600,000.

[86] Wei submits that an appropriate monetary penalty would be $6,500. She filed with the Commission materials to suggest she has significant and ongoing debts. The executive director argued that the evidence provided by Wei to support her submission that she is unable to pay an administrative sanction was significantly lacking, in that Wei chose not

to provide any bank statements, tax assessments, loan documentation, credit reports or list of historically held assets that one would expect to see in similar circumstances.

[87] The panel is not persuaded that it would be in the public interest to order a small administrative sanction, as suggested by Wei, where her conduct as outlined above, as well as previous cases addressing fraudulent conduct of a similar magnitude, demonstrate that a substantial monetary penalty should follow. Nor are we convinced that the evidence filed by Wei in support of her submission that she has substantial debt is persuasive. We agree with the executive director that in circumstances where a respondent submits that they are significantly indebted to a third party, records documenting the indebtedness including bank statements, loan documents and other similar records would be adduced in support. That is not the case before us. Instead, the minimal evidence provided by Wei regarding her debts raises more questions in our minds than it answers.

[88] The executive director filed with us past examples of Commission decisions where the amount of the administrative sanction reflected the amount raised under the guise of a Ponzi scheme. While DFRF raised US$1,152,000 from residents of British Columbia, we are mindful that Wei's role in the fraud was less than that of Filho, who orchestrated the fraudulent scheme where he diverted investor funds for other purposes. Given all the factors in this matter, and considering the public interest, we find that it is appropriate to order a $500,000 administrative penalty against Wei under section 162 of the Act.

[89] The executive director seeks a $100,000 administrative penalty against Law. Law submits that he should receive the same administrative penalty as Filho and Valdez in these proceedings, that is, no penalty. However, this ignores the manner that the proceedings were brought and the inability of the Commission to order an administrative penalty in matters brought under section 161(6) of the Act. In the alternative, Law proposes that a $1,500 penalty is appropriate.

[90] While Law's conduct was the least serious of the BC Respondents, as outlined above, it was an important element of the DFRF scheme, and still more significant than that of Liao in *Bezazz*. The Commission in that matter ordered Liao to pay a $100,000 administrative penalty. We find that it is appropriate, and in the public interest, to order a $150,000 administrative penalty against Law under section 162 of the Act.

[91] Similar to Law, the executive director seeks a $100,000 administrative penalty against Villarin. Villarin submits he cannot afford to pay a large administrative penalty, but did not provide any evidence to support this submission. Further, Villarin did not submit what, if any, monetary penalty would be appropriate given our findings.

[92] Of the three BC Respondents, we have found that Villarin's conduct was not as egregious as that of Wei, but more serious than that of Law. Relying on our findings discussed above, we find that it is appropriate to order a financial sanction against Villarin that is commensurate with the significant role he played in DFRF, as well as his direct solicitation of investors and his actual knowledge of the underlying fraud. We find that it

is appropriate, and in the public interest, to order a $200,000 administrative penalty against Villarin under section 162 of the Act.

IV. Orders

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

Wei

1. under section 161(1)(d)(i) of the Act, Wei resign any position she holds as a director or officer of an issuer or registrant;

2. Wei is permanently prohibited:

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

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

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

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

   (v) under section 161(1)(d)(iv) of the Act, 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) 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;

   (vii) under section 161(1)(d)(vi) of the Act, from engaging in promotional activities on her own behalf in respect of circumstances that would reasonably be expected to benefit her;

3. under section 161(1)(g) of the Act that Wei pay CDN$90,000 to the Commission, being the amount obtained, directly or indirectly, as a result of her contravention of section 57(b) of the Act; and

4. Wei pay the Commission an administrative penalty of $500,000 under section 162 of the Act.

Law

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

6. Law is prohibited until the later of February 28, 2043 and the date he pays the order under paragraph 7 below:

   (i) 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 and derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, if he gives the registered dealer or registrant a copy of this decision;

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

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

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

   (v) under section 161(1)(d)(iv) of the Act, 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) 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;

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

7. Law pay the Commission an administrative penalty of $150,000 under section 162 of the Act.

Villarin

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

9. Villarin is prohibited until the later of February 28, 2048 and the date he pays the order under paragraphs 10 and 11 below:

(i) 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 and derivatives for his own account (including one RRSP account, one TFSA account and one RESP account), through a registered dealer or registrant, if he gives the registered dealer or registrant a copy of this decision;

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

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

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

(v) under section 161(1)(d)(iv) of the Act, 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) 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;

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

10. under section 161(1)(g) of the Act that Villarin pay CDN$15,718 to the Commission, being the amount obtained, directly or indirectly, as a result of his contravention of section 57(b) of the Act; and

11. Villarin pay the Commission an administrative penalty of $200,000 under section 162 of the Act.

Filho

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

13. Filho is permanently prohibited:

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

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

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

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

(v) under section 161(1)(d)(iv) of the Act, 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) 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; and

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

Valdes

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

15. Valdes is permanently prohibited:

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

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

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

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

(v) under section 161(1)(d)(iv) of the Act, 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) 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; and

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

The DFRF entities

16. DFRF Massachusetts and DFRF Florida are permanently prohibited:

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

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

(iii) under section 161(1)(d)(iii) of the Act, from becoming or acting as a registrant or promoter; and

(iv) 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.

February 28, 2023

For the Commission:

Gordon Johnson
Vice Chair

Audrey T. Ho
Commissioner

James Kershaw
Commissioner

NOTICE: The orders made against DFRF Enterprises LLC (DFRF Massachusetts), DFRF Enterprises, LLC (DFRF Florida), Daniel Fernandes Rojo Filho, Heriberto C. Perez Valdes, Sabrina Ling Huei Wei, Justin Colin Villarin and James Bernard Law in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to them.