

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

Citation: Re Baynsworth, 2025 BCSECCOM 22

Date: 20250114

Baynsworth and Lloyd Holdings Inc. and James Michael Burnett

Panel	Audrey T. Ho	Commissioner
	Marion Shaw	Commissioner
	Jason Milne	Commissioner

Hearing date December 9, 2024

Ruling date December 9, 2024

Date of Reasons January 14, 2025

Parties

James Torrance	For the Executive Director
Will Fraser	

Reasons for Ruling

I. Introduction

- [1] On November 25, 2024, the executive director of the Commission issued a temporary order, 2024 BCSECCOM 480 (Temporary Order) against Baynsworth and Lloyd Holdings Inc. (Baynsworth) and James Michael Burnett (Burnett) (together, Respondents).
- [2] The Temporary Order prohibited certain activities relating to Baynsworth securities.
- [3] The Temporary Order was issued in response to evidence that the Respondents may be violating the registration requirements of the *Securities Act*, RSBC 1996, c. 418 (Act) and making representations prohibited by the Act, despite having received a warning from Commission staff regarding that conduct in 2022 and recent repeated requests from Commission staff to cease those activities.

II. Application for extension of the Temporary Order

- [4] On December 6, 2024, the executive director applied to extend the Temporary Order (Extension Application).
- [5] The executive director provided notice of the Extension Application hearing to the Respondents. Neither attended the hearing and neither provided any evidence or submissions for our consideration.
- [6] On December 9, 2024, we heard the Extension Application and extended the Temporary Order for one year, pursuant to section 161(3) of the Act (2024 BCSECCOM 508), with reasons to follow.
- [7] The terms of the Temporary Order, as extended, are that until December 9, 2025:
 - a) under section 161(1)(b)(i), all persons cease trading in securities of Baynsworth;

- b) under section 161(1)(d)(v), Burnett is prohibited from engaging in promotional activities by or on behalf of Baynsworth or on behalf of another person that is reasonably expected to benefit from promotional activity relating to securities of Baynsworth;
- c) under section 161(1)(d)(vi), Baynsworth is prohibited from engaging in promotional activities on Baynsworth's own behalf in respect of circumstances that would reasonably be expected to benefit Baynsworth; and
- d) under section 161(1)(e)(i), the Respondents are prohibited from disseminating to the public, or authorizing the dissemination to the public, of any information or record relating to securities of Baynsworth.

[8] These are our reasons.

III. Background

- [9] Baynsworth was incorporated in British Columbia by Burnett on December 5, 2017. It was dissolved on December 4, 2023 for failure to file.
- [10] Burnett was its sole director according to the last filing with the BC Registry Services.
- [11] The Respondents have never been registered under the Act. They have never filed with the Commission a prospectus, an offering memorandum or a report of exempt distribution.
- [12] In July 2022, the Commission received a complaint regarding the Respondents. Via a Baynsworth website (First Website), Baynsworth was offering various "structured deposit programs" to depositors that would generate monthly returns ranging from 0.29% to 1.04%, with a 100% money back guarantee. Enforcement staff at the Commission contacted the Respondents and expressed concerns about some of the language used on the First Website with regard to those programs. They also told the Respondents to consider getting legal advice to verify that their activities and what they were offering were not captured by the Act. Burnett assured enforcement staff that Baynsworth did not advise people, sell securities or have any investors. Enforcement staff did not pursue formal enforcement action after Burnett removed the First Website in September 2022.
- [13] In August 2024, the Commission received a second complaint regarding the Respondents. The anonymous complainant said a family member had invested tens of thousands of dollars with Baynsworth for the past seven years and never saw a return on their investment. The complainant alleged that the Respondents were soliciting investments using high-pressure tactics and were preying on the financially unsophisticated.
- [14] Upon investigation, enforcement staff found evidence that the Respondents were illegally distributing securities, promoting securities without being registered, and making false or misleading statements while they were engaged in promotional activities, all in contravention of the Act. Enforcement staff asked the Respondents to cease their activities but the Respondents did not fully comply.
- [15] In support of the Extension Application, the executive director tendered extensive affidavit evidence regarding the Respondents' past and current activities. We describe key elements of that evidence in section V below.

IV. Applicable law

- [16] A panel of this Commission in *Re GSPartners*, 2024 BCSECCOM 127 reviewed the applicable law on making and extending temporary orders, illegal distributions, unregistered trading and prohibited representations.
- [17] We concur with that panel's statements on the applicable law, and have quoted them extensively below:

Making and extending temporary orders

- [14] Section 161(2) - (4) of the Act address temporary orders and extensions of those orders:

- (2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without providing an opportunity to be heard, to have effect for not longer than 15 days after the date the temporary order is made.
- (3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without providing an opportunity to be heard, make an order extending a temporary order until a hearing is held, and a decision is rendered.
- (4) The commission or the executive director, as the case may be, must send written notice of every order made under this section to any person that is directly affected by the order.

- [15] There is no bright-line test for determining whether an extension sought by the executive director under section 161(3) of the Act is appropriate. As stated by the Commission in *Fairtide Capital Corp.*, 2002 BCSECCOM 993 at paragraph 29:

In our view, there is no bright line test. The Commission considers evidence using its expertise and specialized understanding of the markets and the securities related activities it supervises, to determine what is in the public interest in any given circumstance.

- [16] In *Re Minnie*, 2004 BCSECCOM 677, the Commission set out the test to be met in extending a temporary order where, as here, there are allegations that the respondents have contravened a specific provision in the Act:

22 Staff must produce evidence for the commission independently to assess whether there is *prima facie* evidence of the misconduct alleged and whether, in the circumstances, the extension is necessary and in the public interest. The evidence must be more than staff's opinion or belief, given under oath, that a respondent breached the legislation or acted contrary to the public interest.

- [17] Black's Law Dictionary, 11th edition, has defined "*prima facie*" as follows:

Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue...

[18] As stated in *Re Zhang*, 2023 BCSECCOM 304, the term “*prima facie*” is used to characterize something as being accepted on its face unless disproved. Generally, *prima facie* evidence means evidence sufficient to establish a fact until the contrary is proven.

[19] The panel in *Zhang* pointed to the importance of the protection of the public in the use of tools such as temporary orders. At paragraphs 7 and 8, they said:

...the regulatory context is important when considering temporary orders. A temporary order is a regulatory tool given to the commission.

The Act is a regulatory statute with a public interest mandate, and its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. The public interest purpose in imposing regulatory enforcement orders is neither remedial nor punitive, but protective and prospective in nature. These powers are intended to prevent likely future harm to the integrity of our capital markets.

A. Notice to the Respondents

[18] As stated in subsections 161(2) and (4) of the Act, the executive director is not required to provide notice prior to issuing a temporary order or bringing an application to extend a temporary order. He is, however, required to provide notice once an order has been issued.

[19] Section 180 of the Act allows for notice by personal delivery, mail or email. Emails must be sent to the latest address known for the person to whom the executive director is giving notice.

B. Distribution requirements

[20] Section 61(1) of the Act provides:

61(1) Unless exempted under this Act, a person must not distribute a security unless

- (a) a preliminary prospectus and a prospectus respecting the security have been filed with the executive director, and
- (b) the executive director has issued receipts for the preliminary prospectus and prospectus.

[21] In section 1(1) of the Act, “security” is defined to include, in sub-paragraph (l), “an investment contract”.

[22] “Investment contract” is not defined in the Act. The seminal case on its definition is *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 SCR 112 (SCC), where the Supreme Court of Canada defined an “investment contract” as “an investment of money in a common enterprise with profits to come solely from the efforts of others”.

[23] As stated by this Commission in *Re Wong*, 2016 BCSECCOM 208 (para 169), the Supreme Court recognized that “common enterprise” means “one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties”, and “solely” means “whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise”.

[24] On what constitutes a “common enterprise”, the Supreme Court also said, at pages 129-130:

In my view, the test of common enterprise is met in the case at bar. I accept respondent’s submission that such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor’s role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words, the “commonality” necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves.

[25] In section 1(1) of the Act, “distribution” is defined as follows:

“**distribution**” means, if used in relation to trading in securities,

(a) a trade in a security of an issuer that has not been previously issued,

...

[26] In section 1(1) of the Act, “trade” is defined to include:

(a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt or other obligation,

...

(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e.2).

[27] A person relying on an exemption from the prospectus requirements has the onus of proving that the exemption is available. See *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 163, paras 36-38.

C. Registration requirements for trading

[28] Section 34(1) of the Act requires that persons who trade in securities be registered. It states:

34(1) A person must not

(a) trade in a security or derivative,

...

unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity.

[29] In *Re Liu*, 2018 BCSECCOM 372 at paragraph 78, the panel noted that there have been a number of decisions of the Commission and other securities regulatory authorities across the country with respect to what specific conduct might constitute “acts in furtherance” of a trade.

The panel cited *Re Rezwealth Financial Services Inc.*, 2013 ONSEC 28 at paragraph 213, where the Ontario Securities Commission said that:

...trading is a broad concept which includes any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition.

[30] At paragraph 214 of *Rezwealth*, the Ontario Securities Commission listed a number of activities that constitute acts in furtherance of a trade. They include:

- a) distributing promotional materials concerning potential investments; and
- b) preparing and disseminating materials describing investment programs.

[31] To establish a breach of section 34(1)(a), the executive director must prove that a respondent's conduct constituted a trade. The onus then shifts to the respondent to establish an exemption from the requirement to be registered. See: *Liu*, para 106.

D. Prohibited representations

[32] Section 50(3) of the Act addresses prohibited representations:

50(3) A person engaged in a promotional activity must not make a statement or provide information

- (a) that a reasonable investor would consider important in determining whether to purchase, not purchase, trade or not trade a security if the statement or information, at the time and in light of the circumstances in which the statement is made or the information is provided,
 - (i) is false or misleading, or
 - (ii) omits a fact necessary to make the statement or information not false or misleading.

...

[33] Section 1(1) of the Act defines "promotional activity" to mean:

any activity, including, for greater certainty, any oral or written communication, that by itself or together with one or more other activities encourages or reasonably could be expected to encourage a person

- (a) to purchase, not purchase, trade or not trade a security, or
- (b) to trade or not trade a derivative,

...

V. The position of the executive director

[34] The executive director submitted that the evidence before us constitutes *prima facie* evidence that the Respondents have contravened and are continuing to contravene the following provisions of the Act:

- a) section 61, by distributing securities without proper filings and without an exemption;

- b) section 34(1)(a), by promoting investment contracts without being registered and without an exemption; and
- c) section 50(3)(a) of the Act, by making false or misleading statements about guaranteed annual returns on investment and the review of Baynsworth “programs” by a lawyer.

[35] The executive director submitted that it is both necessary and in the public interest for this panel to extend the Temporary Order.

A. Evidence tendered by the executive director

[36] We highlight in this section key evidence tendered by the executive director, none of which was disputed.

[37] The executive director tendered evidence that the Respondents are soliciting investors through a website hosted by Squarespace (Current Website), Google posts and a WhatsApp business account (together, the Promotional Channels).

[38] The Current Website contains statements that Baynsworth:

- a) is “one of Canada’s leading economic development houses” that “offers government contract procurement solutions, and through our profit-sharing approach, we help our clients thrive and flourish in a stable world class economy”;
- b) “offer [sic] you a sound secure way of working within a group to maximize the group power and growth by focusing on government contracts in your program selection. Yes we sell you access to our programs and inturn we find and bid contracts matching your program and industry. The decision is yours and everyone starts somewhere”.

[39] The Current Website sets out the following investment programs, with annual rates of return ranging between 7.2%-18.3% and a 100% money-back guarantee:

Name	Synergy	Green Tree	C.O.R.E
Description	Synergy ... Good choice this is a program that guides and delivers results for startup depositors looking to maximize their beginning deposit	Green Tree is a fantastic building block for the future offering strong and vibrant growth and a foundation you can build on	Core is your hard hitting support when you need it most and amplifies the best of structured deposits and how important they will be in the future
Deposit accepted	Min \$100,000	Min \$250,000	Min \$1 million
Deposit rate (annual)	7.2%	10.5%	18.3%

[40] Google search results for Baynsworth’s business listing revealed multiple posts from Baynsworth between December 2021 and May 2024 promoting events and investment opportunities.

[41] The Current Website contains an invitation to contact Baynsworth for an information kit. In response to a covert enquiry by a Commission investigator acting under an alias, the investigator was sent a welcome kit and a link to Baynsworth’s WhatsApp business account.

[42] The welcome kit contained documents describing Baynsworth’s business, “programs”, money-back guarantee, security agreement and promissory note. One document was a 2023 report that stated, among other things:

- a) Overview: Baynsworth and Lloyd Holdings is an established economic development house.
- b) Specifications: Baynsworth and Lloyd Holdings Inc. works with our depositors to grow their deposit and help to offset their future endeavours
- c) Our Team and Talent: Our Lawyers – [lawyer’s name redacted].
- d) Program Protection: Your principal is converted into GIC form and then held for the length of your term and helps facilitate the higher value contracts bid process. All deposits are held on a (1) one year to (3) year term.

[43] Baynsworth’s WhatsApp business account had a product catalogue which described the following five “programs” offered by Baynsworth, all with one-year terms:

Name	5 on 5 Introduction	Synergy	Green Tree	C.O.R.E.	Carbon Tax Offset 2024
Description	Welcome to the world of Government contract profit sharing. Our new 5 on 5 program offers a 5% return on \$5000.00 for one year. The best part is refer your friends and get \$150 for each friend that joins. That's a Deal.	Synergy is a fantastic program with the advantage to meld into everyday life.	Green Tree offers a sustainable opportunity for everyday families and the environment	C.O.R.E. offers you the best of the profit sharing program with a foundation to grow on	As well [sic] all know the government is raising the Carbon tax across the board from almost everything you buy. You name it and it's taxed. Enough is enough. Do you want great returns? Yes Not seeing them with others? Yes. Do you want \$1000 dollars per month? Yes This is why Baynsworth and Lloyd Holdings Inc is stepping in to help.
Deposit accepted	Min \$5,000	Min \$20,000	Min \$50,000	Min \$100,000	Min \$40,000 to Max \$500,000
Deposit rate (annual)	5%	6% (0.5% monthly)	9% (0.75% monthly)	12% (1% monthly)	Flex rate 10% to 18% cap

- [44] Burnett corresponded with the undercover Commission investigator via Baynsworth's WhatsApp business account. Burnett told the investigator that:
- a) "Our starting rate of return is 10% a year up to 22% based on your needs";
 - b) "All of our programs are only a one year term. We guarantee your fund and rate for the whole term";
 - c) "Your 10% rate begins at 20k that a one year term";
 - d) "All of our programs go through our lawyer. His name is [redacted but Burnett named the lawyer listed in the welcome kit] in Vancouver"; and
 - e) "All your money is guaranteed [lawyer's name redacted] our lawyer will take care of those".
- [45] On September 3, 2024, the Commission investigator emailed the Respondents (Formal Letter) using his true identity, and asked the Respondents to voluntarily take down the Promotional Channels by September 6, 2024. That was not done by September 9 and multiple phone calls to Baynsworth's WhatsApp business phone number were not answered.
- [46] Through WhatsApp correspondence between September 9 and 12, Burnett confirmed receipt of the Formal Letter. Burnett said he would "make the adjustments that the investigator recommended", that he "has spoken with Baynsworth's IT teams" and everything "is getting scrubbed", that the "site is not active" and "everything will be down before your deadline".
- [47] On September 13, the investigator emailed Baynsworth's email address asking Burnett to provide records showing that the Current Website and Baynsworth's Google business posts have been removed, and to confirm that Baynsworth has stopped accepting client funds for its "programs", both by September 16.
- [48] By September 16, Burnett had not responded to the investigator's request. The investigator found the Current Website to be still active and the content unchanged, but the rest of the Promotional Channels had been removed.
- [49] On October 7, the Commission investigator contacted the Vancouver lawyer named in Baynsworth's welcome kit. The lawyer said that although Burnett had visited his law firm in July 2023 to ask if the firm was available to provide legal services to review documents, he and the law firm were never retained to act for either of the Respondents.
- [50] In response to a demand for production of records by enforcement staff, Burnett communicated with staff on November 22 and met with them on December 3. Burnett told staff:
- a) "I have nothing to do with the sale or promotion of any type of stock bonds or anything like that at all";
 - b) "I don't even have any investment let alone investors about any type of security";
 - c) Baynsworth does not deal in securities like "stocks and bonds and mutual funds";

- d) he removed the Current Website “months ago”; he spoke with Google and Squarespace who told him that it is a “ghost link” and it would take 72 days for the website to be completely scrubbed from the Internet;
- e) the Current Website’s “Google Analytics” would be available in three to four days and that would show there has been no activity on the website.

- [51] At the December 3 meeting, enforcement staff told Burnett to seek his own legal advice, but explained that “securities” encompass more than just stocks and bonds and mutual funds, and it was staff’s view that the programs Baynsworth offered on the Current Website were securities. Enforcement staff also asked Burnett to produce the Google Analytics report, evidence of contact with Google and Squarespace, and certain other records. There is no evidence before us that he has done so.
- [52] Commission investigators found the Current Website was still active and the content unchanged as of December 5, 2024.

VI. Analysis and Conclusions

A. Notice to the Respondents

- [53] The executive director emailed a copy of the Temporary Order to Baynsworth at the email address he had for Baynsworth (Baynsworth Email Address). Counsel for the executive director advised the panel that it is the only email address for Baynsworth known to the executive director.
- [54] The executive director sent a copy of the Temporary Order to Burnett by various means, including to the email address he had for Burnett, to Baynsworth’s WhatsApp telephone number, and through five unsuccessful attempts at personal delivery. Burnett subsequently confirmed to a Commission investigator that he had received the Temporary Order, which was given to him again when he attended the Commission’s office on December 3, 2024.
- [55] The executive director emailed to the Respondents at their respective email addresses a copy of the Extension Application and supporting materials, and notice of the Extension Application hearing date, time and location. On the same day, the Commission received an email response from the Baynsworth Email Address confirming receipt.
- [56] The evidence indicates that Burnett used the Baynsworth Email Address to communicate with Commission staff as recently as late November 2024.
- [57] As a result, we are satisfied that the executive director has provided notice of the Temporary Order and the Extension Application to the Respondents, in accordance with s. 180 of the Act.

B. Requirements underpinning the Extension Application

- [58] To succeed in the Extension Application, the executive director must show that:
- a) there is *prima facie* evidence of one or more breaches of the Act;
 - b) it is necessary to extend the Temporary Order; and
 - c) it is in the public interest to extend the Temporary Order.

**C. Is there prima facie evidence of breaches of the Act?
Is there a security?**

- [59] “Security” as defined by the Act encompasses more than the common types of securities such as stocks, bonds and mutual funds. It includes an “investment contract” as defined in *Pacific Coast Coin Exchange*.
- [60] The nature of Baynsworth’s business and how it purports to make money from its programs for depositors are not clear or well described on the Current Website, in the welcome kit or in the other materials for potential depositors. Some of the content is nonsensical. But what information there is points to a common enterprise between a depositor and Baynsworth. A clear illustration of that comes from the Current Website:

Baynsworth and LLoyd [sic] offer [sic] you a sound secure way of working within a group to maximize the group power and growth by focusing on government contracts in your program selection.

Yes we sell you access to our programs and inturn we find and bid contracts matching your program and industry.

The decision is yours and everyone starts somewhere.

- [61] What is clearly and consistently indicated, is that in return for depositing money with Baynsworth under these programs, a depositor can expect to receive a specified rate of return paid yearly. What is also clear is that there is no requirement for the depositor to do anything else to earn that return.
- [62] Given that, the evidence establishes, on a *prima facie* basis, that a deposit of money with Baynsworth is an investment in a common enterprise with the Respondents, from which the depositor expects to earn a profit (the guaranteed rate of return) from the efforts of the Respondents.
- [63] We therefore find, on a *prima facie* basis, that a deposit with Baynsworth meets the definition of “investment contract” and is a “security” under the Act.

Illegal distribution

- [64] The executive director acknowledged that the information in the second complaint is not corroborated in terms of the identity of the investor, the lack of returns, and the actual investment of funds. But he submitted that the complainant’s information is consistent with investing with the Respondents in the general manner described on the Current Website, and is *prima facie* evidence of a distribution of at least one security.
- [65] The second complaint states that the complainant’s family member has invested with Baynsworth for the past seven years, and that Baynsworth “is seeking long and short term investments that promise to pay high rates of interest.”
- [66] The complaint, although not very informative, is evidence that someone did in fact invest with Baynsworth. The information in the complaint is consistent with the other evidence about Baynsworth’s programs, and with evidence that promotional activities have been ongoing for some time. There is nothing before us to suggest that we should not accept the information in the complaint at face value at this time, as noted in *Zhang*. That complaint, considered together

with the other evidence, is sufficient to establish a fact or raise a presumption that there had been a distribution of a security to at least one person.

- [67] The evidence is clear that the Respondents had not made the filings required by section 61(1) of the Act. There is no evidence that an exemption from section 61(1) of the Act was available to the Respondents. Accordingly, we find there is *prima facie* evidence that Baynsworth has illegally distributed a security, contrary to section 61(1) of the Act.

Unregistered trading

- [68] “Trading” is a broad concept. It includes any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of a sale of a security, even if the sale is not effected. See: *Aurora (Re)*, 2011 ABASC 501 at para 136.
- [69] As noted in *Liu*, distributing promotional materials concerning potential investments, and preparing and disseminating materials describing investment programs, have been considered acts in furtherance of trades. The Respondents promoted the Baynsworth programs through the Promotional Channels. They prepared and disseminated materials describing the Baynsworth programs through the Promotional Channels. Burnett communicated with and distributed materials describing the programs to the undercover Commission investigator who had expressed interest in investing in them. It is reasonable to conclude that the Respondents’ actions were taken to encourage investment in these programs.
- [70] The Respondents are not registered under the Act. There is no evidence that an exemption from the registration requirements was available to either of them.
- [71] We find there is ample evidence, on a *prima facie* basis, that the Respondents conducted unregistered trading, contrary to section 34(1)(a) of the Act.

Prohibited representations

- [72] We find *prima facie* evidence that the Respondents made prohibited representations in three ways.
- [73] First, the Respondents falsely stated that all Baynsworth programs are reviewed by a certain lawyer and he “will take care of those”. That information is contained in the welcome kit and was repeated to the Commission investigator posing as a potential investor. In deciding whether to invest, a reasonable investor would consider it important and reassuring that a law firm is involved to “look after” the guaranteed programs in some fashion. Believing that a law firm is involved with administering the programs is likely to instill more trust in, and add credibility to, the programs in the eyes of a potential depositor. It is reasonable to expect that the statement was meant to encourage potential depositors to invest in the Baynsworth programs. Therefore, the Respondents were engaging in promotional activities when they made that false statement.
- [74] Second, the Baynsworth programs offer high-return, no-risk, 100% money-back guaranteed investments. The Respondents do not give any clear explanation of how depositors’ funds would be used or how returns would be generated, and what risks are involved. A reasonable investor would want to know the answers so they could assess the likelihood that the risk-free return is achievable. These are the kinds of information that a reasonable investor would consider important in deciding whether to invest.
- [75] This Commission consistently warns the investing public to be careful about investing in “high-return, no-risk, guaranteed” investments. For example, in *Re International Fiduciary Corp SA*,

2008 BCSECCOM 107 at paras.138-139, after hearing expert evidence, the Commission held that high monthly returns could not exist in a low-risk investment (see also: *Re Stiles*, 2012 BCSECCOM 383 at para 31). Applying our expertise and specialized understanding of the capital markets, we are similarly skeptical of the promise of high rates of return with no risk in the Baynsworth programs, especially when there is no explanation of how that would be achieved. Without a clear explanation, and in the face of *prima facie* evidence from the second complaint that one investor did not receive any return, we find that the Respondents' representation of high-return, no-risk, guaranteed investments is, *prima facie*, a statement that is false or misleading or omits facts necessary to make it not false or misleading.

- [76] Third, although it was not argued by the executive director, the Respondents did not disclose that Baynsworth was dissolved in December 2023 in the communications or materials they disseminated after that time. A reasonable investor would consider that information to be important in deciding whether to invest. Without disclosing the fact that Baynsworth had ceased to exist and was incapable of doing anything, the information about Baynsworth's role in generating returns for depositors was false or misleading.
- [77] The above-mentioned statements or omissions were found in materials disseminated to the public through some of the Promotional Channels. They were also contained in (or omitted from) communications to the Commission investigator posing as a potential investor. It is reasonable to expect that these statements were meant to encourage potential depositors to invest in the Baynsworth programs. Therefore, the Respondents were engaging in promotional activities when they made those statements or omissions.
- [78] For those reasons, we are satisfied there is *prima facie* evidence that the Respondents made false or misleading representations in the course of promotional activities, contrary to section 50(3)(a) of the Act.

D. Conclusion on *prima facie* evidence

- [79] As stated in *Zhang*, this is a preliminary stage. The affidavit evidence received might not be the same as the evidence ultimately presented at a hearing on the merits. There may be other evidence which modifies what we have seen so far. However, we have before us clear and ample evidence of conduct which, on a *prima facie* basis, establishes unregistered trading and making prohibited representations. We also find *prima facie* evidence of an illegal distribution.
- [80] We now turn to the other two branches of the test.

E. Is it necessary and in the public interest to extend the Temporary Order?

- [81] There is *prima facie* evidence of misconduct, in some instances going as far back as 2022.
- [82] While the Current Website remains accessible with its content unchanged, there is *prima facie* evidence of continuing misconduct with respect to unregistered trading and making some of the prohibited representations.
- [83] The Respondents have been repeatedly told that their activities likely contravene the Act. Burnett continued to deny that he was dealing with securities captured by the Act. The Respondents were repeatedly asked to cease all activities. But as of December 5, 2024, the Current Website was still accessible and the content unchanged. This is inconsistent with Burnett's assertions that the website would be taken down. He was asked to provide evidence that he was working with the website hosts to do that as he claimed; there is no evidence that he has done so.

- [84] We agree with the executive director that it is necessary to protect the public from investing in Baynsworth programs. We are concerned that unsophisticated investors would be attracted by the promise of high returns with no risk. With the continued accessibility of the Current Website and Burnett's insistence that he is not dealing in securities, there is a risk that an unsuspecting member of the public will invest in the Baynsworth programs. It is also harmful to the integrity of the capital markets and public confidence in them to permit unregistered trading to continue even after the Respondents have been notified and given an opportunity to cease trading.
- [85] We find the terms and duration of the proposed extension to the Temporary Order reasonable and specific to the circumstances. It only applies to Baynsworth securities and is intended to stop the Respondents from trading and marketing Baynsworth securities. The executive director indicated he is not yet prepared to issue a notice of hearing. The duration of the Temporary Order is one year, which is reasonable given the typical timeframe for completing an investigation and holding a hearing before this tribunal.
- [86] We are not aware of any circumstances that suggest it is not in the public interest to extend the Temporary Order.
- [87] We are satisfied that it is both necessary and in the public interest to extend the Temporary Order, in order to stop continuing misconduct and protect the investing public.
- [88] For the reasons given above, we extended the Temporary Order to December 9, 2025, pursuant to section 161(3) of the Act.

January 14, 2025

For the Commission

Audrey T. Ho
Commissioner

Marion Shaw
Commissioner

Jason Milne
Commissioner