2008 BCSECCOM 107

International Fiduciary Corp SA, Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, and Preston Pinkett II

Sections 161(1) and 162 of the *Securities Act,* RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken	Vice Chair
	John K. Graf	Commissioner
	Kenneth G. Hanna	Commissioner
Dates of Hearing	October 2, 3, 5, 9-11 and November 21, 2007	
Date of Decision	February 20, 2008	

Appearing

Alan E. Keats	For the Executive Director

Decision

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I Introduction

¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

¶ 2 The executive director issued a notice of hearing and temporary orders on November 1, 2006 (see 2006 BCSECCOM 624). The temporary orders required

- the respondents to comply with or cease contravening the Act
- Malcolm Cameron Boyd Stevenson, Preston Pinkett II and Daniel Eric Byer to cease all investor relations activities on behalf of International Fiduciary Corp SA (IFC)
- all persons to cease trading in an investment scheme that the executive director alleged in the notice of hearing was being promoted through IFC

¶ 3 In hearings on November 16 and December 13, 2006, the commission adjourned the hearing and extended the temporary orders. The respondents were represented in connection with these hearings and consented to the adjournments and extensions.

¶ 4 At a hearing on March 22, 2007 the commission extended the temporary orders until a hearing was held and a decision rendered and set hearing dates in October 2007. By notice dated September 4, 2007 the commission made minor changes to the hearing dates.

¶ 5 The executive director issued an amended notice of hearing on July 19, 2007 (see 2007 BCSECCOM 453). In that notice of hearing the executive director alleges that between April 2004 and November 2006, IFC, Stevenson, Pinkett and Byer contravened the Act by

a. trading securities without being registered,
b. distributing securities without filing a prospectus, and
c. perpetrating a fraud.

¶ 6 None of the respondents appeared at the hearing on the merits, nor were any of them represented by counsel. We granted the executive director's application to combine the liability and sanction portions of the hearing.

¶ 7 All dollar amounts in this decision are in US dollars.

II Synopsis

¶ 8 The respondents misappropriated millions of dollars of investors' money through their promotion and sale of a sham investment scheme.

¶ 9 Stevenson, Pinkett and Byer started the investment scheme. The investment vehicle was IFC.

¶ 10 The scheme involved a minimum investment of $100,000. The respondents told investors that their investment would remain on deposit at a US bank in Virginia, and would be within their control at all times. They told the investors that their investment was not at risk and that they could withdraw their funds at any time on short notice.

¶ 11 The respondents promised investors a return of 6% per month. They told investors that this was possible through IFC's "asset growth program". The respondents told investors that, under the program, IFC leveraged the investors' money, used the leveraged amounts to buy "1st Tier medium term bank notes" at a discount, and then sold the notes at a profit.

¶ 12 All these statements were lies, and Stevenson, Pinkett and Byer knew it. Not only did the asset growth program not exist, expert testimony shows that it would be impossible for it to exist. In fact, the IFC investment scheme was a Ponzi scheme – the respondents used the funds of later investors to make the promised payments to earlier investors – set up by Stevenson, Pinkett and Byer for the sole purpose of enriching themselves.

¶ 13 Stevenson, Pinkett and Byer took over $12.7 million of investor money for their own use.

¶ 14 At least 143 investors are known to have invested in the scheme, of which 89 are British Columbians. The British Columbia investors collectively invested over $23.3 million in the scheme and received payments totalling just under $10.3 million.

III Background

¶ 15 Stevenson, Pinkett and Byer all promoted the investment scheme through IFC.

¶ 16 IFC is a Virginia corporation. IFC is not registered, nor has it filed a prospectus, under the Act.

¶ 17 Stevenson is a resident of Abbotsford, British Columbia. IFC documents identify him as an authorized signatory for IFC. In 2002 Stevenson was sanctioned by this commission for failing to file insider reports. (See *Stevenson* 2002 BCSECCOM 802.) He has never been registered under the Act.

¶ 18 Pinkett is a resident of Virginia. Pinkett is a director of IFC and its CEO and Chair. IFC documents identify him as an authorized signatory for IFC. He is also the administrator of IFC's website. Pinkett has never been registered under the Act.

¶ 19 Byer is a resident of Abbotsford, British Columbia. In 1989 Byer was sanctioned by this commission for failing to fulfil his duties as a director of a reporting issuer. (See *Nuspar Resources Ltd.* [1989] BCSC Weekly Summary 126.) Byer was registered from time to time under the Act to sell mutual funds with four different firms from 1994 through 1999. He is no longer registered.

A The scheme

1. How the scheme was described to investors

¶ 20 The respondents designed and promoted the scheme in the way best calculated to attract investor interest – by the promise of a low-risk investment that would yield astronomical returns.

¶ 21 The respondents told investors that their money was not at risk: it would remain on deposit in a bank at all times, under their control, and available for withdrawal at any time on a few days' notice.

¶ 22 The respondents offered investors a return on their investment of 6% per month.

¶ 23 The respondents described IFC's business as the trading of "1st Tier medium term bank notes" through a "business relationship with an international bank that operates an asset growth program." The respondents told investors that IFC used the services of a professional trader who "leveraged" the funds IFC raised from investors to buy large volumes of these notes at a discount, which the trader then resold at a profit.

¶ 24 The respondents told investors that this business was conducted by major banks all over the world, including Canadian banks, but kept a secret because the banks did not want to share this profitable business with "ordinary people." Stevenson and Byer told investors they were lucky to be able to participate with as little as $100,000, because these types of investment usually required a much greater minimum investment. Some investors were told that at least $1 million would normally be required, others that $10 million was customary.

¶ 25 Stevenson and Byer made these representations verbally to investors. Representations were also made to investors in two letters that documented their investment. The first, described by the respondents as the “comfort letter,” was from IFC and addressed to each investor. The second was a letter Stevenson and Byer gave to investors for them to sign. Described as the “Trading Authorization,” it was addressed to IFC and authorized it to transfer funds on the investor’s behalf.

¶ 26 Each comfort letter was prepared for the signatures of Stevenson and Pinkett, both of whom are described under the signature line as an “Authorized Signatory”. Of the letters in evidence, Stevenson signed some; Pinkett signed all.

¶ 27 The comfort letter reads as follows (some versions in evidence have non-substantive variations):

> Re: Asset Growth Program
>
> Dear [investor]:
>
> As you have been informed by Daniel Byer, International Fiduciary Corp. S.A. (‘IFC’) has developed a business relationship with an international bank that operates an asset growth program by buying and selling 1st Tier medium term bank notes.
>
> IFC does not sell or buy, nor does it promote, any form of securities or stocks whether governed by the Securities Exchange Commission or not.
>
> While funds are deposited into IFC either at the United Bank NA., in Arlington, Virginia, or Banco Bilbao Vizcaya Argentaria (BBVA) or the Great Florida Bank (GFB), which are both in Miami USA, a new and separate bank account (a segregated account under the signatory of the Depositor) is opened and the account number is assigned by the bank before funds are sent to this account at the bank. Although the Depositor’s Account is opened and maintained in the name of International Fiduciary Corp. S.A., the company IFC is subject only to administer those funds as agent allowing IFC to support and maintain the program business. As such, IFC only manages the funds that are in the Depositor’s Account. Those funds always remain owned by the Depositor and the Depositor remains in full control of those funds, and the Depositor’s Account shall remain in full equity value or greater than full equity value.
>
> When IFC, enters into new transactions, it uses the legal and professional services of Sherri L. Wyatt, Esq. and/or Floyd W. Anderson, of 1101 Pennsylvania Av. Washington DC. Mr. Floyd Anderson has been an

Attorney practicing in the District of Columbia, USA for more than 20 years and further maintains the advise of George Bright, who is a former banker with the African Development Bank as a Bond underwriter. Preston Pinkett has been doing international trade and finance business in Africa and the Caribbean for more than 20 years, including a 5 year affiliation with the International Monetary Fund.

Mac Stevenson is a business associate and/or a friend to Daniel Byer, whom you have met and know or have at least been introduced to whether it be in person or by phone.

Very truly yours
INTERNATIONAL FIDUCIARY CORP. S. A.

Preston Pinkett, Authorized Signatory

Per:

Malcolm C. Stevenson, Authorized Signatory

AND

By signing below, [investor] has read the above information and agrees to the business relationship stated therein.

Per:

[investor signature]

¶ 28 The African Development Bank Group says that, although George Bright worked there for about five and half years, his responsibilities were primarily clerical. He "was not at all involved in bond underwriting."

¶ 29 Similarly, the International Monetary Fund says that their records show no affiliation at any time with Pinkett.

¶ 30 The "Trading Authorization" letter each investor signed authorized IFC to transfer the investor's "bank account" from United Bank to Banco Bilbao Vizcaya

Argentaria or Great Florida Bank (both in Miami), or to "any other institution that is acceptable by the 'Trader' (William Malloy) to do the business as described in the 'Comfort Letter'". The ultimate purpose of this document is unclear – no investor funds were transferred to either of these banks.

¶ 31 William Malloy exists, and he is registered to trade in securities in the US. He knows Stevenson, Pinkett and Byer and did have an arrangement to trade securities for Pinkett and IFC.

¶ 32 However, in United States Securities and Exchange Commission proceedings related to the same facts, Malloy testified under oath that he was never a part of any asset growth program described in the comfort letter. He said he has never heard of "1st tier medium term bank notes." He says he was unaware that IFC was raising funds in connection with the scheme described in the comfort letter, or any similar scheme. He says he has never had any discussions with IFC, Stevenson, Pinkett or Byer on the subject of trading any securities in connection with such a scheme.

2. Investment mechanism

¶ 33 Investors participated by depositing a minimum investment of $100,000 in the United Bank, a US bank in Arlington, Virginia.

¶ 34 Documentation for the investment involved several items. First, investors had to provide notarized copies of one or more of their passport, driver's licence, and birth certificate. Byer told some investors that these documents were necessary to open the investors' accounts at United Bank.

¶ 35 IFC also gave investors copies of banking documents from United Bank showing the investor as the "Owner" of an account at the bank. The documents for each investor showed the bank account number for each investor.

¶ 36 If an investor wished to invest through a corporation, IFC provided the investor with forms of corporate resolutions for that purpose.

¶ 37 Once invested, the investor needed to do nothing more but await the promised return. Typically IFC made the first monthly payment in the third week of the month following the month in which the investor invested.

3. Reality of the scheme

¶ 38 The IFC investment scheme was a sham. The so-called 1st Tier medium term bank notes do not exist. Most investors received only a few monthly payments.

¶ 39 The documents investors signed, purportedly to open their accounts at United Bank, had no legitimate purpose. The evidence shows that the bank accounts for investors were usually opened before the investor completed the documentation. In fact, the typical sequence of events was that once an investor agreed to participate, Byer would send Pinkett an email advising him of the investor's name and intended investment amount, and then Pinkett would open the account. Byer would then give the investor wire transfer instructions.

¶ 40 Banking records from United Bank show that in fact Pinkett opened all of the accounts, they were all in the name of IFC, and only Pinkett had control over them.

¶ 41 So, contrary to what the respondents told investors, their money was not under their control once wired, nor was it "leveraged" under the so-called "asset growth program." Instead, it was used by Pinkett to make payments to existing investors, and to fund withdrawals to Stevenson, Pinkett and Byer.

¶ 42 Records from United Bank show that Pinkett distributed $5,530,389.00 to Stevenson, $4,807,490.00 to himself, and $2,439,585.95 to Byer.

¶ 43 We received a report from Dr. Maurice David Levi, who also testified. Dr. Levi has a doctorate from the University of Chicago in money and banking. He has over 30 years of teaching and research in the fields of financial markets and financial institutions, and has published extensively on these and related subjects. Among his published work is a textbook used widely throughout North America and elsewhere in the world to teach international finance.

¶ 44 We accepted Dr. Levi as an expert in the areas of international banking, finance, and economics for the purpose of providing opinion evidence in the hearing.

¶ 45 The following summarizes Dr. Levi's report and his oral testimony:

- He is not familiar with the term "medium term bank note." "Bank note" is a term used to describe ordinary currency used for everyday expenditures – what most would call, simply, "cash".
- There is a class of securities called medium-term notes issued by corporations, government agencies and governments.
- A form of medium-term note issued by a bank would be similar to a CD (certificate of deposit) but with a maturity longer than a typical CD (up to five years) but shorter than long-term notes (with maturities of 10 years or more).
- Bank debt is not ranked in a "tier" system. It is rated by rating agencies, based on the issuing bank's creditworthiness.
- The use of the term "1st Tier" with "medium term" and with "bank notes" is terminology that Dr. Levi says he "has not come across before." To the best

of his knowledge, he says, "no such security trades in the financial markets." He says "I am confident that that if such a market existed, I would have heard of it. Indeed, I have examined trading records of a financial institution that is active in fixed-income markets and found no reference to such a security."

- The term "1st Tier medium term bank notes" does not refer to any security or market. "In fact," he says, "I would go further to say that . . . the terminology appears to be contrived."
- "Bulk rate" discounts for securities do not exist.
- "Nothing legitimate offers a rate of return of 6% per month," he says. ". . . '6% a month return' and 'risk-free' are inconsistent with each other."
- It is not possible for funds used in a leveraged trading scheme to remain secure in a risk-free account while generating a 6% per month trading profit; if a lender were providing leverage, it would secure its debt by having a claim on the deposits.
- "Investments as described in the IFC scheme do not exist," he says, "through banks or any other type of legitimate financial institution in Canada or elsewhere."
- He says, "There are no secret markets. Markets do exist in which the participants are large and are generally known to each other . . . and individuals do not generally have the necessary size to participate . . . the rates of return are competitively determined, and would not offer such returns as those indicated by IFC . . . ."
- He concludes, "The only time I have encountered claims of such astronomical and unbelievable investment returns is when providing an opinion to the BC Securities Commission in 2001 on a similar investment scheme. I believe that at legal hearings it was determined that the proposal was a Ponzi scheme, as I truly believe is this one."

¶ 46 The banking records show that once investors wired funds into the IFC United Bank accounts that they thought were theirs, Pinkett systematically transferred the funds to another IFC United Bank account controlled by Pinkett. The staff investigator who testified described the investor accounts as the "feeder accounts" and the destination account as the "pooled account". All of the investors' funds were transferred from the feeder accounts to the pooled account, usually within days.

¶ 47 The pooled account had no deposits of funds other than these transfers.

¶ 48 Pinkett used the funds in the pooled account to enrich himself, Stevenson and Byer, using the funds of new investors to make the interest payments to existing ones in the process.

¶ 49 The following description of the handling of one investor's funds will illustrate the typical process:

- The investor signed the account opening documents for the United Bank account on April 5, 2006 (the feeder account attributed to him had in fact already been opened by Pinkett six days earlier – on March 30).
- On April 11 the investor wired $100,000 to feeder account attributed to him; the deposit was posted to the account on April 12.
- On April 20, Pinkett transferred $99,000 from the feeder account to the pooled account; transfers from all the feeder accounts to the pooled account that day totalled about $1.9 million.

¶ 50 The payments to Stevenson, Pinkett and Byer were also systematic. Each month, Pinkett and Stevenson agreed on the amounts they would take out of the pooled account. These amounts were relatively constant through most of the relevant period and averaged hundreds of thousands of dollars for each of Stevenson, Pinkett and Byer.

¶ 51 Commission staff is able to account for over 98% of investors' funds transferred to the pooled account at United Bank as follows:

Deposits into pooled account		**$41,931,967**
Withdrawals from pooled account		
To Pinkett	$ 4,807,490	
To Stevenson	5,530,389	
To Byer	2,439,586	
To 89 BC investors	10,258,968	
To 54 non-BC investors	11,024,795	
To others	5,050,000	**39,111,228**
Remaining in account		**2,120,220**
Unreconciled		**700,519**
		$41,931,967

¶ 52 The amount attributed to Stevenson includes sums paid to Worldwide Projects, an entity the evidence shows is owned and controlled by Stevenson. The Stevenson amount also includes $72,300 paid to Midian Investments, an entity belonging to Stevenson, or to Stevenson and Byer.

¶ 53 Pinkett hired an accountant, Waz Abraham, to do accounting for IFC. Abraham was interviewed under oath by the SEC in connection with its parallel proceedings relating to IFC. Abraham testified to the following in the interview:

- He took all of his instructions from Pinkett
- All investor money was deposited in United Bank. IFC opened all of the investor accounts at United Bank, the accounts were in IFC's name, and Pinkett was the sole signatory on the accounts
- Pinkett's operating practice was to transfer investor funds from the feeder accounts to the pooled account within 30 days of deposit
- One of Abraham's tasks was to record payments to investors; Pinkett identified the investors and the amounts they were to receive
- Pinkett shared the report with Stevenson every month
- Pinkett and Stevenson had a conversation each month about how much money they would each withdraw from the pooled account
- Asked if Pinkett reported to anyone, he said there was "a lot of contact" between Pinkett and Stevenson, and Pinkett gave Abraham corrections to his reports after discussing them with Stevenson, so he knew "somebody is reviewing them"
- Pinkett identified Byer as one of those who "introduced" investors to IFC
- No trading profits were deposited into the pooled account; withdrawals from the account were funded entirely by investors
- When he asked Pinkett about the absence of trading profits, Pinkett acknowledged that "they will be later on , but they are not here yet"
- Pinkett paid investors out of the pooled account by transfer directly to their personal bank accounts (not to the United Bank feeder accounts)

4. Collapse of the scheme

¶ 54 After the executive director issued the notice of hearing on November 1, 2006, commission staff asked United Bank for the relevant records relating to the feeder accounts and the pooled account. The Bank provided the documents that month and agreed to freeze the accounts until December 4, 2006. Commission staff brought the results of its investigation to the attention of the SEC, which sought and obtained a court-ordered freeze of the United Bank accounts on December 4, 2006.

¶ 55 At the time of the freeze, the accounts held about $2 million.

¶ 56 The SEC later obtained default judgments against each of the respondents. The judgements found that each of them committed securities fraud and made orders imposing civil penalties and ordering disgorgement. The judgement against IFC was for $25 million. The judgement against Stevenson was for $6.1 million, against Pinkett was for $5.4 million, and against Byer was for $3.2 million.

¶ 57 The 89 British Columbia investors invested over $23.3 million in the IFC scheme. IFC made payments to these investors of just over $10 million. Stevenson, Pinkett and Byer took over $12.7 million for their own use.

¶ 58 The only IFC assets its receiver has located so far are a little over $8 million in IFC accounts at United Bank and elsewhere. These funds, net of competing claims and the receiver's fees, will have to be shared by the 89 British Columbia investors with the other 54 investors who may have claims. This suggests that any recovery from IFC will fall far short of any meaningful repayment of the investors' principal.

B The investors

¶ 59 Six IFC investors testified at the hearing. They described how Stevenson and Pinkett structured the IFC investment, how Stevenson and Byer represented the investment to the investors, and the roles played by each of Stevenson, Pinkett and Byer.

Investor A

¶ 60 Investor A is a 55-year-old dentist. He was qualified in dentistry in Czechoslovakia in 1974. In 1990 Investor A immigrated to Canada and worked as a dishwasher and a security guard until he re-qualified to practice as a dentist in British Columbia.

¶ 61 Garry Pohl, who was Investor A's insurance adviser, referred Investor A to Byer. Pohl knew that Investor A had saved $100,000 for a down payment on a house and was looking for ways to invest it. It would be Investor A's first opportunity to buy a house since arriving in Canada. Pohl told Investor A that Byer had an excellent investment product that he should consider.

¶ 62 Investor A is unsophisticated in financial matters. He trusted Pohl as a friend and advisor, and thought that when Pohl introduced him to Byer, Pohl was implicitly vouching for Byer's character.

¶ 63 Investor A met Byer, who described IFC's business and told him he was lucky to have $100,000 to invest. He told Investor A that his money would remain on deposit, that he would be the owner of his account, and that he could withdraw his funds at any time. Byer told Investor A that there was "absolutely no risk involved."

¶ 64 Investor A invested $100,000 and waited for his monthly payments to begin. They did not, but after he and his wife went after Byer about it, Stevenson contacted them. They provided Stevenson with bank account information and after that the payments arrived as promised – $6,000 per month on Investor A's $100,000 investment.

¶ 65 The steady stream of payments convinced Investor A that the investment was legitimate, and he invested another $50,000.

¶ 66 Investor A received seven payments totalling $51,000. His principal has not been repaid.

¶ 67 Investor A is devastated by his loss. He says he thought he was "dealing with gentlemen" but instead now feels he was dealing with "criminals, lying people." He testified "I started from scratch, and I lost everything; just my – everything – my ten years of work."

Investor B

¶ 68 Investor B is a 50-year-old mortgage broker. She met Stevenson through a trusted friend from her church. She was just starting out as a mortgage broker and Stevenson was introduced to her as a potential client. Stevenson referred a number of clients to her and she ended up doing business with four of them.

¶ 69 It was through these referrals that Investor B heard about the IFC scheme. In an email, Investor B asked Stevenson about the scheme. In his reply, Stevenson said this:

> We do not "invest" anyone's funds – your funds are leveraged to purchase MTN (medium term notes) at a discount and are immediately sold under contract to various mutual funds and other institutional buyers of these "bank issued bonds." You can enter the market at a retail level with Meryl Lynch [*sic*] (or some other securities controlled institution) and you can purchase at an opening price, wait for the rise in price and then sell to make the spread – this is an investment (or risk), there is no risk with these transactions at the level we operate at.

¶ 70 Investor B met with Stevenson to discuss the scheme. Stevenson told her again it was not an investment – "he didn't like to use that term," she testified – but that the money was deposited into an account and "was leveraged to purchase medium term notes in the world bond market, and they had a bond trader." He described IFC's business in the same terms as it appears in the comfort letter. He told her the minimum investment was $100,000 and the return was 6% per month.

¶ 71 Investor B came to trust Stevenson because he introduced her to an individual he described as his "prayer partner". She formed the impression the individual was a pastor, and he turned out to be an investor in the scheme. Stevenson also described Byer as a prayer partner. The term “prayer partner” was significant to Investor B who, as a Christian, took comfort in the fact that the people she was dealing with were also Christians.

¶ 72 Investor B met Byer later in her capacity as a mortgage broker. Byer told her that he worked for Stevenson in connection with the IFC scheme, and his role was to “recruit people to get into the program.”

¶ 73 Stevenson suggested Investor B invest through a lawyer and referred her to Sandy McCandless. Stevenson and McCandless told her that she would retain control over the money she deposited in United Bank.

¶ 74 Using the services of McCandless, Investor B invested $100,000 in August 2006. That fall, she met Stevenson again, in her capacity as a mortgage broker. Stevenson was looking to refinance some property. He was reluctant to sign the application, telling her “he just didn’t want to put his name on anything.” He then showed her two sets identification that he carried with him – one in the name of Malcolm Stevenson, and one in the name of “Marty Stewart,” a name that appears on documents in the record.

¶ 75 Investor B mortgaged her home to raise the $100,000 she invested. She received two payments totalling $12,000 (less $200 per month that McCandless was charging her for “legal fees”). Her principal has not been repaid.

¶ 76 Investor B describes the experience as “Horrible. Absolutely horrible. It’s like a bad dream. . . . I’ve struggled with my faith . . . I’m not as trusting as I used to be.”

Investor C

¶ 77 Investor C is a 40-year-old sales manager for a manufacturing company. He had been acquainted with Gary Pohl through his church for several years and knew Pohl was a financial advisor. Pohl mentioned the IFC scheme to Investor C in casual conversation. Investor C decided to get more information.

¶ 78 Investor C got most of his information about IFC from Pohl. He told Pohl that one of his family’s objectives in investing “was not to sort of live large, but to find ways to support causes or things that we believed in.” Pohl told him that the IFC opportunity was not being offered to “anybody” but to “people like him.”

¶ 79 Pohl told him that what distinguished the IFC opportunity was that the investors retained control over their capital.

¶ 80 Ultimately, Investor C decided to invest. He contacted Pohl, who put him in contact with Byer. Pohl described Byer as "a friend and associate". Investor C didn't know Byer, but, as he put it, "transferred a level of trust to him that I felt for Gary."

¶ 81 Investor C met Byer to document his investment. In discussing the comfort letter, Investor C stressed to Byer that the aspect of being able to keep control over his funds was one of the "fundamental reasons" he was prepared to invest. Byer highlighted the language in the comfort letter promising that. Byer also reiterated that the return was 6% per month.

¶ 82 While the papers were being signed, Byer told Investor C that "typically these kind of investment structures start at the one million mark." Investor C said he felt fortunate to be able to participate for only $100,000.

¶ 83 Investor C invested $100,000. He raised the money to do so through a line of credit secured by a mortgage on his house. He received one payment of $6,000. His principal has not been repaid.

¶ 84 Investor C says he lost an opportunity to take an equity position in his employer because he could no longer afford it. His self-confidence in dealing with his clients has been shaken, and he believes his work performance has suffered as a result of the experience.

Investor D

¶ 85 Investor D is a 44-year-old longshoreman. His father's financial adviser was Gary Pohl, and Pohl and Byer told his father about the scheme.

¶ 86 Investor D and his father, along with about half a dozen other individuals, met with Byer and Stevenson. Byer and Stevenson told the group that they were raising a few million dollars by pooling smaller deposits from individuals. The aim was to leverage the funds so raised to invest, with the profits to be distributed to the investors.

¶ 87 According to Investor D, Byer and Stevenson told the group that "there would be no risk whatsoever, even if somebody defaulted on the loans or anything, it would be insured and there was really no risk at all because it was going into a separate account that only we had control of."

¶ 88 Investor D and his father decided to invest. In the process, Investor D attempted to confirm independently that only he would have access to his funds once deposited, but he "couldn't get the information that I wanted verified" and "started to get cold feet."

¶ 89 He told Byer he was going to hold off, and mused about going to Virginia to do his own due diligence. Byer suggested that instead of doing that, he should invest using the services of McCandless, as other investors had done (including Investor B).

¶ 90 Reassured, Investor D and his father went ahead with the investment, investing $100,000 through McCandless. They later invested additional funds, along with Investor D's brother-in-law. The three invested a total of nearly $600,000. They received 13 monthly payments totalling just under $190,000. Their principal has not been repaid.

¶ 91 Investor D's personal investment was $200,000, which he funded with borrowed money and the proceeds from the sale of a real estate rental property he sold in order to invest in the scheme.

¶ 92 The money Investor D invested represented the majority of what he hoped would fund his retirement. He still owes the first $50,000 he borrowed to invest. As a result, he says, "I am working a lot harder – it seems like I got to start all over again, at my age it's not that easy." He also says his health has been negatively affected by the stress associated with the loss of his investment.

Investor E

¶ 93 Investor E is a 32-year-old poultry farmer. Some of his in-laws had invested in IFC and were receiving payments. They suggested Investor E meet with Byer with a view to becoming an investor. Investor E understood that Byer vetted investors to make sure they were "good folk" before they would be allowed to invest.

¶ 94 Investor E met with Byer, who told him that IFC was started by Stevenson, Pinkett and Byer. He said that about 10 years previously Stevenson and Pinkett had met in the US. They were looking for an investment opportunity, Byer said, and heard of an investment opportunity "where the banks would pay you for having money in the bank account for bond traders." According to Byer, says Investor E, there was no one else involved in the management or operation of IFC.

¶ 95 Byer described the IFC scheme to Investor E as an investment of $100,000 that yielded a return of 6% per month. Byer told him that the $100,000 would be deposited in a bank, which could leverage it 10:1 so that $1 million would be available to lend to a bond trader. The bond trader in turn would use that money to buy medium term notes "in bulk" at, say 90 cents, then sell them for 92 cents to make a profit. Byer told Investor E that because the bond trader was trading with

10 times the amount of the investors capital, the profits were sufficient to pay the 6% return to IFC investors.

¶ 96 Byer described Bill Malloy, the individual represented as IFC's bond trader, as one of the 25 people in the world that did the kind of trading Byer had described to Investor E. He said Malloy was the protégé of another bond trader who had 40 or 50 years of bond trading experience, and that Malloy himself had about 20 years of experience.

¶ 97 Byer told Investor E that ordinarily an individual had to invest as much as $10 million to participate in similar schemes, but that Stevenson, Pinkett and Byer had negotiated arrangements with banks to pool investments of lesser amounts so that working class people could afford to participate.

¶ 98 "Byer said there would be no risk to our money," Investor E testified. "Our money would never leave the bank account. . . . So our minimum $100,000 would always be in the bank." Byer told Investor E that if he ever wanted his money back, he could get it "within a couple days" by contacting Byer, Stevenson or Pinkett.

¶ 99 Investor E and other family members invested $115,000, of which $50,000 was Investor E's, borrowed from his father. Investor E received 5 monthly payments of 6%, totalling $41,275. He then heard from a very upset Byer.

¶ 100 Unknown to Investor E, his financial advisor had concerns about Investor E's investment in the IFC scheme and passed those concerns to commission staff. The adviser took care to conceal Investor E's identity from the materials he provided to commission staff, but it turned out that Investor E's documents were witnessed by an individual who witnessed the documents of only one investor – Investor E. It was therefore apparent to Byer that it was Investor E's documents that led commission staff to initiate an investigation.

¶ 101 As a result, Investor E and his family co-investors were, as he put it, "kicked out" of IFC. Their money was returned in full and they received no more payments. Byer told him that "he had fought for them to stay in" because it was not Investor E's fault that the documents were sent to the commission, but that he was overruled by Stevenson and Pinkett.

¶ 102 Alone among those who testified, Investor E invested, received his 6% per month return, and had his principal repaid. Upset at first by his expulsion, Investor E is now relieved.

Investor F

¶ 103 Investor F is a 47-year-old insurance sales consultant with a large national insurance company. One of his clients was Gary Pohl, who spoke to him about the IFC scheme and introduced him to Byer.

¶ 104 Investor F met Byer who told him that money deposited was on deposit and used as collateral to fund a trading program in medium term notes. Byer told Investor F that there was no risk – if he ever wanted his funds returned, all he had to do was ask.

¶ 105 Investor F invested $100,000. He received 3 payments totalling $18,000. His principal has not been repaid.

C Conduct after the temporary orders

¶ 106 On November 1, 2006 the executive director issued a notice of hearing containing temporary orders requiring all persons to cease trading in securities of IFC and requiring Stevenson, Pinkett and Byer to cease all investor relations activities on behalf of IFC. The temporary orders also required the respondents to comply with or cease contravening the Act.

¶ 107 At the adjournment and extension of temporary orders hearing on November 16, the commission found that the respondents had notice of the hearing. They therefore also had notice of the temporary orders, which were contained in the notice of hearing.

¶ 108 On November 20, Stevenson wrote to his counsel, advising him of an individual who intended to invest in the scheme. In fact Stevenson took $230,000 from new investors after November 16.

¶ 109 Some investors started lawsuits or cooperated with the commission staff investigation, or both. Stevenson wrote to these investors, telling them that as a result of their actions, he would be unable to refund their investment. Instead, he said, their money would be paid into court.

IV Analysis and Findings

A Illegal trading and distribution

¶ 110 The Executive Director alleges that the respondents contravened sections 34(1) and 61(1).

¶ 111 Section 34(1) says “a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . .”.

¶ 112 Section 61(1) says ". . . a person must not distribute a security unless . . . a preliminary prospectus and a prospectus respecting the security have been filed with the executive director" and the Executive Director has issued receipts for them.

¶ 113 If we are to find that a respondent contravened sections 34(1) and 61(1), we must first find that:

1. an investment in the IFC scheme was a "security,"
2. the respondents traded those securities in British Columbia, and
3. for section 61(1), those trades were a distribution.

1. Was an investment in the IFC scheme a "security"

¶ 114 Section 1(1) defines security to include "an investment contract."

¶ 115 The IFC investments were investment contracts. Well-known common law defines an investment contract as an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glen W. Turner Enterprises, Inc.* 474 F. 2d 476 (1973), *Pacific Coast Coin Exchange v. Ontario Securities Commission,* [1978] 2 S.C.R. 112.)

¶ 116 Participation in IFC required an investment of money. The investors' profits were to come from the efforts of persons other than themselves – the evidence is clear that once they deposited their funds, investors were not required to do anything else to earn their returns. The commonality that is required by the cases cited above existed between the respondents and the investors.

¶ 117 We find that an investment in the IFC scheme was a security.

2. Did the respondents trade securities in British Columbia?

Section 1(1) defines trade:

> "trade" includes
> (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, installment or otherwise . . .
> . . .
> (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e);

¶ 118 Stevenson, with Pinkett and Byer, started IFC. Stevenson solicited individuals to invest in the IFC scheme. He met with prospective investors and explained how the IFC investment worked. He is an authorized signatory on the IFC comfort letter and signed many of them. All of these activities fall within paragraphs (a) and (f) of the definition of trade.

¶ 119 Pinkett, with Stevenson and Byer, started IFC. Pinkett is an authorized signatory on the IFC comfort letter and signed all of them. He is the addressee on the trading authorization. Pinkett opened all of the accounts at United Bank and worked with Byer to facilitate the deposit of the investors' funds into the feeder accounts. All of these activities fall within paragraphs (a) and (f) of the definition of trade.

¶ 120 Byer, with Stevenson and Pinkett, started IFC. Byer solicited individuals to invest in the scheme. He met with prospective investors, explained how the IFC investment worked, prepared documents for investors, and gave them instructions on where and how to send their investment funds. All of these activities fall within paragraphs (a) and (f) of the definition of trade.

¶ 121 Through the activities of Stevenson, Pinkett and Byer, IFC traded IFC securities within the meaning of paragraphs (a) and (f) of the definition of trade.

¶ 122 The 89 British Columbia investors were in British Columbia when these activities took place.

¶ 123 We find that all of the respondents traded securities in British Columbia.

3. Were the respondents' trades "distributions"?

¶ 124 Section 1(1) defines distribution as "a trade in a security of an issuer that has not been previously issued."

¶ 125 Investments in the IFC scheme were securities not previously issued. We find that the respondents' trading in these securities were distributions.

4. Contraventions of sections 34(1) and 61(1)

¶ 126 We have found that investments in the IFC scheme were securities, and that the respondents traded and distributed those securities in British Columbia.

¶ 127 None of the respondents was registered under the Act at the relevant time. None has filed a prospectus. Therefore, in the absence of an exemption, the respondents contravened sections 34(1) and 61(1) when they traded the IFC securities.

¶ 128 The legislation provides exemptions from section 34 (1) and 61(1). The onus of showing that any of those exemptions applies rests on the person who seeks to rely on the exemption (*Bilinski* 2002 BCSECCOM 102). There is no evidence that any of the exemptions apply.

¶ 129 We therefore find that all of the respondents contravened sections 34(1) and 61(1) when they traded and distributed the IFC securities.

B Fraud

¶ 130 The notice of hearing alleges that the respondents engaged in transactions, or a series of transactions, that perpetrated a fraud on persons in British Columbia, contrary to section 57(b).

¶ 131 Section 57(b) says:

> "57. A person . . . must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security . . . if the person knows, or ought reasonably to know, that the transaction or series of transactions
> . . .
> (b) perpetrates a fraud on any person in British Columbia."

¶ 132 We have already found that the respondents traded securities. Did they know that those transactions perpetrated a fraud on persons in British Columbia?

¶ 133 Section 57(b) was considered by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. The Court said:

> "29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element."

¶ 134 The Court cited the elements of fraud from *R. v Théroux*, [1993] 2 SCR 5 (at p. 20):

> ". . . the actus reus of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and

> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the mens rea of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk)."

Prohibited act and deprivation

¶ 135 The evidence provides clear and convincing proof that the respondents Stevenson, Pinkett and Byer committed what *Théroux* describes as a "prohibited act" and that it caused deprivation.

¶ 136 Stevenson, Pinkett and Byer started the IFC scheme solely to defraud investors in order to enrich themselves. The asset growth program, which was the purported source of the astronomical returns they promised to investors, was a fairy tale. They described it as a trading strategy that involved the leveraging of capital on a 10-to-1 basis and using the leveraged funds to buy "1st Tier medium term bank notes" at a discount and then to resell them at a profit.

¶ 137 They told investors that William Malloy was the expert trader who would do this trading. Malloy, an experienced trader, says these securities do not exist.

¶ 138 Dr. Levi, an expert in banking and finance, also says that these securities do not exist. He says the leveraging scheme would not work, and that monthly returns of 6% cannot co-exist with a low-risk investment.

¶ 139 In short, the evidence is not merely that the asset growth program did not exist, but that it could not exist. The 6% monthly returns the investors were promised could never have been paid, other than from the contributions of other investors.

¶ 140 Stevenson, Pinkett and Byer made false statements to investors. They told the investors their money would remain on deposit and within their control. In fact, the investors' money, once deposited, was never in their control – it was under Pinkett's control.

¶ 141 The comfort letter that Stevenson and Pinkett signed touted Pinkett's affiliation with the International Monetary Fund, and Bright's with the African Development Bank Group. Pinkett had no affiliation with the IMF, and Bright's role at the ADB was only clerical.

¶ 142 Stevenson and Byer told investors that the medium term bank notes traded in a secret market and a trading program like the one they described was usually available only to banks and the very rich. This was a fabrication. As Dr. Levi testified, there are no secret markets. In fact, Dr. Levi's evidence shows that everything Stevenson, Pinkett and Byer told investors about the asset growth program was a lie.

¶ 143 The IFC investment scheme was a simple Ponzi scheme, by definition fraudulent, as described in *Titan Investments Ltd. Partnership,* [2005] A.J. No. 1041 (AB QB) at para 8:

> Ponzi schemes are fraudulent investment schemes whereby individuals are enticed by a con-man or fraudster to make investments in an operation promising an unreasonable high rate of return. Once the first few investments are made, subsequent investors are enticed to invest partly through reported gains and partly through high payouts to earlier investors.

¶ 144 Ponzi schemes are a particularly sinister form of fraud because those lucky enough to get in at the beginning do in fact earn the promised returns, and lend the credibility to the scheme that it needs in order to lure investors.

¶ 145 This is exactly how IFC operated. Investors who received payments were paid out of the pooled account. The only source of funds in the pooled account was deposits from the feeder accounts, which in turn came from investors. Indeed, the only reason the respondents made any payments to IFC investors was because they had to in order to make the scheme work.

¶ 146 We find that Stevenson, Pinkett and Byer deceived British Columbia investors who suffered deprivation as a result of their deceit. As a group, investors put $23.3 million into the scheme and received only about $10.3 million. There appears to be no reasonable prospect that they will recover any significant portion of what they have lost.

Subjective knowledge

¶ 147 The evidence provides clear and convincing proof that Stevenson, Pinkett and Byer had subjective knowledge of the deceit, and that it could have as a consequence the deprivation of others.

¶ 148 Stevenson, Pinkett and Byer did not use the investors' money for the purposes the investors gave it to them.

¶ 149 Stevenson, with Pinkett and Byer, started the scheme. Stevenson was an authorized signatory on the comfort letter given to investors. He knew that the asset growth program did not exist, that there were no trading profits to pay investors, and that the only source for payments to investors was money from new investors.

¶ 150 Pinkett consulted with Stevenson about the management of the pooled account, and in particular, how much they each would take from it each month. Abraham's draft reports were changed by Stevenson after he and Pinkett reviewed them. Stevenson's take from the pooled account was the greatest.

¶ 151 We find that Stevenson had subjective knowledge of the deceit, and that it would result, not merely in the investors' pecuniary interests being put at risk, but in their actual deprivation.

¶ 152 Pinkett, with Stevenson and Byer, started the scheme. He too was an authorized signatory on the comfort letter given to investors and signed all of them. Pinkett oversaw the flow of investor funds into the feeder accounts and the transfer of those funds into the pooled account. He knew that the pooled account had no source of funding other than the funds that came from investors. He knew that there were no trading profits and that the asset growth program did not exist.

¶ 153 With Stevenson, Pinkett decided how much he, Stevenson and Byer would take from the pooled account each month. Pinkett's take from the pooled account was nearly as much as Stevenson's.

¶ 154 We find that Pinkett had subjective knowledge of the deceit, and that it would result, not merely in the investors' pecuniary interests being put at risk, but in their actual deprivation.

¶ 155 Byer, with Stevenson and Pinkett, started the scheme. Byer was instrumental in bringing British Columbia investors into the scheme. Byer gathered the personal identification documents from the investors and had them sign the so-called account opening documents at United Bank. Yet Byer had to have known that these documents had no legitimate purpose, because he knew that Pinkett had already opened each investor's account before Byer had them sign the purported account opening documentation.

¶ 156 Byer gave investors instructions on how and where to send their funds *before* he sent the account opening forms to Pinkett. Byer also discouraged investors from calling United Bank to confirm the status of their account. Instead, he asked them to contact Stevenson if they had any questions. Byer had to have known that the bank would not confirm to investors that they had control over their funds.

¶ 157 Byer was a former registrant and would have completed the proficiency requirements associated with becoming registered. He had to have known that 1st Tier medium term bank notes did not exist, and that no legitimate investment could yield returns of 6% per month with no risk.

¶ 158 We find that Byer had subjective knowledge of the deceit, and that it would result, not merely in the investors' pecuniary interests being put at risk, but in their actual deprivation.

¶ 159 We therefore find that Stevenson, Pinkett and Byer perpetrated a fraud on persons in British Columbia, and in so doing contravened section 57(b).

V Summary of Findings

¶ 160 We find that Stevenson, Pinkett, Byer and IFC traded in IFC securities without being registered to do so, contrary to section 34(1) of the Act, and distributed those securities without filing a prospectus, contrary to section 61(1) of the Act.

¶ 161 We find that Stevenson, Pinkett and Byer perpetrated a fraud, contrary to section 57(b), when they lied to the investors, inducing them to participate in the sham IFC investment program. Stevenson, Pinkett and Byer started the scheme solely for the purpose of enriching themselves by depriving the investors of their money.

¶ 162 This deliberate and well-organized fraud resulted in the loss of millions of dollars by 89 residents of British Columbia.

VI Sanctions

¶ 163 The executive director seeks permanent orders under section 161(1) of the Act against the individual respondents denying them the use of the exemptions under the Act, prohibiting them from being directors or officers of any issuer, and prohibiting them from engaging in investor relations activities.

¶ 164 The executive director seeks an order under section 162 of the Act imposing an administrative penalty on each of the individual respondents of $1 million.

A Retrospectivity

¶ 165 The respondents' misconduct occurred between April 2004 and November 2006. During and since that time, sections 161(1) and 162 have been amended.

¶ 166 Section 162 was amended first. It says that if the commission, after a hearing, determines that a person has contravened the Act or the regulations, it can order the person to pay the commission an administrative penalty.

¶ 167 The *Securities Amendment Act*, SBC 2006, c. 32 increased the maximum administrative penalty the commission can order under section 162 from $250,000 to $1 million per contravention.

¶ 168 The amendment came into force on May 18, 2006. The executive director issued the first notice of hearing on November 1, 2006.

¶ 169 Much of the conduct alleged in the notice of hearing occurred after May 18, 2006, when the amendment to section 162 came into force. Of the 89 British Columbia investors who participated in the scheme, 34 made their initial investment on or after May 18, including investors B, C and F. Of the remaining 55 British Columbia investors who invested before May 18, 32 reinvested funds after May 18, including investors A, D and E.

¶ 170 Section 161(1) authorizes the commission to make other enforcement orders. The *Securities Amendment Act*, SBC 2007, c. 37 added new powers to section 161(1), including powers to make orders prohibiting a person from acting as a director or officer of a registrant, investment fund manager, or promoter, prohibiting a person from acting as registrants, investment fund managers or promoters, prohibiting a person from acting in a management or consultative capacity in connection with activities in the securities market, and requiring persons to disgorge profits made in contravening the Act. The amendments came into force on November 22, 2007.

¶ 171 There is a presumption against the retrospective operation of statutes. In *Thow* 2007 BCSECCOM 758, this commission considered the issue of retrospectivity in the context of securities legislation and concluded that the presumption against the retrospective operation of the amendments to sections 161(1) and 162 is rebutted.

¶ 172 Based on *Thow*, we have the jurisdiction to apply sections 161(1) and 162 as they now read. Would it be unfair to do so in the context of this hearing?

¶ 173 The increase in the penalty under section 162 came into force before much of the conduct alleged in the notice of hearing, and before the executive director issued the notice of hearing. In submissions, the executive director argued in favour of applying section 162 as amended, so the respondents had notice of the issue and the opportunity to respond.

¶ 174 The new order powers in s 161(1) came into force after all phases of the hearing had ended (except our rendering of this decision). In the notice of hearing, the executive director gave notice of the intention to seek orders under section 161(1), but these new powers were not included in section 161(1) when the executive director issued the notice of hearing.

¶ 175 The issue of applying section 161(1) as amended was not raised in the executive director's submissions, nor did we ask the parties for submissions on the point. In *Thow*, the panel asked for submissions on the application of the new powers in section 161(1) and, having done so, concluded that it would not be unfair to apply section 161(1) as amended.

¶ 176 However, it does not follow that it would be unfair to apply section 161(1) as amended in the absence of submissions. The new powers in sections 161(1)(d)(i) through (iv) to make orders prohibiting persons against any activities in the securities market are intended to deal with exactly the sort of misconduct exhibited by Stevenson, Pinkett and Byer in this case. Orders under those sections are a perfectly natural consequence of their misconduct, and in the circumstances it would not be unfair to make those orders against them.

¶ 177 As for a disgorgement order under section 161(1)(g), the outcome to the respondents would be the same, even if the section were not applied retroactively. This is because we would, in those circumstances, increase the administrative penalties by amounts equal to the amounts that that the respondents took from the investors – otherwise they could have been seen to profit from their misconduct.

¶ 178 Therefore, applying section 161(1) retroactively is not unfair to the respondents because it does not increase the amount that they would be ordered to pay. The only impact is that the majority of what they pay will be available to investors instead of being paid to the commission. In these circumstances, this result is in the public interest.

¶ 179 In these circumstances, it is not unfair to apply the amendments to sections 161(1) and 162.

B Factors to consider

¶ 180 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the commission discussed the factors relevant to sanction as follows (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 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.

¶ 181 The respondents contravened sections 34(1) and 61(12) by trading and distributing IFC securities without being registered and without filing a prospectus. These provisions are designed to prevent exactly the kind of abuse of the markets that has happened in this case. A fraud like this cannot happen without the perpetrators flagrantly disregarding those requirements.

¶ 182 More seriously, the respondents perpetrated a fraud on the investors. They deceived them and took their money.

¶ 183 Stevenson and Byer told investors that their deposits were not at risk, would be left on deposit in a bank and under their control at all times, and could be withdrawn on request. They knew this was untrue. They told investors that IFC would pay a monthly return of 6% through its trading program, which they knew was untrue, because the trading program did not exist.

¶ 184 Pinkett signed the comfort letters, which represented to investors that their funds would remain within their control. He knew this was false, because only he had control over investors' funds. He also knew, contrary to the representation in the comfort letter, that he had never been affiliated with the International Monetary Fund.

¶ 185 Stevenson, Pinkett and Byer deprived the investors of their funds by converting more than $12.7 million to their own use. Pinkett also used investors' funds to make monthly payments to existing investors in order to make the Ponzi scheme work.

¶ 186 Through this serious misconduct, Stevenson, Pinkett and Byer significantly harmed investors and damaged the integrity of British Columbia's capital markets.

¶ 187 We are not aware of any mitigating circumstances.

¶ 188 In Stevenson's case, there are significant aggravating factors. After he had notice of the temporary orders, he continued to raise funds for the scheme in contravention of those orders. He also attempted to intimidate investors who sought to exercise their rights through the courts, or who cooperated with the commission staff investigation. He told them that as a result of their actions, their funds would not be refunded.

¶ 189 Byer's conduct also involves aggravating factors. As a former registrant, he was familiar with the Act. He knew that securities could not be traded in these circumstances without complying with the registration and prospectus requirements. Yet he actively solicited investment in the scheme, knowing it was in contravention of those requirements. Furthermore, as a registrant, he had to know that the promised returns could not be achieved without risk, which he denied existed.

¶ 190 Both Stevenson and Byer have been previously sanctioned by this commission.

¶ 191 The respondents' conduct shows they are not fit to participate in our capital markets. We must also make orders that will demonstrate the consequences of their conduct, and that will have an appropriate deterrent effect.

C Orders in the public interest

¶ 192 This case involves a large, deliberate and well-organized fraud. It calls for orders that are protective of our markets and preventative of likely future harm. One of the best ways to do this is to ensure that the orders we make have a strong deterrent effect, both specific and general.

Sections 34(1) and 61(1)

¶ 193 The respondents all contravened sections 34(1) and 61(1) by trading IFC securities that they were not registered to trade, and for which a prospectus had not been filed. Stevenson was aware of these requirements and tried to avoid them, unsuccessfully, by resorting to a form-over-substance approach. As noted above, Byer, as a former registrant, must have been aware of these requirements, yet ignored them.

¶ 194 The registration and prospectus requirements are fundamental to our system of securities regulation. As noted above, they are designed to prevent exactly the kind of abuse of the markets that has happened in this case.

¶ 195 Therefore a contravention of these provisions in these circumstances requires us to consider the value of both specific and general deterrence. The market as a whole must understand that contraventions of sections 34(1) and 61(1) in connection with a serious fraud will attract an appropriate response.

Section 57(b)

¶ 196 Stevenson, Pinkett and Byer contravened section 57(b) by perpetrating a fraud on the investors.

¶ 197 As this commission observed in *Thow*, “nothing strikes more viciously at the integrity of our capital markets than fraud.”

¶ 198 These respondents’ contravention of the prohibition against fraud is therefore a particular consideration in assessing both specific and general deterrence in our orders. The market as a whole must understand that a finding of fraud will result in a significant penalty.

Orders under section 161(1)

¶ 199 In our opinion, Stevenson, Pinkett and Byer ought to be forever prohibited from trading or purchasing securities in British Columbia on any basis, so we have not included provisions in the orders allowing them to trade in the capital market for their own account. As a result of these respondents’ conduct, many of the investors are unlikely to trade in our markets again, either because they have lost faith in markets or because they have no money left to invest.

¶ 200 Stevenson, Pinkett and Byer appropriated investors’ funds for their own use. In these circumstances, we order disgorgement of those funds.

Order under section 162

¶ 201 Section 162 allows us to order payment of the maximum administrative penalty for each contravention. We have found that the respondents contravened three sections of the Act. They contravened all of those sections in their dealings with each of the 89 investors in British Columbia. They also contravened those sections more than once in their dealings with some investors. There are therefore hundreds of contraventions for which we could order an administrative penalty.

¶ 202 Rather than deal with each of the respondents’ contraventions with each of the investors separately, we have considered their conduct globally, and made an order under section 162 that imposes an administrative penalty for all of their contraventions.

¶ 203 In amending section 162, the Legislature quadrupled the maximum penalty and authorized the maximum to be applied "per contravention". It is clear that the Legislature's intent was that the commission have the power to impose significant penalties where appropriate in the circumstances.

¶ 204 In *Thow*, the commission said:

> 81 This is the first decision in which the commission is ordering an administrative penalty since the Legislature amended section 162, so we have no precedent.
>
> 82 We anticipate future panels will apply section 162 in varying ways, depending on what is appropriate in the circumstances of the cases before them. . . .

¶ 205 We consider the administrative penalty we are ordering appropriate in light of the respondents' blatant disregard of important fundamentals of our system of regulation, the seriousness of their conduct, the harm suffered by the investors, the damage they inflicted on the integrity of our capital markets, and the extent of their enrichment.

¶ 206 In these circumstances, we think an administrative penalty ought to be imposed in addition to the order for disgorgement. The penalty we have ordered for each individual is $1 million. To reflect the aggravating circumstances present in Stevenson's and Byer's cases, their penalties include an additional $500,000.

¶ 207 As noted above, each of the respondents committed hundreds of contraventions, so the penalty we are ordering against each respondent is far smaller than the maximum penalty allowed for each contravention, but in our opinion it is large enough to achieve the protective and preventative effect that these circumstances demand.

¶ 208 IFC's contravention of sections 34(1) and 61(1) was fundamental to its use as the conduit for the fraud. As such, in ordinary circumstances we would impose a significant administrative penalty. However, in this case, an administrative penalty could impair whatever prospects the investors have of recovery from the company. We therefore make no order under section 162 against IFC.

VII Orders

¶ 209 Therefore, considering it to be in the public interest, we order:

Stevenson

1. under section 161(1)(b) of the Act, that Stevenson cease trading permanently, and is prohibited permanently from purchasing, securities or exchange contracts;

2. under section 161(1)(d)(i), that Stevenson resign any position he holds as a director or officer of an issuer, registrant or investment fund manager;

3. under section 161(1)(d)(ii), that Stevenson is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

4. under section 161(1)(d)(iii), that Stevenson is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter,

5. under section 161(1)(d)(iv), that Stevenson is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;

6. under section 161(1)(d)(v), that Stevenson is prohibited permanently from engaging in investor relations activities;

7. under section 161(1)(g), that Stevenson pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of his contraventions of the Act, which we find to be not less than $5,530,389.00;
8. under section 162, that Stevenson pay an administrative penalty of $1.5 million;

Pinkett

9. under section 161(1)(b) of the Act, that Pinkett cease trading permanently, and is prohibited permanently from purchasing, securities or exchange contracts;

10. under section 161(1)(d)(i), that Pinkett resign any position he holds as a director or officer of an issuer, registrant or investment fund manager;

11. under section 161(1)(d)(ii), that Pinkett is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

12. under section 161(1)(d)(iii), that Pinkett is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter,

13. under section 161(1)(d)(iv), that Pinkett is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;

14. under section 161(1)(d)(v), that Pinkett is prohibited permanently from engaging in investor relations activities;

15. under section 161(1)(g), that Pinkett pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of his contraventions of the Act, which we find to be not less than $4,807,490.00;

16. under section 162, that Pinkett pay an administrative penalty of $1 million;

Byer

17. under section 161(1)(b) of the Act, that Byer cease trading permanently, and is prohibited permanently from purchasing, securities or exchange contracts;

18. under section 161(1)(d)(i), that Byer resign any position he holds as a director or officer of an issuer, registrant or investment fund manager;

19. under section 161(1)(d)(ii), that Byer is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

20. under section 161(1)(d)(iii), that Byer is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter,

21. under section 161(1)(d)(iv), that Byer is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;

22. under section 161(1)(d)(v), that Byer is prohibited permanently from engaging in investor relations activities;

23. under section 161(1)(g), that Byer pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of his contraventions of the Act, which we find to be not less than $2,439,585.95;

24. under section 162, that Byer pay an administrative penalty of $1.5 million;

IFC

25. under section 161(1)(b) of the Act, that IFC cease trading permanently, and is prohibited permanently from purchasing, securities or exchange contracts; and

26. under section 161(1)(b), that all persons cease trading permanently, and are prohibited permanently from purchasing, any securities of IFC.

¶ 210 February 20, 2008

¶ 211 **For the Commission**

Brent W. Aitken
Vice Chair

John K. Graf
Commissioner

Kenneth G. Hanna
Commissioner