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

Citation: Re SBC Financial Group Inc., 2018 BCSECCOM 267 Date: 20180905

**SBC Financial Group Inc. and Prabhjot Singh Bakshi**

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| **Panel** | Nigel P. Cave | Vice Chair |
| | Judith Downes | Commissioner |
| | Gordon L. Holloway | Commissioner |
| **Hearing Date** | July 18, 2018 | |
| **Submissions Completed** | August 9, 2018 | |
| **Date of Findings** | September 5, 2018 | |
| **Appearing** | | |
| Mila Pivnenko | For the Executive Director | |
| Nicholas Isaac | | |

Decision

## I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. The Findings of this panel on liability made on April 16, 2018 (2018 BCSECCOM 113) are part of this decision.

[2] These are the reasons of all panel members on all issues, except for the decision on orders under section 161(1)(g) of the Act. Commissioner Downes' dissenting reasons on that issue are below.

[3] We found that the respondents:

a) contravened section 34(a) of the Act with respect to trading in securities between October 2010 and September 2014 in the amount of $2,675,238; and

b) contravened section 61 of the Act with respect to 45 issuances of securities for $1,535,238.

[4] The parties were given an opportunity to make written and oral submissions with respect to the appropriate sanctions in this case. The executive director provided written and oral submissions. The respondents provided written submissions only.

[5] During the oral hearing, we asked the parties for further written submissions concerning the application of orders under section 161(1)(g) of the Act in circumstances where such order arises only from contraventions of section 34(a) of the Act. The executive director provided those submissions to us and we have considered those submissions as part of reaching our decision in this matter. The respondents were advised of our request for further submissions but did not provide further written submissions on this issue.

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

## II. Position of the Parties

[7] The executive director sought the following sanctions in this case:

(a) market prohibitions of 10 years under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(i), (ii), (iii), (iv) and (v) of the Act against Bakshi;

(b) market prohibitions of 10 years under sections 161(1)(b)(ii) and 161(1)(d)(v) of the Act against SBC;

(c) an order under section 161(1)(g) of the Act in the amount of $2,115,040, to be made jointly and severally, against Bakshi and SBC; and

(d) an order under section 162 of the Act in the amount of $75,000 against Bakshi.

[8] The respondents submitted that market prohibitions of five years under sections 161(1)(b)(ii), 161(1)(c) and 161(1)(d)(ii), (iii), (iv) and (v) of the Act would be appropriate in the circumstances.

[9] With respect to any orders made under section 161(1)(b)(ii) of the Act, Bakshi submitted that it would be appropriate to grant him a carve-out to allow him to maintain:

- a personal trading account;
- an RRSP segregated fund account; and
- an unregistered joint account.

[10] With respect to Bakshi's unregistered joint account, his submissions stated that no trading in this account was permitted, yet his submissions further set out that the account contained mutual fund securities which were security for a loan.

[11] With respect to financial sanctions, the respondents did not stipulate any financial sanctions that they suggested would be appropriate. However, Bakshi did submit that any order under section 161(1)(g) of the Act against SBC should not also be made, jointly and severally, against him.

## III. Analysis

### A. Factors

[12] Orders under sections 161(1) and 162 of the Act are protective and preventative, intended to be exercised to prevent future harm. See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37.

[13] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, the Commission identified 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:
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> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

### B. Application of the Factors

***Seriousness of the conduct***

[14] Sections 34 and 61 are "cornerstone" provisions of the Act as they relate directly to protection of the investing public in the purchase and sale of securities.

[15] As set out in *Re Michaels*, 2014 BCSECCOM 457 (paragraph 9):

> … contraventions of section 34 are also inherently serious because the registration requirements of the Act are foundational for protecting investors and the integrity of the capital markets. The requirement in section 34(b) that those who advise others on investments must be registered is intended to ensure that those who seek advice are advised to invest in securities that are suitable. This case clearly illustrates the catastrophic losses that can occur where investments are made without care as to the suitability of those investments for their purchasers.

[16] Similar comments are also appropriate with respect to the requirement to be registered to trade under section 34(a) of the Act and with respect to the significant investor losses that occurred in this case as a consequence (at least in part) from the respondents' contraventions of that provision.

[17] Section 61 is also foundational to the investor protection aspects of our regulatory regime. As set out in *Re Flexfi Inc.*, 2018 BCSECCOM 166 (paragraph 45):

> Contraventions of section 61 of the Act are inherently serious. This section is one of the Act's foundational requirements for protecting investors and preserving the integrity of the capital markets. It requires those who wish to distribute securities to file a prospectus with the Commission or to have an exemption from this requirement. This is intended to ensure that investors receive the information necessary to make an informed investment decision.

[18] The harm to the investors caused by the respondents' contraventions of sections 34 and 61 was manifest in this case. The investors lost substantial investments without having received sufficient information regarding SBC and its securities with which to make an informed investment decision and the respondents dealt with the investors in an unregistered capacity and without fulfilling basic obligations that, as a registrant, they would have owed to their clients.

***Harm suffered by investors and the enrichment of the respondents***

[19] The respondents raised a total of $2,675,238 during an almost four year period, through their unregistered trading activities and engaged in 45 issuances of securities for $1,535,238 in contravention of section 61 of the Act.

[20] Some of the investors received payments from the respondents, in the form of interest or a repayment of principal on their loans to SBC. The total of these payments was $560,198. The remainder of the investors' investments in SBC were lost when SBC was petitioned into bankruptcy. The investors did not receive any distributions out of the bankruptcy proceedings.

[21] In addition to the significant financial losses and the impact of these losses on the financial lives of the investors, we heard testimony from several of the investors who spoke about the damage that this experience had on their investing confidence and trust in financial services providers.

[22] The respondents were significantly enriched by their misconduct.

[23] SBC was the beneficiary of all of the proceeds of its unregistered trading and illegal distributions (as it was engaged in unregistered trading of its own securities). It was enriched by $2,115,040 (being the net difference between the proceeds from the unregistered trading and the amount returned to investors).

[24] SBC was a company owned and controlled by Bakshi so he was indirectly enriched by SBC's enrichment. However, Bakshi also directly obtained a portion of the investors' funds. Commission investigators reviewed the bank statements (from the relevant period) of SBC, Bakshi and another company owned and controlled by Bakshi. Those records reveal considerable cash flows back and forth between the entities. In aggregate, the records indicate that Bakshi (and his company) received from SBC $380,309 more than they contributed to it and were therefore directly enriched by that sum.

[25] Bakshi challenged the quantum of his personal enrichment. We will address these submissions below in our discussion of our orders under section 161(1)(g) (as the issues overlap). It is sufficient for our purposes here to note that we do not agree with Bakshi's submissions on this issue.

[26] In totality, this is a case that involved both significant financial and other harm to the investors and substantial enrichment to the respondents as a consequence of their misconduct.

***Aggravating or mitigating circumstances***

[27] There are no mitigating circumstances in this case.

[28] Bakshi submitted that he has suffered mental health issues as a consequence of "this ordeal". Firstly, the submissions do not suggest that he suffered these mental health issues at the time of the misconduct and, as a consequence, could not be construed as a mitigating circumstance. More importantly, Bakshi did not provide any evidence in support of this submission. We have not considered this as part of our orders in this matter.

[29] The executive director submitted that there are no aggravating circumstances with respect to SBC.

[30] However, the executive director submitted that it is an aggravating factor that Bakshi was formerly a registrant (for nine years) under the Act.

[31] There are a number of decisions of this Commission which have found a respondent's previous registration status under the Act to be an aggravating factor (see: *Re Waters*, 2014 BCSECCOM 369, *Re McIntosh*, 2015 BCSECCOM 69 and *Re McCleary*, 2015 BCSECCOM 281). Although a respondent's previous registration status is not material in all cirucmstances, this is an obvious and clear case where it must be considered an aggravating factor. Bakshi's previous registration status will (or should) have provided him with sufficient background and information to know that his (and SBC's) conduct triggered the requirement to be registered and to know that certain of his investors did not qualify for exemptions from the prospectus requirements in connection with SBC's offering of securities. While we did not make a determination in our Findings that the respondents' contraventions of the Act were intentional, we have no difficulty now in assessing that the respondents' misconduct was not accidental or even merely negligent.

***Participation in our capital markets and fitness to be a registrant or a director or officer***

[32] The respondents' conduct falls far short of that expected of participants in our capital markets.

[33] In particular, Bakshi was the sole officer and director of SBC. His failure to ensure that SBC complied with securities laws raises significant concerns about his fitness to be an officer or director of a company.

[34] More importantly, we have significant concerns about Bakshi's fitness to be either a registrant or an officer or director of an issuer due to his deceitful conduct with respect to certain of his clients. In our findings, we dismissed allegations of fraud against the respondents on the grounds that the conduct alleged to constitute fraud did not involve a "security" under our Act. However, the evidence led during the hearing clearly established that Bakshi engaged in a sophisticated level of deceit against several of his clients. Those investors were clients of the respondents in their financial services business. Honesty is a critical aspect of being either a registrant or a director or officer of an issuer. In fact, it is part of the basic duties of those positions. Our orders must take into account the risk that Bakshi poses to the public through his demonstrated dishonesty.

***Specific and general deterrence***

[35] The sanctions that we impose must be sufficiently severe to establish that both the respondents and others will be deterred from fraudulent misconduct.

[36] Our orders must also be proportionate to the misconduct of the respondents, and the circumstances surrounding it.

***Previous decisions***

[37] The executive director referred us to four previous decisions of this Commission which he submitted were helpful guidance in ascertaining the appropriate sanctions in this case: *Re VerifySmart* Corp., 2012 BCSECCOM 176 (with respect to the respondent Scammell), *Re Williams*, 2016 BCSECCOM 283 (with respect to the respondent Nemeth), *Re HRG Healthcare*, 2016 BCSECCOM 5 (with respect to the respondent Mohan) and *Streamline Properties Inc. (Re)*, 2015 BCSECCOM 66 (with respect to the respondent Weigel).

[38] The decisions referred to above involved respondents who were found liable of contravening, in some cases, only section 61 and, in other cases, both section 34 and section 61. The quantum of the amounts raised by the respondents (in these decisions) from investors through their misconduct varied from between $1.2 million to $3.6 million. The seriousness of the misconduct of the respondents in these decisions was also generally similar to that of the respondents in the current case.

[39] These decisions suggest a range of length of market prohibitions for misconduct of this type (including the magnitude of investor losses and the enrichment of the respondents) between five and ten years and a range of quantum of orders under section 162 of between $50,000 to $100,000. The decisions involve a variety of factors which caused the specific respondents to receive orders that were on the higher or lower end of that range. As such, these decisions are generally supportive of the orders requested by the executive director in this case.

[40] The respondents only referred us to the Court of Appeal decision in *Poonian* (discussed below) and to three decisions of this Commission (*Michaels, Re Oriens Travel & Management Corp*., 2014 BCSECCOM 352 and *Re Pacific Ocean Resources Corp.*, 2012 BCSECCOM 104). Each of those cases was referred to in the context of submissions made by the respondents with respect to the appropriate orders to be made under section 161(1)(g) of the Act and we will deal with those submissions below.

## C. Analysis of appropriate orders

### *Market prohibitions*

[41] The executive director asked for broad market prohibitions lasting 10 years against the respondents. The respondents submitted that market prohibitions of five years would be more appropriate.

[42] As noted above, those two positions mark the "bookends" of the length of market prohibition orders in recent decisions of this Commission for misconduct of the general nature that the respondents engaged in.

[43] This is a case that warrants orders at the upper end of this spectrum. We say that based upon the following:

- the quantum of investor losses and enrichment of the respondents;
- that the misconduct in this case involved significant multiple contraventions of *both* sections 34 and 61, which were sustained over a long period of time;
- the significant aggravating factor of Bakshi's previous registration status; and
- Bakshi's demonstrated dishonesty.

[44] Because of these factors and the need for both specific and general deterrence we find it to be in the public interest and proportionate to Bakshi's misconduct to make market prohibition orders against Bakshi with a length of 10 years.

[45] Although SBC has been dissolved, we find it to be in the public interest to make our market prohibition orders against the company. Dissolved companies can be reinstated relatively easily and we would not be adequately protecting the public if we did not make orders to cover off that possibility. Therefore, we find it to be in the public interest and proportionate to SBC's misconduct to make market prohibition orders against SBC with a length of 10 years.

[46] Bakshi asked for carve-outs from our market prohibition orders that would allow him to trade in securities for his own account.

[47] Previous decisions of this Commission have permitted this carve out, even with respect to those respondents found to have committed much more serious misconduct, including fraud (see: *Re Samji*, 2015 BCSECCOM 29 and *Re Lathigee*, 2015 BCSECCOM 78).

[48] The executive director submitted that Bakshi did not provide evidence in support of his need to maintain brokerage accounts of the type requested. In addition, he submitted that the misconduct in this case arose from the respondents' trading in securities and that there was a demonstrated risk to the public in permitting Bakshi to trade.

[49] While it is true that the nature of the misconduct in this case indirectly involved the respondents trading in securities, there was no evidence that Bakshi or SBC (a company he controlled) used a brokerage account to carry out any aspect of the misconduct. More importantly, it was not Bakshi's trading of securities for his own account that led to the respondents' misconduct in this case. As a consequence, we do not find that granting Bakshi's request for a carve out from our market prohibition orders to permit him to maintain a personal trading account and an RRSP account would be contrary to the public interest in the circumstances.

[50] However, Bakshi also asked for a specific carve-out with respect to an unregistered account and a loan arrangement related to it. We were neither provided with any evidence related to this account and these arrangements nor was it clear to us what "trading" was occurring or could occur in respect of this account. Section 171 of the Act provides a mechanism for respondents to apply to vary previously made orders of this Commission. Without further evidence from Bakshi of the nature of this account and a fulsome understanding of the transactions involved, we are not satisfied that it is in the public interest to add this carve-out to our orders.

***Section 161(1)(g) orders***

[51] The British Columbia Court of Appeal in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, recently adopted a two-step approach to considering applications for orders under section 161(1)(g) (para 144):

> I now turn to apply these principles to the three appeals before this Court. I agree with and adopt the two-step approach identified by Vice Chair Cave in *SPYru* at paras 131-132:
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> > [131] The first step is to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act. This determination is necessary in order to determine if an order can be made, at all, under section 161(1)(g).
> >
> > [132] The second step of my analysis is to determine if it is in the public interest to make such an order. It is clear from the discretionary language of section 161(1)(g) that we must consider the public interest, including issues of specific and general deterrence.

[52] The Court of Appeal in *Poonian* further adopted several principles to apply in interpreting section 161(1)(g) (para 143):

1. The purpose of s. 161(1)(g) is to deter persons from contravening the *Act* by removing the incentive to contravene, i.e. by ensuring the person does not retain the "benefit" of their wrongdoing.

2. The purpose of s. 161(1)(g) is not to punish the contravener or to compensate the public or victims of the contravention. Those objectives may be achieved through other mechanisms in the *Act*, such as the claims process set up under Part 3 of the *Securities Regulation* or the s.157 compliance proceedings in the *Act*.

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

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

5. However, a joint and several order may be made where the parties being held jointly and severally liable are under the direction and control of the contravener such that, in fact, the contravener obtained those amounts *indirectly*. Non-exhaustive examples include the use of a corporate *alter ego*, use of other person's accounts, or use of other persons as nominee recipients.

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

Step 1 – Can a section 161(1)(g) order be made?

[54] The evidence during the hearing was that SBC directly obtained the benefit of the full amount of the $2,675,238[1] that was obtained from investors by its contraventions of the Act.

[1] The $1,535, 238 obtained by SBC from its contraventions of section 61 represent a subset of the amount obtained by SBC from its contraventions of section 34. Therefore, the total amount obtained by SBC from its contraventions of the Act is the amount obtained from its contraventions of section 34 of the Act.

[55] The executive director's submitted that there was nothing in section 161(1)(g) to suggest that contraventions of section 34(a) should be treated any differently with respect to determining orders under that section. The executive director further submitted that, as a matter of policy, there was no reason to approach the legal determination of whether we can make orders under section 161(1)(g) for contraventions of section 34(a) differently from other contraventions of the Act.

[56] We agree with those submissions. There is nothing in section 161(1)(g), or elsewhere in the Act to suggest that we should approach the legal determination of what orders we can make under that section for contraventions of section 34 from other contraventions of the Act. As a consequence, we could make an order under section 161(1)(g) of the Act in this amount against SBC. However, as will be discussed below, there may be circumstances in which the public interest issues (in step 2 of the approach to making orders under this section) associated with making disgorgement orders for contraventions of section 34 may differ from other contraventions of the Act.

[57] As noted in *Poonian*, in determining the appropriate quantum of any order under this section the Commission may take into account the portion of the gross amount obtained from SBC's contraventions of the Act that it returned to investors.

[58] The executive director acknowledged, and this figure was not disputed by the respondents, that a total of $560,198 was paid to investors by SBC in the form of interest and principal repayments. It is appropriate to take this amount into consideration in crafting our orders under section 161(1)(g) such that the total amount of an order under this section against SBC would be reduced to $2,115,040.

[59] Bakshi submitted that further payments were made by him to, or on behalf of, investors (which amounts were disputed by the executive director) and we will consider those submissions below.

[60] The evidence during the hearing was that Bakshi directly (and through his control of another company) obtained a portion of the gross amount obtained from investors by the respondents' contraventions of the Act. As noted above, that amount was $380,309. As a consequence, we could make an order under section 161(1)(g) of the Act for at least this amount (subject to the discussion of whether he indirectly obtained further funds below) against Bakshi.

[61] Bakshi submitted that we should take into consideration a further $284,166.62 in payments that he says were made by him to, or on behalf of, the investors in this case. Of this total, Bakshi submitted that he made $30,666.62 in interest payments to investors and purchased $252,500 in investments for the benefit of SBC (which would indirectly have been of benefit to the investors).

[62] The Commission recently addressed the issue of which party bears the burden of proof in establishing repayments to be taken into account for the purposes of making orders under section 161(1)(g) in *Re Oei*, 2018 BCSECCOM 231 (paragraph 77):

> In assessing the evidentiary issues associated with the purported investor repayments, the first issue is which party bears the onus of proof. In *Poonian,* the Court set out that the executive director has the onus of establishing a reasonable approximation of the benefit obtained, directly or indirectly, following which the burden of proof switches to the respondent to disprove the reasonableness of this number. Given that the purpose, in this case, of taking investor repayments into account is to establish that Oei and Canadian Manu have "benefitted" from their misconduct in a lesser quantum than the amount of their fraud, we find that the respondents bear the onus of establishing, on a balance of probabilities, that such repayments were made.

[63] As the executive director has established a reasonable approximation of the benefit obtained, we agree that it is the respondent who bears the onus to prove the amount of any repayment to investors in these circumstances.

[64] The panel in *Oei* also set out the evidentiary matters that the respondent must establish (at paragraph 78):

> Given that some of the purported transactions involve payments from a third party (i.e. a person who is not a respondent) and/or to a third party (i.e. a person who is not an investor in Cascade) and, in certain cases, were made in kind, the following aspects of each purported payment must be established by the respondents:
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> a) that a payment was made;
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> b) that a payment was made by, or on behalf of, a respondent;
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> c) that a payment was made to, or for the benefit of, an investor;
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> d) that such payment was in respect of the investor's investment in Cascade; and
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> e) where the payment was in kind, the value of such payment.

[65] Not all of the evidentiary issues that are discussed in this paragraph from *Oei* are relevant in this case but several are critical, namely subparagraphs (d) and (e).

[66] With respect to the purported interest payments that Bakshi says were made to investors, there were banking records which support the submission that Bakshi made certain (although not all) of these payments. What is lacking from this evidence is to whom these payments were made and, more importantly, why such payments were made. The evidence from the bankruptcy trustee in SBC's bankruptcy was that certain investors advanced funds directly to Bakshi. Those amounts were not part of the allegations in this hearing. Whether the payments that Bakshi submitted were interest payments were, in fact, interest payments and, just as importantly, were interest payments which represent repayments of amounts improperly obtained from his misconduct is not possible to determine from the evidence before us. Those payments could represent interest payments on personal debt obligations that are not part of the allegations of misconduct

in this case. Therefore, Bakshi has failed to demonstrate, on a balance of probabilities, that these were investor repayments that we should take into account in making our orders under section 161(1)(g).

[67] With respect to the purported acquisitions of securities that Bakshi submitted were payments made on behalf of SBC, we also find that Bakshi has failed to demonstrate, on a balance of probabilities, that these are payments that we should take into account in making our orders under section 161(1)(g).

[68] First, although there was evidence from the trustee's report in the SBC bankruptcy proceeding that SBC owned some (although not all) of the securities that Bakshi submitted he purchased on behalf of SBC, there was no evidence to support Bakshi's submissions that he originally purchased any those securities (nor their cost to him) or that he transferred them to SBC *for no consideration*. Even if there had been that evidence, there was no evidence to support the valuation of those securities at the time of purchase.

[69] Second, securities owned by SBC were not really owned for the benefit of the investors in the sense that the investors loaned funds to SBC and had no entitlement to SBC's assets. If, in fact, the assets held by SBC had been successful investments, Bakshi, as the owner of SBC, would have been the primary beneficiary of those assets. We do not see how these purported transactions can be viewed as Bakshi being stripped of the benefit of his misconduct in the same way that SBC's direct repayments of cash (in the form of interest and principal) to investors is.

[70] As a consequence, none of Bakshi's submissions in this regard lead us to conclude that any order that we make against him under section 161(1)(g) should be less than the $380,309 he directly obtained from the respondents' contraventions of the Act.

[71] The only remaining issue is whether Bakshi indirectly obtained the funds, directly obtained by SBC, from the respondents' contraventions of the Act. The wording of section 161(1)(g) expressly contemplates making orders under that section where a respondent has indirectly obtained those funds. The decision in *Poonian* expressly acknowledges this and includes several examples of circumstances where someone may indirectly obtain funds which may then properly be made part of an order under this section. One of those examples is where a corporate alter ego of an individual respondent has directly obtained the funds derived from misconduct. In such circumstances, it is possible to view the individual respondent as having indirectly obtained those funds.

[72] We find that SBC is exactly the kind of corporate alter ego for which we can find that Bakshi indirectly obtained the benefit of the respondents' misconduct. Not only was Bakshi the company's sole officer, director and shareholder but the banking records of the respondents show that there were significant deposits and withdrawals between their respective accounts such that there was a significant intermingling of their financial affairs.

[73] Therefore, we conclude that we could make orders under section 161(1)(g) against both SBC and Bakshi in the amount of $2,115,040.

Step 2 – Is it in the public interest to make a section 161(1)(g) order?

[74] There remains only the question of whether it is in the public interest to make orders in this amount, in a lesser amount or not at all with respect to either of the two respondents. This is not a legal question but one of the exercise of our public interest jurisdiction.

[75] We think that there may be circumstances in which the determination of a quantum of an order under section 161(1)(g) for contraventions of section 34 may raise different public interest considerations than for other contraventions of the Act. There are several reasons for this:

- section 34 creates a requirement to be registered; however, the activities that trigger the requirement to be registered encapsulates activity that may go beyond the mere purchasing and selling of securities and both the amounts obtained by a respondent from a failure to be registered and the damage to the public from a failure to comply with section 34 may, in certain cases, be difficult to quantify;

- even where the activity that triggers the requirement to be registered is the strict purchasing and selling of securities, a respondent may have obtained an investor's funds in the legal sense but those funds may then be used to purchase the securities of a third party.

[76] Although different public interest issues may arise in cases involving contraventions of section 34, this is not one of those cases. In this case, the activity that triggered the requirement to be registered was the purchase and sale of securities and the securities that were sold were "proprietary securities" (i.e. securities of SBC which was also the entity that was required to be registered) such that the entity that obtained the benefit of those purchases and sales was also the firm that should have been registered. As a result, in this matter, we do not see any reason in the public interest to limit the potential order under section 161(1)(g) against either of the respondents on the basis that their contravention of the Act is limited to a breach of section 34. .

[77] However, there are other relevant factors we must consider in the public interest analysis, when determining the quantum of a section 161(1)(g) order. As evidenced by the majority decisions of this Commission in *HRG*, *Pacific Ocean* and *Michaels*, and in the dissent from the majority decision in *Streamline,* orders under section 161(1)(g) have been made (or would have been made, in the case of *Streamline*) against a respondent for less than the full amount obtained, directly or indirectly, by that respondent from their contraventions of the Act, on public interest grounds. Those grounds have included that the funds obtained, directly or indirectly, were subsequently sent by the respondent to third parties (in a manner consistent with the investors' expectations) or used by the respondent for a business purpose in a manner that conformed with investors' expectations of the respondent's use of proceeds. Those orders can be understood through the perspective of (one or both):

a) the purpose of our orders under section 161(1)(g) are to strip respondents of the benefit of their misconduct; or

b) the orders should be equitable (not in the strict legal sense of that term) and proportionate to the misconduct.

[78] In this case, investors were told that their funds were being used by the respondents to make investments in public and private company securities and in real estate. The evidence, although less than complete in this regard, demonstrates that this is what the majority of the investors' funds were used by the respondents. However, there was no evidence to support the notion that the $380,309 that was transferred from SBC to Bakshi's account (and to another company Bakshi controlled) was used in a manner consistent with the investors' expectations.

[79] In the circumstances of this case, we find that the public interest lies in making an order against each of the respondents, on a joint and several basis, under section 161(1)(g) in the amount of $380,309.

***Administrative penalties***

[80] The executive director asked for an order under section 162 in the amount of $75,000 against Bakshi. The executive director did not seek an order under section 162 against SBC. His rationale for this position is that SBC did not act independently from Bakshi and that the company has both gone through bankruptcy and been dissolved (as of November 21, 2016). If the second issue were persuasive it would also suggest that we should not make an order under section 161(1)(g) against SBC. We do not find it persuasive. However, we do agree that SBC cannot be viewed to have acted independently from Bakshi and therefore we do not find it necessary, in the circumstances, to make an order under section 162 against SBC.

[81] Bakshi did not provide us with an appropriate quantum of an order under section 162.

[82] Bakshi submitted that he was impecunious.

[83] A respondent's financial circumstances can be a factor to take into account with respect to specific deterrence, although it is not a factor to consider with respect to general deterrence. However, in order for us to take a respondent's financial circumstances into account we must be provided with evidence of that respondent's finances. In this case, we were provided no evidence of Bakshi's financial circumstances (income or assets) and, as a consequence, we have not taken this into account in crafting or orders under section 162.

[84] As noted above, we were presented with previous decisions of this Commission which suggested that the bookends for the quantum of orders under section 162 for misconduct of the type engaged in by the respondents is $50,000 to $100,000. Therefore, the

executive director's submissions suggesting that $75,000 would be an appropriate amount for an order under section 162 is not unreasonable.

[85] However, as we noted above, we find the misconduct of the respondents and the risk to the public that they pose to be on the upper end of this spectrum. For all of the reasons set out in paragraph 43 above, with particular emphasis on the sustained breaches of *both* sections 34 and 61, and the need for both specific and general deterrence, we find it to be in the public interest and proportionate to Bakshi's misconduct to make an order against him under section 162 in the amount of $100,000.

[86] For all of the reasons discussed above, we do not find it necessary to make an order under section 162 against SBC.

## IV. Orders

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

***Bakshi***

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

(b) Bakshi is prohibited until the later of 10 years from the date of this order and the date that he pays the amounts set out in subparagraphs (c) and (d) below:

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

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

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

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

(v) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

(vi) under section 161(1)(d)(v), from engaging in investor relations activities;

(c) Bakshi pay to the Commission $380,309 pursuant to section 161(1)(g) of the Act; and

(d) Bakshi pay to the Commission an administrative penalty of $100,000 under section 162 of the Act.

***SBC***

(e) SBC Financial Group Inc. is prohibited for 10 years:

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

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

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

(iv) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

(v) under section 161(1)(d)(v), from engaging in investor relations activities;

(f) SBC pay to the Commission $380,309 pursuant to section 161(1)(g) of the Act; and

(g) with respect to our orders under subparagraphs (c) and (f), Bakshi and SBC shall be jointly and severally liable for $380,309.

September 5, 2018

**For the Commission**

Nigel P. Cave
Vice Chair

Gordon L. Holloway
Commissioner

**Reasons for the Decision of Judith Downes, Commissioner**

[88] I concur with the majority decision in all respects other than the decision to limit the amount of the order made against SBC and Bakshi under section 161(1)(g) to $380,309 on the basis that the balance of the investor funds obtained by the respondents was used in a manner consistent with the investors' expectations.

[89] I would have ordered that Bakshi and SBC, on a joint and several basis, pay to the Commission $2,115,040 pursuant to section 161(1)(g) of the Act.

[90] I agree with the two-step approach adopted in the majority decision in considering whether section 161(1)(g) orders are appropriate against the respondents.

[91] As set out in *Poonian*, the first step is to determine whether the respondents, directly or indirectly, obtained amounts arising from their contraventions of sections 34(a) and 61 of the Act.

[92] I concur with the reasoning and conclusion of the majority that we have the authority to make orders under section 161(1)(g) against both SBC and Bakshi in the amount of $2,115,040.

[93] The second step is to determine whether it is in the public interest to make such an order. As set out in *Poonian*, the discretionary language of section 161(1)(g) makes it clear that the public interest, including issues of specific and general deterrence, must be considered in a determination of whether a section 161(1)(g) order should be made.

[94] I agree with the majority view in *Streamline* that, as a general principle, it is not inequitable or punitive to make a section 161(1)(g) order in the full amount of the benefit obtained by respondents where the proceeds raised from investors were used in accordance with investor expectations and not for personal gain.

[95] In this case, the investors lost substantial investments without having received sufficient information regarding SBC and its securities with which to make an informed investment decision and the respondents dealt with the investors in an unregistered capacity and without fulfilling basic obligations that, as a registrant, they would have owed to their clients.

[96] In my view, where investors have been denied the fundamental protections of the Act, it is not relevant that the investment proceeds have been used in accordance with investor expectations. A focus on the use of proceeds is misplaced when the investment decision itself was ill-informed.

[97] SBC obtained a net benefit of $2,115,040 from its unregistered trading and illegal distributions. Bakshi, as the alter ego of SBC, indirectly obtained the full amount of that benefit.

[98] In my view, it is in the public interest to order that SBC and Bakshi disgorge, on a joint and several basis, the full amount of the benefit obtained by them to deter those respondents and others who obtain a benefit, directly or indirectly, in connection with unregistered trading and illegal distributions.

September 5, 2018

Judith Downes
Commissioner