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

Citation: Re FS Financial Strategies, 2020 BCSECCOM 121 Date: 20200422

Aik Guan "Frankie" Lim, Scott Thomas Low, Darrell Wayne Wiebe, FS Financial Strategies Inc., FS Financial Strategies Services Inc., 3i Capital ClearPath Limited Partnership, FS Financial Services Inc., FS Financial Services (Alberta) Inc., Verico FS Capital Inc., and FS Financial Systems Inc.[1]

Panel[2]	Audrey T. Ho	Commissioner
	Gordon Holloway	Commissioner
Hearing date	February 26, 2020	
Submissions completed	March 23, 2020	
Decision date	April 22, 2020	
Appearing		
Derek J. Chapman Joanne Thai	For the Executive Director	
Chilwin C. Cheng	For Aik Guan "Frankie" Lim, Scott Thomas Low, Darrell Wayne Wiebe, FS Financial Strategies Inc., FS Financial Strategies Services Inc., 3i Capital ClearPath Limited Partnership, FS Financial Services Inc., FS Financial Services (Alberta) Inc., Verico FS Capital Inc. and FS Financial Systems Inc.	

[1] The original style of cause in this matter was: Aik Guan "Frankie" Lim, Scott Thomas Low, FS Financial Strategies Inc., FS Financial Services Inc., FS Financial Strategies Services Inc., FS Financial Services (Alberta) Inc., Darrell Wiebe, Chun Ying "Jim" Pan, Chung-Sheng "Johnson" Kao, CC Cornerstone Credit Ltd. (now known as Flexfi Inc.), Afshin Ardalan, WL Strategic Capital Partners Inc., George Lay, Hunter Wei-Shun Wang (aka Hunter Wei Shun Wang), FS Stellar Insurance Services Inc., Nyit Foon "Lydia" Chin, Aike Joo Lim, Verico FS Capital Inc., Gagan Deep Bachra, FS Financial Systems Inc., Chi Kay "Dixon" Wong and Meng Cher "Philip" Tsai. By February 26, 2020, the executive director had discontinued the proceedings against all parties other than the Respondents (as defined in this decision).
[2] Vice Chair Nigel Cave was an original member of the panel but left the Commission before the hearing on liability and sanctions commenced. He took no part in these Findings and decision.

Findings and Decision

I. Introduction

[1] These are the liability and sanctions portions of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

[2] On February 6, 2017, the Executive Director issued:

a) a temporary order against Aik Guan "Frankie" Lim, Scott Thomas Low, FS Financial Strategies Inc., FS Financial Services Inc., FS Financial Strategies Services Inc., FS Financial Services (Alberta) Inc., Darrell Wiebe, Chun Ying "Jim" Pan, Chung-Sheng "Johnson" Kao, CC Cornerstone Credit Ltd. (now known as Flexfi Inc.), Afshin Ardalan, WL Strategic Capital Partners Inc., George Lay, Hunter Wei-Shun Wang (aka Hunter Wei Shun Wang), FS Stellar Insurance Services Inc., Nyit Foon "Lydia" Chin, Aike Joo Lim, Verico FS Capital Inc., Gagan Deep Bachra, FS Financial Systems Inc., Chi Kay "Dixon" Wong and Meng Cher "Philip" Tsai (collectively, the Initial Respondents); and

b) a notice of hearing setting February 17, 2017 to hear the executive director's application to extend the temporary order until a hearing is held and a decision rendered (2017 BCSECCOM 33).

[3] At various times between February 6, 2017 and February 25, 2020, the Commission adjourned the hearing of the executive director's application to extend the Temporary Order to a future date and extended the Temporary Order to the future hearing date, ordered variations to the Temporary Order, and allowed the Temporary Order to lapse against certain respondents.

[4] Over the same time period, the executive director entered into settlement agreements with a number of the Initial Respondents and discontinued these proceedings against them.

[5] On October 24, 2018, the executive director issued an amended notice of hearing against Aik Guan "Frankie" Lim (Lim), Scott Thomas Low (Low), Darrell Wayne Wiebe (Wiebe), FS Financial Strategies Inc., FS Financial Strategies Services Inc., 3i Capital ClearPath Limited Partnership (3i Capital), FS Financial Services Inc., FS Financial Services (Alberta) Inc., Verico FS Capital Inc., FS Financial Systems Inc., and certain other Initial Respondents (2018 BCSECCOM 330).

[6] The companies and limited partnership listed in paragraph 5 above are collectively referred to in this decision as the "FS Group". The FS Group, together with Lim, Low and Wiebe, are collectively referred to in this decision as the "Respondents".

[7] On August 23, 2019, the executive director issued a Further Amended Notice of Hearing against the Respondents and certain other Initial Respondents. The executive director alleged the following contraventions with respect to the Respondents:

a) ***Misrepresentations***
Between November 2012 and January 2017 (the relevant period), the FS Group raised over $47 million without disclosing its true financial condition to investors. In doing so, the FS Group made statements to its investors that it knew, or ought reasonably to have known, were misrepresentations contrary to section 50(1)(d) of the Act.

While they were directors or officers of the FS Group, Lim, Low and Wiebe authorized, permitted or acquiesced in the FS Group's contraventions of section 50(1)(d) and therefore, by virtue of section 168.2 of the Act, they also contravened section 50(1)(d).

b) ***Illegal distributions***
The FS Group distributed over $47 million of its securities without filing a prospectus. Prospectus exemptions were not available for about $29 million of these sales. In doing so, the FS Group contravened section 61 of the Act every time it distributed a security to an investor without an exemption.

While they were directors of one or more companies in the FS Group, Lim and Low authorized, permitted or acquiesced in the FS Group's contraventions of section 61 and therefore, by virtue of section 168.2, they also contravened section 61.

b) ***Unregistered trading***
FS Services, FS Alberta, FS Capital and FS Systems were in the business of trading in securities when they sold almost $33 million of the FS Group's securities in the form of unsecured loan agreements. They were not registered under the Act to sell securities when they did so. In doing so, those four companies, together with Lim and Low, contravened section 34(a) of the Act every time they sold a security to an investor.

While they were directors of those FS companies, Lim and Low authorized, permitted or acquiesced in those companies' contravention of section 34(a) and therefore, by virtue of section 168.2 of the Act, they also contravened section 34(a).

c) ***Breach of undertaking***
Lim and Low gave undertakings to the executive director in 2014 to cease trading and distributing securities. Despite these undertakings, they continued their fund

raising activities for the FS Group until 2017, and raised an additional $29.34 million in breach of their undertakings. In doing so, Lim and Low contravened section 57.6 of the Act.

[8] On August 23, 2019, Lim, Low and the FS Group entered into an Agreed Statement of Facts with the executive director, in which they admitted to the misconduct described in Part II below.

[9] On September 24, 2019, Wiebe entered into an Agreed Statement of Facts with the executive director, in which he admitted to the misconduct described in Part II below.

[10] By February 26, 2020, the executive director had discontinued these proceedings against all of the Initial Respondents other than the Respondents.

[11] This hearing relates to the Further Amended Notice of Hearing and the Respondents.

[12] At the hearing, counsel for the executive director confirmed that with respect to the unregistered trading allegation against Lim and Low, the executive director was only continuing with the allegation that Lim and Low contravened section 34(a) indirectly by virtue of section 168.2 of the Act, and was no longer pursuing the allegation that Lim and Low contravened section 34(a) directly.

[13] The parties proceeded on the basis that the Respondents admitted to the facts and misconduct set out in their respective Agreed Statements of Facts and that we should therefore combine the liability and sanctions portions of this hearing. We determined that it was appropriate in the circumstances.

[14] The executive director tendered documentary evidence and made written and oral submissions on liability and sanctions. The Respondents tendered documentary evidence and made written and oral submissions on sanctions.

[15] During the hearing, we asked the parties to provide to the panel further precedents that might assist the panel in determining the appropriate sanctions. The parties did so following the oral hearing.

[16] At the conclusion of the oral hearing, by consent of the parties, we ordered a further extension of the temporary order against the Respondents, until a decision is rendered [2020 BCSECCOM 84].

[17] These are our findings on liability and our decision on sanctions.

II. Background

[18] The facts and misconduct described in paragraphs 20-22, 25, 27-28, 31, 34, 36-40, and 44-52 below were admitted to by Lim, Low and the FS Group in their Agreed Statement of Facts.

[19] The facts and misconduct described in paragraphs 23-24, 28, 31, 34, 38-39, 41 and 43 below were admitted to by Wiebe in his Agreed Statement of Facts.

[20] Lim and Low are residents of British Columbia, and were formerly registered under the Act.

[21] Lim was licensed by the Insurance Council of British Columbia throughout the period November 2012 to January 2017 (the relevant period). Low was licensed by the Insurance Council for most of the relevant period.

[22] Lim and Low were the founders and directors or *de facto* directors of each company in the FS Group during the relevant period. They directed and controlled the FS Group and treated the companies as one entity.

[23] Wiebe is a resident of British Columbia. He was licensed by the Insurance Council of British Columbia throughout the relevant period, and was formerly registered under the Act.

[24] Wiebe was the general manager of the FS Group during the relevant period.

[25] Each company in the FS Group was a British Columbia company except FS Alberta, which was an Alberta company, and FS Systems, which was a federal company registered in British Columbia.

[26] FS Strategies Services was the general manager and general partner of 3i Capital. Lim told Commission investigators that FS Strategies Services controlled 3i Capital.

[27] None of the companies in the FS Group was ever registered under the Act.

[28] The FS Group was mainly in the insurance business.

[29] In 2010, Lim and Low started FS Strategies (the first company in the FS Group) as an insurance company operating out of a single office in Vancouver modelled as a café. Part of their business model was to pay their insurance agents a salary rather than the industry standard of paying a commission on the sale of insurance products.

[30] Lim and Low contemplated a relatively rapid expansion of the business. By February 2017, the FS Group had opened 12 offices, nine in the Lower Mainland, two in Alberta

and one in Ontario, with approximately 80 licensed advisors or advisors-in-training, 20 independent contractors, six IT personnel, and eight administrative employees.

[31] The FS Group raised money during the relevant period for its general business purposes as follows:

a) Each of the companies in the FS Group (other than FS Strategies Services) raised money using unsecured loan agreements promising lenders annual interests of 10% to 12%, payable monthly. The unsecured loan agreements were "securities" under the Act.
b) FS Strategies Services was the general manager of 3i Capital and raised money during the relevant period in the form of subscription agreements entitling investors to units of 3i Capital and paying a priority annual return of 8%. The subscription agreements were "securities" under the Act.

[32] The FS Group also offered a "Borrow to Invest" program whereby investors could borrow money from a bank to invest with the FS Group. The program was premised on the monthly interests payable from the FS Group investments being greater than the monthly interests payable to the bank.

[33] Lim and Low were personally named as borrowers with either FS Strategies or FS Services in some of the earlier loan agreements, under which $10,388,913 was raised by FS Strategies and $3,930,000 was raised by FS Services.

Misrepresentations

[34] The FS Group raised over $47 million during the relevant period while making statements to investors with the intention of effecting trades in its securities. Without limiting the foregoing, the FS Group made statements about the level of risk involved by stating its ability to repay investors their principal and pay them a monthly or annual return, but did not disclose its true financial condition. In particular, it did not disclose the fact that the FS Group:

a) was not profitable;

b) did not generate sufficient revenues from its business operations to cover its business expenses and pay investors their monthly returns, leading to consistent shortfalls; and

c) covered the shortfalls by raising more money from investors.

[35] The amounts raised by each FS Group company, as well as the amounts repaid to investors, are as follows:

FS Group company	Amount raised	Amount repaid	Net amount
FS Strategies	$13,543,898	$9,285,790	$4,258,108
FS Strategies Services/3i Capital LP	$910,000	$676,577	$233,423
FS Services	$4,605,000	$522,302	$4,082,698
FS Alberta	$17,437,980	$3,336,970	$14,101,010
FS Capital	$8,915,000	$586,725	$8,328,275
FS Systems	$1,925,000	$126,444	$1,798,556

[36] The FS Group's business expenses and payments to its investors during the relevant period exceeded its business revenues, resulting in significant shortfalls, as follows:

Year	Business revenues	Business expenses	Payments to investors	Shortfall
Nov and Dec 2012	$106,615	$546,655	$143,900	($583,940)
2013	$850,080	$5,007,911	$1,156,722	($5,314,554)
2014	$1,507,010	$7,148,182	$2,185,324	($7,826,497)
2015	$2,359,476	$8,251,985	$4,805,775	($10,698,284)
2016	$3,074,699	$11,824,045	$5,825,164	($14,574,509)
Jan 2017	$351,848	$747,774	$417,921	($813,847)
Total	**$8,249,728**	**$33,526,553**	**$14,534,807**	**($39,811,631)**

[37] The FS Group raised money from investors during the relevant period to cover the shortfalls as follows:

Year	Shortfall	Money raised from investors
Nov and Dec 2012	($583,940)	$1,235,000
2013	($5,314,554)	$5,873,913
2014	($7,826,497)	$10,889,985
2015	($10,698,284)	$11,709,980
2016	($14,574,509)	$16,688,000
Jan 2017	($813,847)	$940,000
Total	**($39,811,631)**	**$47,336,878**

[38] The Respondents admitted that the FS Group's true financial condition, including the particular facts stated in paragraph 34, were material facts that were either required to be stated, or necessary to be stated to prevent the FS Group's loan and subscription agreements from being false or misleading in the circumstances in which they were made.

[39] The Respondents admitted that, by engaging in this conduct, the FS Group made statements to its investors with the intention of effecting a trade in its securities that it knew, or ought reasonably to have known, were misrepresentations, contrary to section 50(1)(d) of the Act.

[40] Lim, Low and the FS Group admitted that, while they were directors of the FS Group, Lim and Low authorized, permitted or acquiesced in the FS Group's contraventions of section 50(1)(d) and therefore, by virtue of section 168.2 of the Act, they also contravened section 50(1)(d).

[41] Wiebe admitted that he was aware of the material facts, including that the FS Group was not profitable and did not generate sufficient revenues from its business operations to cover its business expenses and pay investors their monthly returns, leading to consistent shortfalls. He routinely advised the FS Group about how much money it needed to meet its ongoing financial obligations, and administered the unsecured loan agreements and subscription agreements once they were signed.

[42] Wiebe told Commission investigators that he knew his career with Lim and Low was based on not asking a lot of questions and simply doing what he was told by them.

[43] Wiebe admitted that, while he was an officer of the FS Group, he acquiesced in the FS Group's contraventions of section 50(1)(d) and therefore, by virtue of section 168.2, he also contravened section 50(1)(d).

Illegal distributions

[44] The FS Group distributed over $47 million of its securities during the relevant period without filing a prospectus. Prospectus exemptions were not available for about $29 million of these sales as follows:

Respondent	**Total distribution**	**# of investors**	**Illegal distribution**	**# of investors**
FS Strategies	$13,543,898	147	$7,244,985	94
FS Strategies Services	$910,000	26	$635,000	19
FS Services	$4,605,000	37	$1,480,000	20
FS Alberta	$17,437,980	103	$12,729,980	72

FS Capital	$8,915,000	55	$5,380,000	35
FS Systems	$1,925,000	21	$1,620,000	15
Total	**$47,336,878**	**389**	**$29,089,965**	**255**

[45] Lim, Low and the FS Group admitted that, by engaging in this conduct, the FS Group contravened section 61 of the Act every time it distributed a security to an investor without an exemption.

[46] Lim, Low and the FS Group admitted that, while they were directors of the FS Group, Lim and Low authorized, permitted or acquiesced in the FS Group's contraventions of section 61, and therefore, by virtue of section 168.2 of the Act, they also contravened section 61.

Unregistered trading

[47] FS Services, FS Alberta, FS Capital and FS Systems were in the business of trading in securities when they sold almost $33 million of the FS Group's securities during the relevant period in the form of unsecured loan agreements, when they were not registered under the Act to do so, as follows:

Respondent	**Unregistered trading**
FS Services99	$4,605,000
FS Alberta	$17,437,980
FS Capital	$8,915,000
FS Systems	$1,925,000
Total	**$32,882,980**

[48] Lim, Low and the FS Group admitted that, by engaging in this conduct, FS Services, FS Alberta, FS Capital and FS Systems contravened section 34(a) of the Act every time they sold a security to an investor.

[49] Lim, Low and the FS Group admitted that, while Lim and Low were directors of FS Services, FS Alberta, FS Capital and FS Systems, they authorized, permitted or acquiesced in those FS Group companies' contraventions of section 34(a), and therefore, by virtue of section 168.2 of the Act, they also contravened section 34(a).

Breach of undertaking

[50] In December 2014, Lim, Low and FS Strategies gave undertakings to the executive director to cease trading and distributing securities until FS Strategies had met the following conditions:

a) filed exempt distribution reports with the Commission;

b) provided certain documents satisfactory to Commission staff supporting prospectus exemptions claimed for investors; and

c) refunded all loans from individuals who would not qualify for a prospectus exemption.

[51] Despite those undertakings and before FS Strategies complied with those conditions, Lim and Low continued their fund raising activities for the FS Group until 2017, raising an additional $29.34 million using unsecured loan agreements.

[52] Lim, Low and the FS Group admitted that, by engaging in this conduct, Lim and Low contravened section 57.6 of the Act.

Respondents' affairs after issuance of the temporary order

[53] After the executive director issued the Temporary Order in February 2017, the Insurance Council of British Columbia suspended or terminated the licences of Lim, Low, Wiebe and each FS Group company that was licensed by it. Lim and Low said that effectively closed the FS Group's business.

[54] According to affidavit evidence from Lim and Low, since the issuance of the Temporary Order, managing general agents (representing insurers and insurance underwriters) terminated their contracts with the FS Group, the FS Group lost all of its licensed agents and leased premises, and had not earned any commission or revenue from their insurance business.

III. Analysis and Findings

A. Applicable Law

Standard of proof

[55] Proof on a balance of probabilities is the standard of proof that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

Misrepresentations

[56] During the relevant period, section 50(1)(d) of the Act stated that "a person, while engaging in investor relations activities or with the intention of effecting a trade in a security, must not … make a statement that the person knows, or ought reasonably to know, is a misrepresentation".

[57] Section 1(1) of the Act defines:

a) "material fact" to mean, "when used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities"; and

b) "misrepresentation" to mean, "an untrue statement of a material fact, or an omission to state a material fact that is (i) required to be stated, or (ii) necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made."

Prospectus requirements

[58] Section 61(1) of the Act states that "unless exempted under this Act, 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.

[59] Section 1(1) of the Act defines:

a) "distribution" as "a trade in a security of an issuer that has not been previously issued";

b) "security" to include "(a) document, instrument or writing commonly known as a security", "(d) a bond, debenture, note or other evidence of indebtedness …" and "(l) an investment contract"; and

c) "trade" to include "(a) a disposition of a security for valuable consideration" and "(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)".

[60] Section 1.10 of the companion policy to *National Instrument 45-106 – Prospectus Exemptions* (NI45-106 CP) states that the person distributing securities is responsible for determining, given the facts available, whether an exemption from the prospectus requirement, set out in section 61(1), is available.

[61] The Commission has consistently held that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act, and the person relying on an exemption has the onus of proving that the exemption is available. See *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 163 (para. 32-33).

Unregistered trading

[62] During the relevant period, section 34(a) of the Act stated that a person "must not trade in a security or exchange contract … unless the person is registered in accordance with the regulations and in the category prescribed for the purpose of the activity."

[63] Section 8.4(1) of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* sets out an exemption from the requirement to be registered to trade in securities for persons who are not engaged in the business of trading in securities as principal or agent and who do not hold themselves out as engaging in the business of trading as principal or agent.

Breach of undertaking

[64] Section 57.6 of the Act states that "a person that gives a written undertaking to the commission or the executive director must comply with the undertaking."

Liability under section 168.2 of the Act

[65] Section 168.2 states that if a corporate respondent contravenes a provision of the Act, an individual who is an employee, officer, director or agent of the corporate respondent also contravenes the same provision of the Act, if the individual "authorizes, permits or acquiesces in the contravention."

B. Findings

[66] The Respondents have admitted their misconduct and liability for the allegations against them as set out in each of the Agreed Statements of Facts. Their counsel confirmed to the panel at the hearing that the Respondents made those admissions.

[67] We have no reason to reject any of the Respondents' admissions of facts or misconduct. The Respondents were represented by experienced counsel. The evidence before us fully supports those admissions and our findings of liability are set out below.

[68] Therefore, we make the following findings:

Misrepresentations

1. the FS Group raised over $47 million in total from investors during the relevant period, in the respective amounts listed in the table found in paragraph 35 above;

2. the FS Group's true financial condition, including the particular facts stated in paragraph 34, were material facts that were either required to be stated, or necessary to be stated to prevent the FS Group's loan and subscription agreements from being false or misleading in the circumstances in which they were made;

3. the FS Group contravened section 50(1)(d) of the Act when they raised over $47 million during the relevant period without disclosing its true financial condition to investors;

4. Lim and Low authorized, permitted or acquiesced in the FS Group's contraventions of section 50(1)(d) and therefore, by virtue of section 168.2, each of them also contravened section 50(1)(d); and

5. Wiebe acquiesced in the FS Group's contraventions of section 50(1)(d) and therefore, by virtue of section 168.2, he also contravened section 50(1)(d);

Illegal distributions

6. the FS Group raised over $29 million in total from investors during the relevant period without a prospectus exemption or filing a prospectus;

7. each FS Group entity contravened section 61 of the Act every time it distributed securities to investors without an exemption or filing a prospectus, in the amount set forth in paragraph 44 above;

8. Lim and Low authorized, permitted or acquiesced in the FS Group's contraventions of section 61 and therefore, by virtue of section 168.2, each of them also contravened section 61;

Unregistered trading

9. FS Services, FS Alberta, FS Capital and FS Systems were in the business of trading when they sold almost $33 million in FS Group securities to investors without being registered to do so, in the respective amounts listed in the table found in paragraph 47 above;

10. each of FS Services, FS Alberta, FS Capital and FS Systems contravened section 34(a) of the Act every time it sold a FS security to investors without being registered under the Act;

11. Lim and Low authorized, permitted or acquiesced in the contraventions of section 34(a) by FS Services, FS Alberta, FS Capital and FS Systems and therefore, by virtue of section 168.2 of the Act, each of them also contravened section 34(a);

Breach of undertaking

12. Lim and Low raised an additional $29.34 million for the FS Group in breach of the undertaking to cease trading and distributing securities; and

13. each of Lim and Low contravened section 57.6 of the Act every time he raised money in breach of the undertaking.

IV. Sanctions

A. Position of the Parties

[69] The executive director submitted that the following sanctions are appropriate in the circumstances:

1. With respect to the FS Group:

   a) permanent, comprehensive market bans under section 161(1);

   b) disgorgement orders under section 161(1)(g), for the amount of money each raised when making misrepresentations, less the amounts repaid to investors, as follows:

      - FS Strategies – $4,258,108
      - FS Strategies Services and 3i Capital, on a joint and several basis – $233,423
      - FS Services – $4,082,698
      - FS Alberta – $14,101,010
      - FS Capital – $8,328,275
      - FS Systems – $1,798,556; and

   c) no administrative penalty.

2. With respect to Lim and Low:

   a) permanent, comprehensive market bans under section 161(1);

b) disgorgement orders under section 161(1)(g):

- against each of them and each FS Group entity on a joint and several basis, in the amount of money sought against each entity in subparagraph 69(1)(b) above, or in the alternative,
- $10,388,913 against each of them and FS Strategies on a joint and several basis, plus another $3,930,000 against each of them and FS Services on a joint and several basis, and

c) $4,000,000 in administrative penalty against each of them under section 162.

3. With respect to Wiebe:

a) comprehensive market bans under section 161(1), for the longer of 10 years or until Wiebe pays his administrative penalty;

b) no disgorgement order; and

c) $75,000 in administrative penalty under section 162.

[70] The respondents submitted that the following sanctions are appropriate in the circumstances:

1. With respect to the FS Group:

a) seven-year market bans;

b) no disgorgement order; and

c) administrative penalty as follows:

- FS Strategies – $90,000
- FS Strategies Services – $6,500
- FS Services – $30,000
- FS Alberta – $125,000
- FS Capital – $60,000
- FS Systems – $10,000.

2. With respect to Lim and Low:

a) seven-year market bans ;

b) no disgorgement order; and

c) $250,000 in administrative penalty against each of them.

3. With respect to Wiebe:

a) no market ban;

b) no disgorgement order; and

c) $20,000 in administrative penalty.

[71] The Respondents asked us to consider a remedy that would allow the FS Group to restart its insurance business under strict supervision and periodic reporting to the Commission, possibly with an appointed receiver to supervise or manage their financial affairs. Lim and Low asserted that they could restructure their business model to a more traditional sales model that will not require outside investments, become profitable again and repay investors.

B. Factors

[72] 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.

[73] 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:
>
> - the seriousness of the respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,

- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

C. Application of the Factors

Seriousness of the conduct

[74] We agree with the following view expressed by the Commission in *Re Michaels*, 2014 BCSECCOM 457 (para. 8):

> Not far behind fraud, in the scale of seriousness of misconduct, stands misrepresentation. Those who operate and profit in the capital markets by misstating material facts (through commission or omission), undermine the confidence of the public in one of the cornerstones of capital markets regulation, the provision of accurate and complete information for investors to make informed investment decisions.

[75] This Commission has consistently held that failure to comply with a cease trade order is serious misconduct. See *Re Loughery*, 2019 BCSECCOM 78. Like a cease trade order, an undertaking is a very important tool that the Commission uses to protect the capital markets. Failure to comply with an undertaking undermines the Commission's ability to effectively regulate the capital markets. A breach of an undertaking is even more serious than a breach of a cease trade order, in the sense that an undertaking is a legal promise (to act or refrain from acting) intentionally given to the Commission. The Commission must be able to rely on that promise. A breach of that promise is very serious misconduct.

[76] Lastly, contraventions of sections 34 and 61 are inherently serious. As the Commission stated in *Re Wireless Wizard*, 2015 BCSECCOM 443 (para. 8):

> These sections are the Act's foundational requirements for protecting investors and preserving the integrity of the capital markets. They require those who wish to trade in securities to be registered and those who wish to distribute securities to file a prospectus with the Commission. This is intended to ensure that investors are offered only securities that are suitable and that they receive the information necessary to make an informed investment decision.

[77] We find the Respondents' misconduct to be very serious. Investors were denied the protections that underpin the legal requirements stated above. The seriousness of the misconduct was magnified by the significant amount of money and large number of investors involved, and the duration of the misconduct. The $47 million were raised from 389 investors involving over 500 investor loan agreements; the $29 million of illegal

distributions were raised from 255 investors involving over 300 investor loan agreements; and the $33 million in unregistered trading involved more than 250 investor loan agreements. More than 230 investor loan agreements were entered into after 2014 to raise the $29.34 million in breach of undertakings.

[78] Lim, Low and Wiebe's misconduct is also made more serious by their previous status as registrants under the Act. They were registered in various capacities related to scholarship plan securities. These registrations would have, or should have, made them aware of the prospectus and registration requirements of the Act, the role of the Commission in regulating the capital markets, and in the case of Lim and Low, the significance of an undertaking and the seriousness of its breach.

Harm to investors/capital markets

[79] Investors were harmed when they invested in the FS Group without knowing facts that they ought to have in order to make informed investment decisions.

[80] Although there was no detailed evidence on the current financial condition and status of the FS Group, nor specific evidence of the harm to specific investors, given the significant shortfall facing the FS Group in 2017, and the loss of insurance licences and business since then, it is unlikely that the FS Group has sufficient funds to repay the investors for the amounts still outstanding.

[81] The Respondents also damaged the reputation and integrity of our capital markets. Investors lose confidence in the markets and become hesitant to invest if they cannot trust those who sell securities to do so in compliance with securities regulations, and to inform them of all the facts that would reasonably be expected to have a significant effect on the value of their investments before they invest. See: *Re Michaels; Re Wireless Wizard,* 2015 BCSECCOM 443 (para. 11).

Enrichment

[82] The FS Group was enriched by the misconduct as it received the cash proceeds of the investments in contravention of the Act.

[83] The executive director submitted that Lim, Low and Wiebe personally benefited from the misconduct because they received significant sums from the FS Group during the relevant period. He invited us to find enrichment by Lim, Low and Wiebe in the net amounts of approximately $1.7 million, $1.5 million and $374,000 respectively. These were the net amounts paid to them by the FS Group during the relevant period, and equated to mean annual payments of approximately $410,000 to Lim, $350,000 to Low, and $88,000 to Wiebe.

[84] In interviews with Commission investigators, Lim and Low admitted to taking money out of the FS Group, initially in consulting fees and later in the form of shareholder loans. Lim also said he generated annual income of $250,000 from his own insurance business prior to joining Low to set up FS Strategies, and that over time, he incorporated that business and income into the FS Group which accounted for some of the withdrawals he made.

[85] There is no question that the investors' funds allowed Lim and Low to pay themselves handsomely. But there is no suggestion that their compensation was not legitimately earned. Nor do we find the quantum of these payments so excessive, given the size of the FS Group operations, as to lead us to question their legitimacy.

[86] Wiebe acknowledged that he received compensation from the FS Group. But there is no suggestion that his compensation was not legitimately earned. Given his role as general manager and the size of the FS Group operations, compensation of $88,000 a year is not unreasonable.

Aggravating/mitigating factors

[87] None of the Respondents has a history of securities regulatory misconduct.

[88] The fact that the Respondents admitted liability is a significant mitigating factor. It allowed the Commission and investors to avoid a lengthy hearing to determine liability.

[89] We do not find any aggravating factors.

[90] The executive director submitted that the fact that Lim and Low raised over $29 million for other companies in the FS Group after being put on notice that Commission staff had concerns with FS Strategies' fund-raising (which led to the undertakings) is an aggravating factor. This breach of undertaking was alleged as a separate contravention for which we have found liability, and we have taken into account the circumstances surrounding that contravention in determining the seriousness of that misconduct and the appropriate sanction. Having done so, it would not be appropriate to consider it again as an aggravating factor.

[91] The Respondents' counsel submitted that it is a mitigating factor that there is no evidence that the Respondents knew, rather than "ought to have known", of the misrepresentations.

[92] It is clear from the definition of "misrepresentation" that a respondent has made a misrepresentation if they either "knew or ought to have known" of the misrepresentation; actual knowledge is not required. Given that, the fact that a respondent ought to have known, but did not actually know, of the misrepresentation is not a mitigating factor. However, the respondent's state of knowledge is a consideration in determining the appropriate sanction, in that a respondent who made a misrepresentation knowingly merits a greater sanction than one who ought to have known. We have taken this factor into account in our deliberations.

Risk to investors and markets/fitness to be a registrant, director or officer

[93] The type, size, scope and duration of the misconduct demonstrate that the Respondents pose a significant risk to our capital markets.

[94] Lim, Low and Wiebe worked in two heavily regulated financial service sectors in this province. As former registrants under the Act, we expect them to know and comply with the requirements of the Act.

[95] Lim and Low were in control and directed the affairs of the FS Group and were largely responsible for their misconduct.

[96] We find troubling the fact that more than half of the $47 million was raised, primarily through companies other than FS Strategies (the subject of the undertakings), after undertakings were given to cease trading and distributing securities.

[97] By December 2014, Lim and Low were aware that Commission staff was of the view that FS Strategies had been raising capital since 2010 in violation of the Act including specifically section 61. Yet, the FS Group continued to raise capital in violation of section 61 until they were stopped in 2017.

[98] Wiebe was less culpable than Lim and Low for the FS Group's misconduct; Wiebe did not control or direct the affairs of FS Group, nor did he find investors for the FS Group. He did not breach any undertaking.

Specific and general deterrence

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

[100] Our orders must also be proportionate to the misconduct (and the circumstances surrounding it) of the Respondents.

Previous orders – general comments

[101] Neither party could locate comparable decisions where the misconduct is similar in magnitude and scope to the present case, but did not also involve fraud.

[102] Therefore, we invited the parties to provide us with decisions involving a similar magnitude, even if they also involved other misconduct and therefore are not strictly comparable. The executive director referred us to a number of decisions involving larger investment amounts and misconduct that included fraud. Having reviewed them, we agree with the parties that these decisions were not helpful and we did not consider them.

[103] The Respondents cited settlement decisions to support their submissions. The historical practice of this Commission is to give little weight to settlement decisions in determining sanctions in the hearing process, since settlements are derived in a different context than decisions arising from a hearing. See: *Re Hamilton*, 2019 BCSECCOM 115.

[104] This proceeding is unusual in that there is no comparable decision to assist us. We were therefore prepared to consider settlement decisions if they would assist our deliberations.

[105] On the scale of misconduct, illegal distributions and unregistered trading are typically viewed as less serious than misrepresentation and fraud. Consistent with that, and subject always to the particular circumstances of each case, the starting point for the magnitude of sanctions the Commission orders for illegal distributions and unregistered trading is usually less than that for misrepresentation and fraud. For that reason, although they were not cited by the parties, we find helpful two recent Commission decisions (*Re HRG Healthcare*, 2016 BCSECCOM 5, and *Re Streamline Properties Inc.*, 2015 BCSECCOM 66) on section 34 and 61 contraventions. Again, we do not typically consider decisions involving different misconduct, as they are not comparable. In this instance, we considered these two decisions only to assess if the order of magnitude of the sanctions we make against Wiebe is proportional in comparison to the magnitude of the sanctions the Commission had imposed for less serious misconduct. This is a rare deviation from our usual practice, in the circumstances of this decision, and does not signal a change in practice.

Previous orders – executive director's position

[106] The executive director cited *Re McCabe*, 2014 BCSECCOM 512, where the Commission ordered the largest administrative penalty in recent years solely for misrepresentation.

[107] McCabe produced tout sheets that included a gross misrepresentation about the gold reserves for an exploration-stage mining company. The misrepresentation was repeated in three issues of the tout sheet that were mailed to a total of three million households. The shares of the mining company were quoted on the over the counter markets in the United States. McCabe was paid almost $2.8 million to produce the tout sheets. The Commission held that the misrepresentation was not technical or accidental. Rather, it was a gross misrepresentation "invented" by McCabe in the face of contrary facts in the public record relating to the company. The Commission held that it was an aggravating factor that McCabe's misconduct related to companies in the junior markets as those markets are particularly vulnerable to reputational damage. The Commission held that potential investors were exposed to an improper practice and were clearly harmed. McCabe received comprehensive, permanent market bans under section 161(1) of the Act. He was ordered to pay to the Commission $2.8 million under section 161(1)(g) and $1.5 million under section 162.

[108] The executive director submitted that although the misrepresentation in *McCabe* was more serious in that McCabe purposely "invented" the misrepresentation, the harm to FS Group investors was far more serious given the magnitude of their loss, which would be compounded for those investors who borrowed money to invest under the "Borrow to Invest" program offered by the FS Group. Therefore, Lim and Low each deserve an administrative penalty of at least $1.5 million for misrepresentation.

[109] The executive director also referred us to a decision from the Ontario Securities Commission. In *Factorcorp Inc. (Re)*, 2013 LNONOSC 726, the respondents raised approximately $50.4 million from more than 600 investors. They misrepresented certain aspects of the nature of the business, failed to file an offering memorandum, and redeemed investments of approximately $724,000 from 10 investors on one day in breach of a cease trade order. The corporate respondents were suspended for 10 years. The individual respondent (the sole director and officer of the companies and a registrant) was given a 10-year trading ban and a permanent ban from acting as a director and officer. He was also ordered to disgorge $420,000 and pay an administrative penalty of $750,000. The executive director also submitted that the Commission has generally ordered administrative penalties that are significantly higher than those issued in Ontario.

[110] With respect to the illegal distributions, unregistered trading and breach of undertaking, the executive director submitted that, given their seriousness and magnitude, each misconduct merits an administrative penalty of $1 million against each of Lim and Low. The executive director said it was open to the panel to find that the Respondents' contraventions occurred multiple times. But, given the significant mitigating factor, it is appropriate, proportional and in the public interest for us to order Lim and Low to each pay an administrative penalty of $4 million globally.

Previous orders – Respondents' position

[111] The Respondents pointed to the settlement agreements between the executive director and some of the Initial Respondents who were nominee directors and/or finders for the FS Group, and argued that we should order sanctions on a scale consistent with those settlement agreements. Those Initial Respondents were involved in the FS Group's illegal distributions of between $1.6 million to $12.8 million, affecting between 15 to 72 investors. They agreed to market bans ranging from one to five years and penalties between $0 to $40,000. No other payments were required.

[112] The Respondents also cited *Re Flexfi Inc.*, 2018 BCSECCOM 166. The *Flexfi* respondents were among the Initial Respondents. Ultimately, the executive director issued a separate notice of hearing against them for unrelated activities. Flexfi and its sole director admitted to contravening section 61 of the Act with respect to 47 investors and total proceeds raised of $2.2 million. There was no evidence of investor harm as Flexfi continued to operate and was meeting its loan obligations to investors. The Commission ordered a four-year market ban against the two respondents with carve-outs to allow them to find financing for the Flexfi business and pay back investors. The Commission ordered Flexfi's director to pay a $40,000 administrative penalty, but did not make any order under section 161(1)(g).

[113] To support their position on a $250,000 administrative penalty, the Respondents took the penalty amounts in the settlement agreements, and extrapolated them to arrive at higher figures (imputed fines) based on the total amount raised through misrepresentation or illegal distribution by the entire FS Group, and the total number of investors affected. These calculations resulted in average "imputed fines" ranging from $61,136 to $244,543. Using the same methodology, extrapolating from the *Flexfi* sanction resulted in an average "imputed fine" of $208,019.

[114] Lastly, the Respondents cited three other settlement agreements with the executive director: *Cem Ali*, 2009 BCSECCOM 732, *Wallace Gerard Fulkco*, 2008 BCSECCOM 173, and *Renee Marie Helmig aka Nisha Helmig*, 2009 BCSECCOM 512.

[115] In *Ali*, the respondent raised approximately US$34 million from 957 investors over the course of 1.5 years, through the sale of limited partnership units, for the purpose of

investing in the forex market. Ali was the president and sole director of the general partner of that limited partnership. Investor funds were sent to a third party to invest on behalf of the limited partnership. That third party was fraudulent and conducted no trading. Ali illegally traded and distributed securities, and made misrepresentations in the sale brochures. He was found to have contravened section 34(1)(a), 61(1) and 50(1)(d) of the Act. He also contravened a cease trade order by continuing to sell securities and received $2.5 million of investor funds after the cease trade order was issued. Ali agreed to a permanent market ban. The executive director indicated he would have fined Ali $1 million if Ali were not bankrupt.

[116] In both *Fulkco* and *Helmig*, the respondents relied on false information provided by another person without conducting due diligence, and made misrepresentations to investors to convince them to invest with that person. They also contravened sections 34(1) and 61 of the Act. *Fulkco* involved 162 British Columbian residents who invested US$6 million, while *Helmig* involved 590 British Columbian residents who invested $4.3 million. In each case, the respondent agreed to a 10-year market ban. Neither was assessed any penalty under the settlement due to their inability to pay. The executive director indicated that he would have fined Fulkco $100,000 if not for his inability to pay.

Other previous orders

[117] In *Re Streamline Properties*, the respondents raised approximately $3.6 million through illegal distributions. The panel found that the respondents were careless or reckless with respect to compliance with securities law, and the respondents' conduct was aggravated by the fact that some of the investors not only lost their investments but were unknowingly made liable for certain liabilities of one of the corporate respondents. There was no evidence that the two individual respondents (who were directors or officers) were materially enriched or otherwise personally benefited from the misconduct. The Commission ordered the director who was involved in the illegal distributions (but not the fraud or breach of a previous order of the Commission) to pay $100,000 in administrative penalty, and banned him from our capital markets for 10 years.

[118] In *Re HRG Healthcare*, HRG raised approximately $4 million from 109 investors through illegal distributions. Two directors of HRG were found to have contravened section 61 (directly or by virtue of section 168.2) with respect to all or a subset of the amounts raised. HRG also filed exempt distribution reports with false information in contravention of section 168.1(1)(b), and its two directors contravened that section with respect to those reports that they signed. There was no evidence that one director was enriched by the illegal distributions while the other director was enriched by $103,530 in commissions. The Commission ordered each director to pay $75,000 in administrative penalty, and banned both of them from our capital markets for seven years.

D. Analysis of appropriate orders

Market prohibitions

[119] For the reasons already stated in Section C above, the FS Group poses a serious risk to our capital markets. Given that its insurance operations have ceased and we are not persuaded by the evidence (discussed below) that it could successfully rebuild a profitable insurance business and repay investors, we find it appropriate to impose permanent comprehensive market bans.

[120] For the reasons already stated in Section C above, and in particular the circumstances of the breach of undertaking, Lim and Low have shown that they pose a serious risk to our capital markets, and cannot be trusted to comply with legal requirements and orders of the Commission.

[121] The misconduct spanned both trading and distribution activities. We find it to be in the public interest, proportional and appropriate in the circumstances, to order permanent comprehensive market bans against Lim, Low and the FS Group.

[122] Wiebe submitted that a market ban against him is unnecessary. Alternatively, he said the market ban we impose should be reduced by three years to reflect the fact that he has been banned from the market since the issuance of the temporary order in 2017.

[123] Wiebe's misconduct was less than that of Lim or Low. Nevertheless, he acquiesced over an extended period with respect to significant amounts in a misconduct that is not far behind fraud in the scale of seriousness. The evidence demonstrates that he does not have the strength to resist misconduct. He poses a risk to our capital markets and a lengthy market ban is warranted.

[124] Wiebe's misconduct is far more serious than those of the individual respondents in the FS-related settlements and *Flexfi*, in terms of Wiebe's broader role in the FS Group, the type of misconduct and the amounts obtained.

[125] We agree with the executive director that a 10-year comprehensive market ban is reasonable in order of magnitude when compared to the bans in the FS-related settlements and *Flexfi*. Nor is it out of line when compared more broadly with market bans for other types of contraventions, specifically the seven and 10-year market bans imposed on the individual respondents in *Re Streamline Properties* and *Re HRG Healthcare*.

[126] Lastly, it is not consistent with Commission practice to reduce a market ban by the amount of time that had elapsed since a temporary order was issued. That would be tantamount to ordering a seven-year market ban.

[127] Accordingly, we find that a 10-year comprehensive market ban against Wiebe is in the public interest, proportional and appropriate in the circumstances.

Section 161(1)(g) orders

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

> [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 … 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.

[129] 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.

[130] 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?

[131] The evidence established that the FS Group directly obtained from investors through their misconduct the respective amounts set beside their names under the column "Amount raised" in paragraph 35 above. Accordingly, we could make an order against the FS Group companies under section 161(1)(g) in those amounts.

[132] As noted in *Poonian*, in determining the quantum of an order under section 161(1)(g), we may take into account amounts returned by the respondents to investors. In this case, the evidence is that the FS Group entities returned to investors the respective amounts set beside their names under the column "Amount repaid" in paragraph 35 above. We find it is in the public interest to reduce our orders by the amounts repaid to investors.

[133] There is no evidence that Lim, Low or Wiebe directly obtained any of the amounts derived from the misconduct. The executive director acknowledged that the investor money raised under earlier loan agreements that also named Lim and Low as borrowers was paid to the FS Group and used in the same way by the FS Group as the rest of the investor funds.

[134] However, as noted above in paragraph 5 of the *Poonian* principles, section 161(1)(g) allows us to make orders (including joint and several orders) in circumstances where a respondent has "indirectly" obtained amounts from their misconduct.

[135] This case raises the challenging question of whether individual respondents can be said to have *indirectly* obtained amounts derived from misconduct by virtue of the fact that they directed and controlled the corporate entities that raised the money, when the money was raised for and used in a real business.

[136] The executive director says that is precisely the situation in *Michael Patrick Lathigee and Earle Douglas Pasquill, FIC Real Estate Projects Ltd., FIC Foreclosure Fund Ltd., and WBIC Canada Ltd.*, 2015 BCSECCOM 78. Lathigee and Pasquill jointly directed a group of companies (FIC Group), and all of them were found to have committed fraud when they raised funds from investors without disclosing the financial condition of the FIC Group. The Commission found that Lathigee and Pasquill jointly directed and controlled the relevant FIC Group entities that raised the money and therefore obtained the money indirectly. The Commission made joint and several orders under section 161(1)(g) against Lathigee and Pasquill personally, together with the FIC Group entities, for the amounts raised from their fraudulent offerings.

[137] The joint and several orders were upheld by the Court of Appeal in *Poonian*. The Court of Appeal was not persuaded by arguments that some of the funds fraudulently raised were used for their intended purpose, nor that the funds raised were received by the corporate entities and not by Lathigee or Pasquill.

[138] The executive director asked us not to follow *Re Dominion Grand*, 2019 BCSECCOM 335, where another panel of the Commission held that there must be some evidence or indicia of personal benefit to a respondent before a section 161(1)(g) order can be made under step 1. Alternatively, he submitted that the $3.2 million paid to Lim and Low constituted personal benefit to them.

[139] Based on the Court of Appeal's application of the *Poonian* principles to Lathigee and Pasquill, it may be open to us to find that a disgorgement order can be made against Lim and Low in this instance. However, we do not find it necessary to make that determination, for the reasons stated below in step 2.

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

[140] We do not find any reason not to make section 161(1)(g) orders against the FS Group.

[141] This case is not comparable to *Flexfi*. Flexfi continued its business operations and met its obligations to investors during the enforcement process. The *Flexfi* panel was concerned that a disgorgement order may trigger a financial event for Flexfi that could impair the ongoing financial situation of the investors who provided the funds in the illegal distributions.

[142] Here, operations are already impaired. Lim and Low quoted industry statistics on the revenue that could be earned by an average insurance advisor and the FS Group. Even if the Insurance Council permits the FS Group to resume operations, the evidence is not sufficient for us to conclude that the FS Group is likely to successfully revive its relationships and business with insurance companies, underwriters, agents and customers with the stain of this regulatory history, and become profitable to repay investors.

[143] Accordingly, we order the FS Group companies to pay the respective amounts set beside their names under the column "Net amount" in paragraph 35 above. Given that FS Strategies Services had control over 3i Capital as its general partner and manager, we find that these two companies both obtained those funds and it is appropriate that they be jointly and severally liable for the amount raised for 3i Capital.

[144] The purpose of section 161(1)(g) is to compel wrongdoers to give up any ill-gotten amounts. Although Lim and Low directed and controlled the FS Group and paid themselves handsomely, this is not a case where they used the FS Group to indirectly obtain funds from wrongdoing. The FS Group was made up of real companies with a real business, assets and staff. Investors' money was paid to and used by the FS Group. It did not go to Lim and Low, except for $3.2 million. There is no indication that the $3.2 million was not legitimately earned. In these circumstances, it is not consistent with the purpose of section 161(1)(g) to order Lim and Low to repay the entire $47 million, less any amounts repaid to investors.

[145] We also would not order disgorgement of the $14.3 million raised using loan agreements that included Lim and Low personally as borrowers, as those amounts were obtained by the FS Group, not Lim and Low, and used in the same way as the other raised funds.

[146] In *Re Loughery*, 2019 BCSECCOM 78 (at para 46), the Commission held it was not in the public interest to issue a section 161(1)(g) order against the *de facto* director of a corporate respondent with respect to salary/management fees paid to the director using investor funds, when there was no suggestion that the fees were not legitimately earned.

[147] Similarly, there is no suggestion here that Lim and Low did not legitimately earn the $3.2 million they received from the FS Group. Given that, and the fact that any outstanding shareholder loans they received remain debts to the FS Group to be repaid, disgorgement is not necessary for deterrence in this case.

[148] For these reasons, we find it is not in the public interest to make any section 161(1)(g) orders against Lim and Low.

Administrative penalties

[149] We did not find helpful the Respondents' approach of extrapolating from the amounts in the FS-related settlements and *Flexfi*, as the circumstances of those cases (including the types of misconduct, number of contraventions, roles of the respondents) were very different from the circumstances before us.

[150] We also did not find helpful the comparisons to the *Ali*, *Fulkco* and *Helmig* settlement decisions, as the roles of those individuals were also different. We do note that *Ali* resulted in significant sanctions.

[151] Even though this case involved more money and investors, given McCabe's intentional gross misconduct, we find the misrepresentations by Lim and Low to be less serious than that of McCabe, and the administrative penalty on account of misrepresentation should be less than $1.5 million.

[152] We did not find *Factorcorp* helpful. We find the circumstances surrounding the capital raising in breach of undertakings in this case to be more serious than the redemption of securities in breach of a cease trade order in *Factorcorp*.

[153] With respect to the breach of undertaking, it is difficult to envisage a more serious breach than what was done here. Under the Act, the maximum administrative penalty that could be ordered is $1 million per contravention, and we find that a penalty of similar magnitude on account of that misconduct is warranted.

[154] Although there were multiple times that the Respondents contravened sections 34, 61 and there were multiple breaches of the undertaking, in light of all the circumstances including the significant mitigating factor, we find that an administrative penalty of $2 million against each of Lim and Low is appropriate and in the public interest.

[155] Given our disgorgement orders and the fact that the FS Group acted under the direction and control of Lim and Low, we do not find it necessary to order administrative penalties against them.

[156] For the reasons already stated, Wiebe's conduct requires a significantly greater administrative penalty than those in the FS-related settlements or *Flexfi*.

[157] The $75,000 amount recommended by the executive director is not unreasonable in order of magnitude when compared to the administrative penalties in the FS-related settlements and *Flexfi*. Nor is it out of line when compared to the magnitude of the administrative penalties against the individual respondents in *Re Streamline Properties* and *Re HRG Healthcare*, in light of those respondents' roles and less serious misconduct involving lesser amounts.

[158] We find that an administrative penalty of $75,000 against Wiebe is appropriate, proportional and in the public interest.

Act amendments

[159] On March 27, 2020, amendments to the Act came into force. They included amendments to section 161 of the Act. There was no discussion about these amendments by the parties in their written submissions or at the oral hearing of this matter. Given that the amendments came into force after the Further Amended Notice of Hearing was issued and the date the hearing was held and that the panel received no submissions relating to the amendments, in the particular circumstances of this case, it is appropriate to make orders under section 161 as it read prior to March 27, 2020.

V. Orders

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

FS Group

1. under section 161(1)(b)(i), all persons cease trading in, or be prohibited from purchasing, any securities of FS Financial Strategies Inc., FS Financial Strategies Services Inc., 3i Capital ClearPath Limited Partnership, FS Financial Services Inc., FS Financial Services (Alberta) Inc., Verico FS Capital Inc. and FS Financial Systems Inc.;

2. each of FS Financial Strategies Inc., FS Financial Strategies Services Inc., 3i Capital ClearPath Limited Partnership, FS Financial Services Inc., FS Financial Services (Alberta) Inc., Verico FS Capital Inc. and FS Financial Systems Inc. is permanently prohibited:

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

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

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

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

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

3. the FS Group pays to the Commission the following amounts under section 161(1)(g):

    a) FS Financial Strategies Inc. – $4,258,108

    b) FS Financial Strategies Services Inc. and 3i Capital ClearPath Limited Partnership – $233,423, on a joint and several basis

    c) FS Financial Services Inc. – $4,082,698

    d) FS Financial Services (Alberta) Inc. – $14,101,010

    e) Verico FS Capital Inc. – $8,328,275

    f) FS Financial Systems Inc. – $1,798,556;

Lim and Low

4. under section 161(d)(i), each of Lim and Low resign any position he holds as a director or officer of an issuer or registrant;

5. each of Lim and Low is permanently prohibited:

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

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

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

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

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

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

6. each of Lim and Low pay to the Commission an administrative penalty of $2 million under section 162 of the Act;

Wiebe

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

8. Wiebe is prohibited:

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

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

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

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

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

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

until April 22, 2030 or when he pays the administrative penalty ordered in paragraph 9 below, whichever is later; and

9. Wiebe pay to the Commission an administrative penalty of $75,000 under section 162 of the Act.

[161] April 22, 2020

For the Commission

Audrey T. Ho
Commissioner

Gordon Holloway
Commissioner