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

Citation: Re Oei, 2018 BCSECCOM 231 Date: 20180808

**Paul Se Hui Oei,**
**Canadian Manu Immigration & Financial Services Inc.,**
**0863220 B.C. Ltd. and 0905701 B.C. Ltd.**[1]

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| **Panel** | Nigel P. Cave | Vice Chair |
| | Audrey T. Ho | Commissioner |
| | Suzanne K. Wiltshire | Commissioner |
| **Hearing Date** | May 15, 2018 | |
| **Submissions Completed** | June 19, 2018 | |
| **Decision Date** | August 8, 2018 | |
| **Appearing** | | |
| Mila Pivnenko<br>Nicholas Isaac | For the Executive Director | |
| Teresa Tomchak<br>Yun Li-Reilly | For Paul Se Hui Oei,<br>Canadian Manu Immigration & Financial Services Inc.,<br>0863220 B.C. Ltd. and 0905701 B.C. Ltd. | |

**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 December 12, 2017 (2017 BCSECCOM 365) are part of this decision.

[2] We found that each of Paul Se Hui Oei, Canadian Manu Immigration & Financial Services Inc., 0863220 B.C. Ltd. and 0905701 B.C. Ltd. contravened section 57(b) of the Act in the following manner:

[1] The original style of cause in this matter was Paul Se Hui Oei, Canadian Manu Immigration & Financial Services Inc., 0863220 B.C. Ltd., 0905701 B.C. Ltd. and Organic Eco-Centre Corp. (OEC). In our findings of December 12, 2017, we dismissed the allegations in the notice of hearing made against OEC. Therefore, the style of cause has been amended to refer only to the remaining respondents in this matter.

a) Oei committed 63 contraventions of section 57(b) of the Act in the aggregate amount of $5,003,088[2];

b) Canadian Manu committed 63 contraventions of section 57(b) of the Act in the aggregate amount of $5,003,088;

c) 0863 committed 33 contraventions of section 57(b) of the Act in the aggregate amount of $3,001,853; and

d) 0905 committed 30 contraventions of section 57(b) of the Act in the aggregate amount of $2,001,235.

[3] The executive director and the respondents provided written and oral submissions on the appropriate sanctions in this case.

[4] During the oral hearing, we asked the parties for further written submissions on certain evidentiary issues relating to repayments of investor funds purportedly made by the respondents. The parties provided those submissions to us and we have considered those submissions as part of reaching our decision in this matter.

## II. Position of the parties

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

a) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(i), (ii), (iii), (iv) and (v) of the Act against Oei;

b) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(v) against the corporate respondents;

c) an order under section 161(1)(g) of the Act in the amount of $4,160,577, to be made jointly and severally, against Oei and Canadian Manu;

d) an order under section 162 of the Act in the amount of $6 million against Oei; and

e) an order under section 162 of the Act in the amount of $1 million against Canadian Manu.

[2] The original investments in Cascade were completed using a mixture of Canadian and US dollars. In our findings, we simply aggregated all of the invested funds at an assumed Canadian/US dollar exchange rate of CDN$1/US$1. In so doing, we acknowledged that the fully converted (at the exchange rate in effect at the time of the investments) quantum of the fraudulent misconduct might differ from the amount set out therein. In our findings, we asked for submissions, during the sanctions phase of this proceeding, from the parties on the appropriate fully converted amount. The executive director submitted that the fully converted quantum of the fraudulent misconduct was $5,081,415. The respondents did not take issue with this figure. Therefore, we have used $5,081,415 as the CDN dollar amount of the fraudulent misconduct for the purposes of our orders.

[6] The respondents submitted that the appropriate sanctions should be as follows:

a) permanent orders under sections 161(1)(b) and (d) of the Act against all of the respondents, subject to certain carve-outs in respect of our orders against Oei that would allow him to:

i) trade for his own account through a registered dealer or financial institution;

ii) act as a director and officer of an issuer if all of the issuer's securities are beneficially owned by him or members of his immediate family; and

iii) enter into loan transactions with a financial institution; and

b) an order under s. 162 in the amount of $1 million against Oei.

[7] The executive director objected to each of the three carve-outs requested by the respondents from our market prohibition orders against Oei as not being in the public interest.

[8] During the oral hearing, we asked the respondents whether it would be appropriate, if we did determine that orders against the respondents under section 161(1)(g) would be appropriate and in the public interest, for such disgorgement orders to be made jointly and severally as between Oei and Canadian Manu. The respondents acknowledged that, in such circumstances, joint and several orders would be appropriate.

## III. Analysis

### A. Factors

[9] 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.

[10] 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 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***

[11] Previous decisions of this Commission have repeatedly held that fraud is the most serious misconduct found in the Act (see *Manna Trading Corp. Ltd. et al.*, 2009 BCSECCOM 595).

[12] The reason that fraud is the most serious misconduct under the Act is set out in the Commission's recent decision in *Re Bai*, 2018 BCSECCOM 156 (at paragraph 9):

> It is the most serious misconduct owing to the deceit that will have been perpetrated upon investors and fraud requires that the respondent have had the requisite mental intent (or *mens rea*) with respect to his or her misconduct.

[13] The respondents acknowledged that their misconduct was serious. However, they asked us to recognize that there is a range of seriousness with respect to cases of fraud. They submitted that the circumstances of this case differ from those that involve respondents who make a deliberate and calculated attempt to defraud investors and who make attempts to obfuscate their fraudulent behavior.

[14] In general, we do not agree with the respondents' submissions in this regard. Those submissions come very close to suggesting that the respondents' fraudulent misconduct occurred due to inadvertence, accident or mistake. However, the respondents' misconduct in this case did not arise, as suggested by the respondents, from their inadvertence, poor record keeping or an overly complicated investment structure. On the contrary, we specifically found that the respondents had the requisite mental intent for fraud and knowingly misappropriated over $5 million of the funds provided by investors for Cascade. That is very serious misconduct and our orders must reflect that.

[15] They further submitted that the seriousness of their misconduct should be differentiated from those cases where respondents have perpetrated a fraud without there being a legitimate investment or business and where investors are deceived into providing money in furtherance of a fictitious investment. They submitted that the respondents' fraud in this case occurred in the context of capital raising for a legitimate (albeit ultimately unsuccessful) business.

[16] There may be circumstances in which the fact that fraudulent misconduct occurs in the context of legitimate capital raising is material to the question of sanctions. However, the respondents' misconduct in this case was so serious, the amounts invested by the investors so large and the enrichment of the respondents from their misconduct so significant, that the context of this occurring during legitimate capital raising is not a material factor in determining the appropriate sanctions.

[17] The respondents' misconduct was made more serious in that it arose, with respect to a number of investors, in the context of one or more of the respondents providing another regulated financial service to those investors. A number of the investors testified that they first came into contact with the respondents through dealings with one of the respondents and/or Oei's spouse (all of whom were registered insurance brokers) with respect to insurance. They were then induced to purchase securities in Cascade. There is an element of conflict of interest or abuse of that prior relationship that must be reflected in our orders.

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

[18] The investors who were defrauded by the respondents in this case have suffered significant financial losses. However, it is not possible for us to quantify the exact magnitude of those losses, due to the following:

a) one of the companies into which investors indirectly invested, CRC, has gone bankrupt;

b) another of the companies into which investors indirectly invested, CROF, has ceased to carry on business and there was no evidence or suggestion by any party that the securities of that entity have any remaining value;

c) some of the investors in CRC and CROF exchanged their securities in CRC and CROF for securities of OEC. As will be discussed in further detail below, there is insufficient evidence for us to determine the value of the securities of OEC;

d) certain of the investors received interest and principal payments during the period relevant to the matters in the notice of hearing; and

e) as will be discussed in greater detail below, certain of the investors have had funds returned to them by one or more of the respondents and by third parties (the exact amount of some of these payments is not clear from the evidence) after the period relevant to the matters in the notice of hearing.

[19] It is sufficient for our purposes to note that investor losses in this case were substantial. We must also note that not all of the investor losses arose as a result of the fraudulent misconduct of the respondents, as we have found that a large portion of the investors' funds were used for their stated purposes. The Cascade businesses in which the investors were investing have failed. Although it was not alleged that the Cascade businesses failed as a consequence of the respondents' fraud, it is also not possible for us to know

the impact that the respondents' diversion of investor funds from Cascade had, if any, on the failure of the Cascade businesses.

[20] We are able to quantify the enrichment of the respondents arising from their fraudulent misconduct. The respondents were enriched by the amount of the fraud - $5,081,415. That amount was fraudulently obtained by one or more of the respondents. As will be discussed below, certain repayments have been made to investors. Notwithstanding those payments, the quantum of the enrichment in this case was significant.

***Aggravating or mitigating circumstances***

[21] None of the respondents has a history of securities regulatory misconduct.

[22] The executive director submitted that there are no mitigating circumstances in this case. He submitted that there are two aggravating factors with respect to Oei:

a) Oei's previous registration under the Act and in another regulated financial services sector (insurance); and

b) the respondents' poor record keeping, which was carried out with an intention to obfuscate their misappropriation of investor funds.

[23] The respondents submitted that it is a mitigating circumstance that they sought legal advice from a reputable law firm and that that firm suggested the indirect investment structure that was ultimately used to carry out the investments in the Cascade businesses. The respondents further submitted that the aggravating circumstances relied upon by the executive director in his submissions are either not material (in the case of Oei's previous registration status), less meaningful than suggested by the executive director or done without the intent suggested by the executive director (in the case of the poor record keeping).

[24] We do not find that there are any mitigating circumstances in this case.

[25] In reaching that conclusion, we do not accept the submissions of the respondents that it should be a mitigating factor that the respondents sought legal advice in connection with the structuring of the investment or that the law firm was, in some manner, responsible for the misappropriation of investor funds.

[26] In our findings, we commented that it was difficult to discern or give legal meaning to many of the legal documents prepared in connection with the indirect investment structure. However, incomprehensible legal documents do not explain or justify that the respondents simply chose not to flow the funds provided by the investors through the investment structure (as would have been possible). The indirect investment structure did not cause the fraud in this case.

[27] We also reject the suggestion made by the respondents during oral submissions that the respondents' lawyers were at fault for the respondents' fraud as the legal documents failed to disclose to the investors that the respondents would be keeping all or a portion of the approximately $5 million that was misappropriated. This submission was made by the respondents without any evidence to support the proposition that instructions were given by the respondents to the respondents' law firm to prepare documents containing this disclosure. These submissions also suggest that the fraudulent misconduct was a mistake – a submission that we explicitly reject.

[28] We do find that there was a material aggravating factor in this case with respect to Oei and Canadian Manu – the respondents' poor record keeping. We agree with the respondents' submissions that we did not make a finding that this poor record keeping was carried out intentionally to obfuscate the respondents' misappropriation of investor funds. However, the respondents' poor record keeping, in fact, had that effect.

[29] More importantly, as this Commission has found on several previous instances (*Re Spyru*, 2015 BCSECCOM 452 and *Re Schouw*, 2017 BCSECCOM 168), it is a materially aggravating factor when those who raise substantial sums from the investing public are unable to account properly for the manner in which those funds are used. Those who do not keep adequate records of the use of investor funds pose a serious and substantial risk to the public and our orders must reflect that risk.

[30] A respondent's previous registration status has also been determined to be an aggravating factor in certain previous cases (see *Re Waters*, 2014 BCSECCOM 369 and *Re Sungro*, 2015 BCSECCOM 281). In general, those cases involved situations where the respondent's registration status under the Act was used to carry out the misconduct (i.e. a registered representative using their trading accounts to assist in a market manipulation) or where the respondent's registration status should have made them aware of their misconduct (i.e. in cases of illegal distributions in contravention of section 61 of the Act or a failure to be registered under section 34 of the Act).

[31] Oei was not registered under the Act at the time of his misconduct and did not abuse his registration status under the Act in furtherance of his misconduct. Nor is his fraudulent misconduct similar to the illegal distribution cases described above.

[32] The executive director submits that Oei abused his registration status in the insurance industry as a number of the investors were first introduced to the Cascade investment by Oei after the investors had first approached Oei or his wife in search of insurance services.

[33] Any violation or abuse of Oei's registration status to sell insurance is better addressed by the insurance regulators. We do not find this to be an aggravating factor in the circumstances of this case.

[34] However, as noted above, we find that Oei and Canadian Manu's abuse of existing financial services relationships makes their misconduct more serious.

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

[35] Those who commit fraud of any kind, but particularly of the quantum carried out by the respondents in this case, represent a very serious risk to our capital markets.

[36] It is significant that the respondents tendered financial evidence during the hearing that was not credible and, in some cases, defied logic. Such conduct towards the regulator also raises significant concerns about the respondents' fitness to participate in our capital markets.

[37] The fraudulent misconduct in this case was carried out through and assisted by the use of corporations owned (along with family members) and controlled by Oei. Oei's conduct not only falls far short of that expected of someone who carries out the duties of an officer or a director of a corporation but, in fact, demonstrates his willingness to use corporations in carrying out harm to the public. Our orders relating to Oei's ability to be a director or officer of an issuer must reflect this risk to the public.

***Specific and general deterrence***

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

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

***Previous decisions***

[40] The executive director submitted that there were no recent decisions of this Commission where the respondent's fraudulent misconduct, in terms of quantum and the circumstances of the misconduct, was similar to that of the respondents in this case. He submits that sanctioning principles taken from many previous decisions of this Commission support the sanctions sought in this case.

[41] The respondents cited a number of previous decisions of this Commission in support of various submissions that they made in the context of specific sanctioning issues. We will refer to a number of those decisions below.

## C. Analysis of appropriate orders

***Market prohibitions***

[42] The executive director asked for permanent market prohibitions against the respondents. The respondents acknowledged that permanent market prohibitions would be appropriate.

[43] Given the severity of the misconduct in this case and the extreme risk that the respondents pose to our capital markets, we find permanent market prohibitions to be appropriate in the circumstances.

[44] However, the respondents asked for three specific carve-outs from any market prohibition orders that we make against Oei.

[45] The respondents cited a number of previous decisions of this Commission in which those found to have committed fraud were still permitted to maintain personal trading accounts (see: *Re Samji*, 2015 BCSECCOM 29, *Re Davis*, 2016 BCSECCOM 375 and *Re Lathigee*, 2015 BCSECCOM 78). The quantum of the frauds and the severity of the misconduct committed by the respondents in the *Samji* and *Lathigee* cases were more significant than in the circumstances before us.

[46] The executive director submitted that Oei did not provide evidence in support of his need to maintain brokerage accounts of the type requested and that, in order to protect the public, we should reject this request due to the seriousness of the misconduct in this case.

[47] There was no evidence that Oei or any of the other corporate respondents (all of which Oei controlled) used a trading account to carry out any aspect of the misconduct. As a consequence, we do not find that granting Oei's request for a carve out from our market prohibition orders to permit him to maintain personal trading accounts would be contrary to the public interest in the circumstances.

[48] The respondents also cited a number of previous decisions of this Commission in which a respondent, found to have committed fraud, was permitted to remain or become a director and/or officer of a company where all the securities of that entity were owned by the respondent or their family members (see: *Lathigee* and *Re Wong*, 2017 BCSECCOM 57).

[49] Again, the executive director submitted that it would not be in the public interest to permit Oei to hold positions of this type owing to the seriousness of his misconduct.

[50] In this case, there was clear and demonstrable harm arising from Oei's role in the management (whether as a director or officer or as a *de facto* director or officer) and control of a company, all the securities of which were owned by Oei and his family members. Canadian Manu is an example of just such a company. Canadian Manu and its bank accounts were used as part of a fraudulent scheme.

[51] As a consequence, we are not prepared to grant Oei a carve-out from our market prohibition orders allowing him to act as a director or officer of a company, all the securities of which are owned by family members. As demonstrated by his misconduct, the risk to the public is simply too great. Those who are subject to our market prohibition orders may apply under section 171 of the Act for a variance of those orders. Should Oei wish to act as a director or officer of a specific family company, it is appropriate that he should have to apply to this Commission under section 171 of the Act and demonstrate why, in that specific circumstance, granting such a variance would not be prejudicial to the public interest.

[52] Lastly, Oei sought a carve-out from our market prohibition orders to allow him to enter into loan transactions with financial institutions. The respondents were not able to point to any previous decision of this Commission in which such an order had been granted. The respondents were also not able to specifically identify a transaction for which this

carve out would be necessary. They submitted, in general terms, that Oei may wish, at some point in the future, to obtain a loan from a financial institution.

[53] Commercial loan transactions entered into between a financial institution and one of its customers typically fall outside the ambit of the Act. However, that general statement may not apply to all loan transactions in all circumstances. Again, we were not presented with a specific transaction of the type contemplated by the requested carve-out involving a "security", in order to assess whether or not it would be prejudicial to the public interest to allow such transaction to proceed. Our orders do not contain an exemption of the kind requested by the respondents. Again, section 171 of the Act is available for the Commission to assess future transactions in the public interest.

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

[54] The executive director submits that we should make an order under section 161(1)(g) of the Act, jointly and severally, against Oei and Canadian Manu in the amount of $4,160,577 (an amount derived in a manner discussed in further detail below).

[55] The respondents say that it would not be in the public interest to make an order under section 161(1)(g) against any of the respondents in this case as the amount that the respondents have already repaid to the investors harmed by their misconduct exceeds the quantum of the fraud committed by the respondents.

[56] However, as noted above, the respondents did acknowledge that if we were to make orders under section 161(1)(g), it would be appropriate that such orders be joint and several obligations of Oei and Canadian Manu.

[57] 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:
>
> > [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.

[58] 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.

[59] 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?

[60] The evidence during the hearing was that Oei and Canadian Manu obtained the benefit of the full amount of the $5,081,415 that was obtained from investors by the respondents' fraudulent misconduct.

[61] The evidence during the hearing was not sufficient for us to determine how much of the $5,081,415 was obtained by each of Oei and Canadian Manu.

[62] The executive director did not request that we make an order under section 161(1)(g) against either of the numbered companies. Given that there was no evidence that the numbered companies ever received any funds or that these entities were ever anything other than shell companies, we do not see a legal basis, nor a practical reason, to make an order under section 161(1)(g) against either of the numbered companies.

[63] That the evidence was insufficient for us to determine how much of the $5,081,451 was obtained by each of Oei and Canadian Manu, is not relevant in the circumstances of this case. By virtue of Oei's own evidence (supported by the other documentary and oral evidence in the hearing), he was the sole controlling mind and management of the company. He also controlled all of the company's bank accounts. The evidence was clear that the financial affairs of Oei, personally, and Canadian Manu were intertwined and that funds were regularly transferred between the respondents, without evidence to support the reasons for such transfers.

[64] These findings were also implicitly accepted by the respondents in their acknowledgement that, in the event that we were to make orders under section 161(1)(g) against the respondents, such orders should be made on a joint and several basis between Oei and Canadian Manu.

[65] Therefore, we find that we could make an order against Oei and Canadian Manu, on a joint and several basis, for the $5,081,415 obtained by their contravention of the Act.

[66] However, 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 of the funds obtained from the respondents' fraudulent misconduct that the respondents have returned to the investors.

[67] Unlike the circumstances in *Poonian* and in many other fraud cases before the Commission, the total amount of the fraud on all of the investors in this case was only a portion (38%) of the total amount invested by those investors. In the unique circumstances of this case, both the evidence of investor repayments and the conceptual framework of how investor repayments should be offset against the quantum of the fraud were in dispute between the parties.

[68] In particular, the executive director submitted:

a) that there was insufficient evidence to support a factual finding that certain of the payments claimed by the respondents to have been a payment made by a respondent to an investor was actually: (i) made at all; and/or (ii) a return of funds invested by the investor in Cascade (i.e. that, if a payment was actually made, that the respondents may have made the payment to the investor for some reason other than as a repayment of the investor's investment in Cascade);

b) that the respondents should not be credited for having made a payment to an investor when that payment was actually made by a third party (e.g. when the payment to the investor was actually made by OEC and not one of the respondents);

c) although the executive director acknowledged that there was evidence the respondents had made payments to five investors in respect of their investments in Cascade, that the respondents should only be entitled to a "credit" (in respect of calculating an order under section 161(1)(g)) equal to:

   (i) where the amount returned to the investor was less than 38% of the total funds invested in Cascade by that investor, the full amount of that payment; and

   (ii) where the amount returned to the investor was more than 38% of the total funds invested in Cascade by that investor, an amount equal to 38% of the repayment made to the investor; and

d) using the calculation methodology as set out in subparagraphs (c)(i) and (ii) above, the respondents should only receive a "credit" equal to $920,838 and that, when this figure is deducted from the total amount of the fraud of $5,081,415, the amount of an order under section 161(1)(g) should be $4,160,577.

[69] The executive director's submissions in paragraph 68(c) above are based upon the fact that the quantum of the funds misappropriated through the respondents' fraudulent misconduct was equal to 38% of all of the funds that were invested by the investors.

[70] The executive director acknowledged that the evidence presented at the hearing was not sufficient for us to determine how a specific investor's funds were used. It is therefore impossible for us to determine whether a specific investor's investment was misappropriated by the respondents, in whole or in part. Therefore, the executive director submitted that we should, for the purposes of making orders under section 161(1)(g), assume that 38% of each investor's funds was misappropriated. The executive director submitted, flowing from that assumption, that any payment to an investor that exceeded 38% of that investor's investment did not represent a return, by the respondents, of an amount *obtained directly or indirectly* from their contravention of the Act.

[71] The executive director further submitted that this "percentage allocation" approach would be appropriate as a handful of investors have received all (or nearly all) of their invested funds back from the respondents but many investors have not received any of their invested funds back. The executive director submitted that, to give the respondents full "credit" for their payments to those investors who have had all of their funds returned, would amount to condoning preferential payments to certain investors. He submitted that his percentage allocation approach would deter respondents from "picking and choosing" which investors to repay and from "overpaying" some investors at the cost of others.

[72] Lastly, the executive director submitted that, where the only evidence in support of the respondents' having:

a) made a payment to an investor; or

b) made a payment to an investor, and that such payment was a repayment of that investor's investment in Cascade,

is an affidavit sworn by Oei, we should not accept Oei's evidence. The executive director submitted that Oei's affidavit evidence is insufficient in and of itself and that the respondents should have provided other evidence (e.g. cancelled cheques, loan agreements, receipts, etc.) in support of the making of a payment or the purpose of such payment. He submitted that the respondents provided other financial evidence during the hearing that we did not find credible and that we should be similarly skeptical of the financial information contained in this affidavit from Oei unless it is corroborated by other clear and cogent evidence.

[73] The respondents submitted a schedule which listed all of the investors (who made the investments contained in the notice of hearing) and the repayments, in cash or in kind, that they say those investors received, directly or indirectly, from the respondents. As noted, certain of the purported repayments in the schedule take the form of payments in kind – in this case, the purported transfer of Oei's shares in OEC to the investors. The respondents submit that these OEC shares have a value of $1.50 per share.

[74] The purported repayments listed in this schedule take five different forms:

a) a cash payment made by a respondent to an investor;

b) a cash payment made by a third party, purportedly on behalf of one or more of the respondents, to an investor;

c) a cash payment made by a respondent to a third party, purportedly for the benefit of an investor;

d) a cash payment or credit made by a third party, purportedly on behalf of one or more of the respondents, to a third party, purportedly for the benefit of an investor; and

e) a payment in kind made by a respondent to an investor.

[75] The respondents contested the executive director's submissions that the respondents be given "credit" for only a portion of certain of their repayments (in whatever form) to investors. The respondents submitted that they should receive "credit" for 100% of all of the repayments made to investors. They submitted that the total amount of the respondents' repayments to all investors is $5,864,263 – which amount is in excess of the quantum of their fraudulent misconduct. As a consequence, they submitted that no orders under section 161(1)(g) should be made in the circumstances.

[76] It is necessary for us to go through all of the purported repayments to investors, from an evidentiary perspective, to make findings as to the quantum of repayments to investors. Following that exercise, we will address below the issue of what portion of those

repayments should be "credited" to the respondents for the purposes of determining our orders, if any, under section 161(1)(g).

[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.

[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:

a) that a payment was made;

b) that a payment was made by, or on behalf of, a respondent;

c) that a payment was made to, or for the benefit of, an investor;

d) that such payment was in respect of the investor's investment in Cascade; and

e) where the payment was in kind, the value of such payment.

[79] Oei provided an affidavit stating that he, Canadian Manu or a third party, had paid certain amounts to investors, or to a third party on behalf of an investor. In many cases there was no documentary evidence to support the payment of such amounts, the purpose for which such payment was made, that a third party was paying an amount on the respondents' behalf or that a third party was receiving such amount on behalf of an investor.

[80] The evidence of use of investor funds provided by the respondents during the hearing was littered with errors and entries in accounting software that could not be substantiated and, in some cases, defied logic. Those errors included, without limitation, presenting copies of cheques as evidence of payments to the stated payees when other (banking) evidence demonstrated that those cheques were withdrawn, not cashed or endorsed by the payees to a respondent. Given this background, and in a case involving the misuse and misappropriation of investor funds co-mingled with personal funds, we find that Oei's affidavit is insufficient, in and of itself, to provide sufficient evidence of payment. We have accepted the evidence of payment in his affidavit where there is further evidence to support the statements made by him therein.

*Cash payments*

[81] There was sufficient evidence of each of the criteria set out in paragraph 78 above to support a finding, on a balance of probabilities, that there were cash payments made by a respondent to four investors (in the amounts of: $313,250, $100,000, $19,243.75 and $1,530,943.84).

[82] The evidence in support of these payments included copies of promissory notes, a share purchase agreement, bank records and receipts acknowledging payment. These payments arose in the context of litigation against one or more of the respondents or demands made by an investor for a repayment of funds invested in Cascade.

[83] These payments total $1,963,437.59. The evidence of these payments to investors in Cascade is sufficient for us to conclude that it is appropriate for us to take this amount into account in determining the quantum of our orders under section 161(1)(g).

[84] The executive director submitted that there was sufficient evidence of each of the criteria set out in paragraph 78 for us to find that there was a fifth payment to an investor (Investor Q) in the amount of $30,000. However, the respondents did not submit that such payment should be taken into account in making our orders under section 161(1)(g) (although they did submit that other payments to or on behalf of Investor Q should be taken into account, as discussed below in paragraphs 94-97).

[85] The evidence in support of the $30,000 payment referenced by the executive director was a personal cheque of Oei, with a notation on the cheque indicating that it was a repayment on investment in OEC. Investor Q's daughter provided an affidavit confirming that her father had exchanged his investment in Cascade for an investment in OEC and that her father had received a cash repayment of $40,000 from the respondents in respect of that investment at a date that roughly coincided with the date on the cheque for the $30,000. There was no evidence of a $40,000 payment to Investor Q (other than as contained in the Oei affidavit, which did not reference how such money was paid to Investor Q). The logical inference from all of this is that the payment that Investor Q's daughter referred to is actually the $30,000 payment referenced by the executive director. Therefore, we agree with the executive director that there is sufficient evidence of each of the criteria set out in paragraph 78 for us to establish that there was a fifth payment of $30,000 to Investor Q. The evidence of this payment to an investor in Cascade is sufficient for us to conclude that it is appropriate for us to take this amount into account in determining the quantum of our orders under section 161(1)(g).

[86] All of the remaining purported repayments that the respondents submitted we should take into account in our orders under section 161(1)(g), were not supported by sufficient evidence to establish, on a balance of probabilities, one or more of the factual matters set out in paragraph 78 above.

[87] The respondents submitted that they made a total of 24 payments to (or on behalf of) an investor (Investor U), totaling $1,241,050.68[3] that should be taken into account in making our orders under section 161(1)(g).

[88] Of these 24 purported payments to Investor U:

- one of these payments, for $65,000, was a payment made by Oei to Investor U and there was evidence of payment;

- eight of these payments, totaling $288,891, were payments made by Oei to casinos in Las Vegas; there was evidence of payment but the only evidence that these payments related to Investor U came from an affidavit of Oei;

- seven of these purported payments, totaling $316,659.68, were payments made by OEC – five of these seven payments, totaling $260,000 were made to Investor U, the other two payments, totaling $56,659.68, were made to third parties; the evidence in support of four of these purported payments were copies of cheques without any evidence that they were ever cashed or deposited;

- one of these payments, in the amount of $250,000 was made by a third party (a numbered company), with no evidence of whether the company was in any manner related to any of the respondents, whether the payment was in respect of Investor U's investment in Cascade and if such payment was made on behalf of the respondents;

- the evidence in support of two of these payments for $210,000 were two cheques or bank drafts (not from one of the respondents) where the payor was unidentified, the payee was a third party and there was no evidence that such cheques or bank drafts were cashed or deposited;

- two of these payments, totaling $42,000, were payments made by Canadian Manu to third parties and there was evidence from bank records of these payments having been made; there was no evidence that the third parties accepted payment of these amounts on behalf of Investor U (other than as contained in Oei's affidavit); and

- three of these payments, totaling $68,500, were payments made by Oei to third parties; the evidence in support of these payments were personal cheques of Oei without any evidence to support whether these cheques were ever cashed or deposited. Even if such cheques were cashed or deposited, there was no evidence that the third parties accepted the payment of these amounts on behalf of Investor U (other than as contained in Oei's affidavit).

[3] Some of these payments were made in US dollars but were referenced by the respondents as having been made in CDN dollars (without conversion). Given our findings with respect to all of these payments, we have not attempted to establish a fully converted CDN dollar amount for this figure.

[89] There is a litany of issues associated with these 24 purported payments to Investor U. We do not find that the evidence supports all of the requisite findings, as set out in paragraph 78 above, for 23 of the payments (the 24th payment is discussed in paragraph 90 below) for the following reasons:

- the evidence during the hearing was that Investor U was both an investor in Cascade and also a substantial investor in OEC (after the period relevant to the notice of hearing). The evidence was insufficient to establish that any payments made by OEC were actually payments made in respect of Investor U's investment in Cascade. Given the dates of these purported repayments, which were largely after Cascade ceased to carry on business, the more logical conclusion is that the payments made by OEC to Investor U were payments made by OEC in respect of Investor U's investment in OEC;

- Oei stated in his affidavit that all payments made by OEC to investors were payments made on his behalf and that he subsequently repaid these amounts to OEC. The only evidence of Oei having borrowed funds from OEC and, more importantly, having repaid these amounts to OEC was Oei's statement in his affidavit. There was no evidence of any loan arrangement between Oei and OEC or the repayment thereof. These were substantial sums. If Oei had made these payments to OEC he would have had bank records to demonstrate that they were made. He did not provide any bank records. Therefore, the evidence was insufficient to support a finding, on a balance of probabilities, that these payments were made, indirectly, by the respondents;

- the evidence in support of all of the purported payments made by the respondents to third parties (including the eight payments to the Las Vegas casinos) was insufficient for us to find that these payments were made to Investor U and were made in respect of an investment in Cascade. There was no evidence from Investor U or any of the third parties to suggest that these third parties were accepting payment on Investor U's behalf or that such payments were made in respect of Investor U's investment in Cascade;

- the evidence in support of the two payments (totaling $42,000) made by a third party (other than OEC) to a third party is wholly insufficient for us to determine that such payments were made on behalf of a respondent, that the third party was accepting payment on behalf of Investor U or that such payments were in respect of Investor U's investment in Cascade;

- during the liability phase of the hearing, the respondents submitted that one of the payments (in the amount of $43,159.68) was actually the payment of a commission to a relative of Investor U. It is not credible to now submit that such payment was actually a repayment of a portion of Investor U's investment in Cascade; and

- finally, the evidence was insufficient for us to find that a substantial number of these 23 purported payments, for which there was no evidence that a cheque or bank draft was actually cashed or deposited, were demonstrably paid.

[90] There was sufficient evidence to find that one of the 24 purported payments, in the amount of $65,000, was made by Oei to Investor U. The only question is whether this payment was made in respect of Investor U's investment in Cascade. As noted above, Investor U was an investor in Cascade and OEC. The payment was made at a date in which business activities related to Cascade had ceased. Interest payments had ceased being made to other investors in Cascade by this date. Given the date of payment and without evidence that Investor U was demanding a repayment of previously invested funds, it is more logical that this amount was a payment in respect of Investor U's investment in OEC.

[91] In summary, with respect to each of the 24 payments to Investor U, we find that the respondents have failed to provide sufficient evidence, on a balance of probabilities, to establish one or more of the requisite factual elements set out in paragraph 78.

[92] The respondents also submitted that they made a cash payment of $30,000 to another investor (Investor SC) along with a purported payment to this same investor from OEC in the amount of $40,900. There was no evidence that the $30,000 was actually paid or sufficient evidence to establish that the payment was in respect of Investor SC's investment in Cascade, as the evidence of payment was simply a schedule of payments to investors attached to an affidavit of Oei without any explanation of how or why such payment was made.

[93] For the same reasons as described above (with respect to Investor U), we are also not satisfied that there was sufficient evidence to find that the payment of $40,900 to Investor SC by OEC was a payment made in respect of Investor SC's investment in Cascade or that such amount has been repaid to OEC by the respondents.

[94] The respondents submitted that a series of transactions has resulted in them repaying $500,000 to Investor Q. The purported payments took the form of a payment of $40,000 in cash and a transfer of a property by a third party to the daughter and spouse of Investor Q in which the acquirer received a credit (or price reduction) of $460,000.

[95] As set out above, Investor Q's daughter provided an affidavit which indicated the receipt of these amounts by, or on behalf of, her father and on behalf of his investment in Cascade.

[96] We have already addressed the issues with respect to the purported $40,000 cash payment referenced by Investor Q's daughter. We have already given the respondents credit for $30,000 of this. There is no evidence of payment of the additional $10,000. The difficulty with the land transfer by the third party is whether the evidence supports a finding that the respondents have actually repaid the third party this amount. The

evidence was that, as of the date of the hearing, the $460,000 represented a debt owed by Oei to the third party.

[97] Although we have evidence from Investor Q's daughter that he has received restitution for $460,000 through the land transfer, our orders under section 161(1)(g) are not about victim restitution. They seek to strip the respondents of the benefits of their misconduct. The $460,000 debt owed to the third party, is an amount that may never be paid by the respondents. Without confirmation that the respondents have repaid this debt obligation to the third party, it is not possible to view the respondents as having been "stripped of the benefit" of their fraudulent misconduct. We do not find that it is appropriate to take this amount into consideration in making our orders under section 161(1)(g).

[98] Lastly, the respondents submitted that a cash payment of $50,000, made by OEC to a third party, was actually a payment made by or on behalf of the respondents to an investor (Investor N) in Cascade. There was evidence to support a finding that the third party was a company owned or controlled by the investor. However, as in the case of the payment made by OEC to Investor Q, the evidence (being only a statement of repayment by Oei in his affidavit) was insufficient for us to determine that OEC has been repaid by the respondents for such amount.

[99] In summary, we find that the total of cash payments made by the respondents to investors that we should take into consideration in making our orders under section 161(1)(g) is $1,993,437.59.

*Payments in kind made by a respondent to an investor*

[100] The respondents submitted that 16 of the investors in Cascade had shares of OEC (owned by the respondents) transferred to them at no cost and that those shares had an aggregate value of $2,038,874. The respondents submitted that we should give them credit for this amount in our determination of any orders to be made under section 161(1)(g) of the Act.

[101] This submission places a value for each OEC share of $1.50 (at the time of such transfers). The evidence that the respondents pointed to in support of this valuation was:

a) the purchase price of the OEC shares in connection with acquisitions of such shares by three investors, prior to 2016, who invested in OEC only and not in Cascade;

b) the purchase price of the OEC shares in connection with the acquisitions, prior to 2016, of such shares by a number of investors who had previously invested in Cascade; and

c) the purchase price paid by an "arm's length" third party in April of 2018 for the acquisition of OEC shares from Oei's wife.

[102] The executive director submitted that we should not give the respondents credit for any of these amounts as:

a) the evidence was insufficient for us to make a finding that the OEC shares had been transferred to the investors by the respondents as a repayment for amounts invested in Cascade; and

b) the evidence of valuation was insufficient for us to make a finding that the OEC shares have a value of $1.50.

[103] There are significant problems with the evidence relating to these purported OEC share transfers. Oei provided an affidavit saying that the transfers were made and attached share certificates of OEC in the names of the investors. There was also at least one email to an investor setting out an offer from Oei to transfer shares of OEC to that investor in lieu of an investment in Cascade. However, there was no documentary evidence that would normally be associated with shares transferred from one shareholder to another (e.g. share transfer agreements confirming the purpose and timing of the transfers, copies of one or more cancelled share certificates in the name of the transferor and share registers of the company confirming the transfers and the date). As such, we find that the evidence is insufficient to establish that all of the shares held by all of the16 investors were transferred by the respondents to the investors for no consideration.

[104] Most significantly, we find the valuation evidence completely inadequate to allow us to make a finding that the OEC shares purportedly transferred to the investors were actually worth $1.50 per share. We make this finding based upon the following:

- there was no formal, third party, valuation in evidence;

- an e-mail drafted by Oei, containing an offer made to one of the 16 investors to transfer OEC shares, stated that there was no formal valuation to support the suggested transfer price per share of $1.50 and "the value of those shares is speculative";

- the transactions referenced in subparagraphs 101(a) and (b) above all occurred substantially prior to (in some cases several years prior to) the purported transfers to the 16 Cascade investors, with no evidence to suggest that the value of the OEC shares remained unchanged in the intervening two years;

- the transactions referenced in subparagraph 101(b) above were transactions that occurred in the context of the bankruptcy of CRC and Oei had indicated to the Cascade investors, at that time, that a further investment in OEC was the only way to "save" their prior investment. This raises substantial questions about how "freely" the OEC share price in connection with these transactions was negotiated; and

- the transaction referenced in subparagraph 101(c) above was more recent and purportedly to an arms' length party; however, the total transaction amount was only for $15,000 which would be wholly insufficient, under any acceptable method of valuation, to value shares of the whole company. Even

> more importantly in the context of a case involving almost a complete absence of record keeping about the use of investor funds, we have no evidence of what information this investor was provided about OEC, its assets, liabilities, financial condition or business prospects. We have no way to ascertain if the investment of $15,000 occurred on an informed basis or not.

[105] For all of the reasons set out above, we do not find it to be appropriate to give credit to the respondents, for the purposes of our orders under section 161(1)(g), for any monetary amount in connection with these purported OEC share transfers.

[106] Having found that we should take into account repayments made by the respondents to Cascade investors of $1,993,437.59, the only remaining issue is whether the respondents should receive a credit equal to 100% of this amount or only a portion of this amount as the executive director submitted.

[107] We do not agree with the executive director's submissions in this regard. The executive director's submissions suggested that allowing the respondents to receive credit for 100% of the payments that they have made could lead to inequalities in investor restitution or, worse yet, preferential payments to investors that would not be in the public interest.

[108] First, there was no evidence or even a suggestion that any of the four payments totaling $1,993,437.59 were "preferential" or made in circumstances that should raise concerns in the public interest.

[109] Secondly, concerns about unequal restitution to investors are misplaced at this stage in our proceedings. As *Poonian* highlights, orders under section 161(1)(g) are not made with investor restitution in mind, they are sanctions directed at ensuring that respondents do not benefit from their misconduct.

[110] Finally, the executive director's submissions on this point are at odds with the manner in which he proceeded with this case during the liability phase of this hearing. During the liability phase of this hearing, the executive director submitted that it was impossible, based upon the respondents' co-mingling of funds and poor record keeping, to determine how a specific investor's funds were used and whether all or any portion of such funds had been misappropriated by the respondents. We agreed with those submissions and looked at the entirety of the funds raised and funds used by the respondents to determine that they had carried out the necessary *actus reus* of fraud.

[111] In so doing, we determined that the respondents had misappropriated approximately $5 million of investor funds. We do not know from which investors and in what amounts this $5 million was misappropriated. It is not now appropriate to look to each specific investor and say that each investor had 38% of their funds misappropriated and therefore any repayment over and above that amount is not a payment of funds obtained from the respondents' misconduct.

[112] In short, the respondents misappropriated approximately $5 million. That is the amount obtained by them by their contraventions of the Act. They have had $1,993,437.59 of that amount "stripped" by repaying investors. The difference of $3,087,977.41 is the amount of benefit that the respondents still have from their misconduct. Our orders under section 161(1)(g) reflect this amount.

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

[113] There is no reason why it would not be in the public interest to make orders under section 161(1)(g) against Oei and Canadian Manu in the amount of $3,087,977.41. They have obtained this amount through their fraudulent misconduct.

[114] As acknowledged by the respondents, this is a case where it is also in the public interest to make our orders under section 161(1)(g) joint and several as between Oei and Canadian Manu.

***Administrative penalties***

[115] The executive director asked for orders under section 162 in the amount of $6 million against Oei and in the amount of $1 million against Canadian Manu.

[116] The respondents submit that an order under section 162 in the amount of $1 million against Oei would be appropriate.

[117] The executive director did not provide us with any previous decisions of this Commission in support of the quantum of the administrative penalty that he is seeking in this case.

[118] The respondents distinguished the circumstances of their misconduct from a number of decisions of this Commission involving fraud where there was no legitimate business or investment opportunity (in particular from *Re Zhu*, 2015 BCSECCOM 264 and *Re Williams*, 2016 BCSECCOM 283). In so doing, they pointed to the fact that the Cascade investment was a legitimate investment opportunity and that the respondents had raised money from investors in the context of this investment.

[119] The respondents directed us to the recent Commission decision in *Re Wong*, 2017 BCSECCOM 57, where two sisters were found to have committed frauds totaling almost $12 million. The sisters were found to have kept approximately $2 million of the amount raised from their fraudulent misconduct, after deducting the funds they repaid to investors. In assessing the seriousness of the sisters' misconduct that panel found that the fraud occurred in the context of a legitimate investment opportunity where there had been a substantial co-mingling of personal funds and funds raised from investors but that co-mingling was not held to be part of a deliberate plan to defraud investors. The sisters were each ordered to pay an administrative penalty of $6 million.

[120] The respondents also submitted that the Commission's reasoning in *Re Michaels*, 2014 BCSECCOM 457, that the quantum of a respondent's benefit from its misconduct is a reasonable place to start in assessing the quantum of an administrative penalty, should be followed in this case. The respondents submitted that they did not benefit from their

misconduct (after the repayments to investors), such that an administrative penalty of $1 million against Oei was appropriate in all of the circumstances.

[121] Lastly, with respect to an administrative penalty against Canadian Manu, the respondents cited *Re Eaglemark*, 2017 BCSECCOM 42, in which the panel cited with approval the *Williams* decision, for the proposition that it is not necessary to impose a separate administrative penalty against a corporate respondent that was really just the alter ego of an individual respondent. In this case, the respondents say that Canadian Manu was just the alter ego of Oei and that we should not impose any administrative penalty against the corporation.

[122] We agree that there are some similarities between the circumstances of this case and those found in the *Wong* decision. That decision is the most helpful decision that we were provided as guidance for the appropriate orders under section 162 in this case.

[123] We do not agree with the respondents' submissions (as set out above) with respect to either the seriousness of their misconduct or the quantum of their enrichment.

[124] We have considered all of the *Eron* factors in determining the appropriate orders under section 162. These are the factors that we have weighed most heavily:

- the seriousness of the contraventions which includes the quantum of the fraudulent misconduct and that the respondents, with respect to some of the investors, abused existing financial services relationships;

- the enrichment of Oei and Canadian Manu;

- the harm to investors (which in this case is significant, although difficult to quantify);

- the harm to the integrity of our capital markets; and

- the material aggravating factor that arises from the respondents' failure to keep records of the use of investor proceeds.

[125] The seriousness of the misconduct in this case was similar to that of the respondents in *Wong* although the quantum of the fraud was significantly less, which would normally result in a smaller administrative penalty. The enrichment of the respondents in this case was higher than that of the sisters in *Wong*. In addition, there is also the significant aggravating factor of poor record keeping that was not present in the *Wong* case. Weighing all of the factors in paragraph 124 above and the factors relative to the *Wong* decision, we find an order in the amount of $4.5 million against Oei to be appropriate in the circumstances.

[126] When considering orders under section 162 against Canadian Manu, we also do not agree with the submissions of the respondents.

[127] The reasoning in *Eaglemark* does not apply in the circumstances before us.

[128] There are circumstances where corporations (or other legal entities), which have been found to have committed misconduct, have been dissolved, have no assets, no operations or do not exist in the practical (rather than the legal) sense. These entities were (at the time of the misconduct) also usually controlled and operated solely at the direction of, and through, the sole actions of an individual respondent. The two numbered companies that are respondents in this case represent just such entities. There is little public interest necessity in issuing separate orders under section 162 against entities of this type.

[129] Canadian Manu was controlled by Oei. However, Canadian Manu was an entity with a real business, assets, operations and, during a portion of the relevant period, had a director separate and apart from the individual respondent. It was not a mere shell at the time of the misconduct and may well carry on business, financings and other activities in our capital markets in the future. Therefore, it is in the public interest for us to issue monetary sanctions that serve the purposes of specific and general deterrence.

[130] However, it is also true that, when looking at the misconduct of Canadian Manu versus Oei, the company's contribution to the misconduct in this case was significantly less serious than that of Oei. Oei was clearly the mastermind of the fraud perpetrated on the investors. He made the representations to investors about the investment structure. He made the decisions with respect to the flow of funds that led to the diversion and misappropriation of investor funds. Canadian Manu was a material participant in all of this misconduct and must bear some responsibility for its role, but it clearly was not the driving force behind the fraud. Our orders must recognize the difference in contribution to the fraudulent misconduct. We find an order in the amount of $1.0 million against Canadian Manu to be appropriate in the circumstances.

## IV. Orders

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

***Oei***

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

(b) Oei is permanently prohibited:

(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 RRSP accounts, TFSA accounts and RESP accounts) 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) Oei pay to the Commission $3,087,977.41 pursuant to section 161(1)(g) of the Act; and

(d) Oei pay to the Commission an administrative penalty of $4.5 million under section 162 of the Act.

***Canadian Manu Immigration & Financial Services Inc.***

(e) Canadian Manu is permanently prohibited:

(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) Canadian Manu pay to the Commission $3,087,977.41 pursuant to section 161(1)(g) of the Act; and

(g) Canadian Manu pay to the Commission an administrative penalty of $1.0 million under section 162 of the Act.

***0863220 B.C. Ltd.***

(h) 0863 is permanently prohibited:

(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;

***0905701 B.C. Ltd.***

(i) 0905 is permanently prohibited:

(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.

(j) the obligations to pay the amount set out in subparagraphs (c) and (f) above are joint and several as between Oei and Canadian Manu, such that the total payments to be made under the orders in those subparagraphs shall not exceed $3,087,977.41.

August 8, 2018
**For the Commission**

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Suzanne K. Wiltshire
Commissioner