2002 BCSECCOM 993

COR#02/142

Decision

Fairtide Capital Corp., Bayshore Management Corp., Gibraltor Consulting Corp., Pacific Capital Markets Inc., Wet Coast Capital Corp., Brek Energy Corporation, GlobeTrac Inc., Communicate.com Inc., Francis Jason Dean Biller, David Matthew Jeffs, Leigh Jeffs, Richard Jeffs, John Da Costa, Gordon Wiltse, Travis Brian Arnold, Rylie David Ableman, Richard Edwards Cartledge, Stephen Gerald Diakow, Raymond Christopher Dove, Aaron Leslie Evans, Peter James Forward, William Friesen, Altaf Goolab, Andrew David Greig, Jeffrey Mitchell Seabrook, Adrian Ting Lee, Jason Douglas Lintunen, Anne McFadden, Johnny Cameron Pan, Matthew Mitchell Phillips, Jon Stanbrough, David Wallace Strong, Daniel Ross Warburton, Raymond Wong

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Joyce C. Maykut, Q.C.	Vice Chair
	Neil Alexander	Commissioner
	Marc A. Foreman	Commissioner
Dates of Hearing	November 27 and 29, 2002	
Date of Decision	December 11, 2002	

Appearing

James Sasha Angus Joseph A. Bernardo Patricia A.A. Taylor	For Commission staff
Mark Jette	For Fairtide Capital Corp., Bayshore Management Corp., Gibraltor Consulting Corp., Wet Coast Capital Corp., Globetrac Inc., Leigh Jeffs, Richard Jeffs, John Da Costa and Gordon Wiltse
Kenneth W. Ball	For Pacific Capital Markets Inc., Communicate.com Inc., David Matthew Jeffs and Johnny Cameron Pan
David G. Fredricksen	For Brek Energy Corporation

2002 BCSECCOM 993

Peter Leask, Q.C.	For Francis Jason Dean Biller
Robert W. Cooper	For Rylie David Ableman, Richard Edwards Cartledge, Raymond Christopher Dove, Aaron Leslie Evans, Peter James Forward, Altaf Goolab, Andrew David Greig, Jeffrey Mithcell Seabrook, Adrian Ting Lee, Jason Douglas Lintunen, Matthew Mitchell Phillips, Jon Stanbrough, David Wallace Strong, Daniel Ross Warburton and Raymond Wong
H. Roderick Anderson	For Stephen Gerald Diakow
J. Douglas Jevning	For Anne McFadden

Introduction

¶ 1 This is an application to extend temporary orders issued by the Executive Director on November 13, 2002 against Fairtide Capital Corporation and 48 other corporate and individual respondents. The Executive Director subsequently amended the temporary orders and the notice of hearing, which accompanied the orders, to remove fourteen respondents. A further amended notice of hearing, which removed another respondent, was issued following the conclusion of the hearing. Vallenar Energy Corp., Billserv Inc., Cryopak Corporation, Cryopak Industries Inc., Derek Resources Corporation, Midastrade.com Inc., Joseph Rene (Laurie) Larose, Gilbert Jason Bailey, Valerie Jean Helsing, Peter Hall, Jeffrey Dean Paquin, Adam Stuart Rabiner, Jordan David Sowden, Eve Wexler and Yong (Cecil) Saeng Lim are no longer named as respondents.

¶ 2 We find that all of the respondents received notice of the hearing according to section 180 of the Act.

¶ 3 In summary, the amended notice alleged that the respondents were operating a boiler room in Vancouver, British Columbia by advising and trading in shares of certain companies to the public contrary to the Act. As a consequence, the Executive Director issued temporary orders under sections 161(1)(a)(b) and (d) of the Act directing that:

- each of the respondents comply with or cease contravening the Act;
- each of the respondents cease trading in, and be prohibited from purchasing any securities;

- each of the individual respondents resign any position each may hold as a director or officer of any issuer, and that each be prohibited from becoming or acting as a director or officer of any issuer; and
- each of the respondents be prohibited from engaging in investor relations activities.

¶ 4 The temporary orders were to expire November 27, 2002. We extended them until we issued our decision on this application.

¶ 5 Staff want the Commission to adjourn the hearing for 90 days and to extend the temporary orders until the hearing is held and a decision rendered. Staff say that they will not be in a position to proceed with the hearing, or necessarily set a date for the hearing, for some time because the investigation has just begun and a parallel criminal investigation complicates that process. They say they will be able to update the Commission and respondents on the investigation in 90 days. The respondents oppose the extension of the temporary orders.

Background

¶ 6 The amended notice of hearing and amended temporary orders, which are quoted below, were issued on the following facts and allegations:

The Parties
Operating Corporate Respondents

1. Fairtide Capital Corp. (Fairtide) is a company incorporated under the laws of British Columbia and is not registered under the Act.

2. Bayshore Management Corp. (Bayshore) is a company incorporated under the laws of British Columbia and is not registered under the Act.

3. Gibraltor Consulting Corp. (Gibraltor) is a company incorporated under the laws of British Columbia and is not registered under the Act.

4. Pacific Capital Markets Inc. (Pacific Capital) is a company incorporated under the laws of British Columbia and is not registered under the Act.

5. Wet Coast Capital Corp. (Wet Coast) is a company incorporated under the laws of British Columbia and is not registered under the Act.

Promoted Respondents

6. Brek Energy Corporation (Brek) is a company incorporated under the laws of the State of Nevada and is not registered under the Act.

7. GlobeTrac Inc. (GlobeTrac) is a company incorporated under the laws of the United Kingdom and is not registered under the Act.

8. Communicate.com Inc. (Communicate.com) is a company incorporated in Alberta and is not registered under the Act.

Associates

9. Francis Jason Dean Biller (Biller) is engaged in investor relations activities as manager and otherwise on behalf of the Operating Corporate Respondents and is not registered under the Act.

10. David Matthew Jeffs is President and a director of Communicate.com and is not registered under the Act.

11. Richard Jeffs is a director of Wet Coast and Pacific Capital and is not registered under the Act.

12. Leigh Jeffs is a director of Bayshore, Fairtide and Gibraltor and is not registered under the Act.

13. John Da Costa (Da Costa) is a director of GlobeTrac, Fairtide and Bayshore and is not registered under the Act.

14. Gordon Wiltse (Wiltse) is engaged in investor relations activities as a manager and otherwise on behalf of the Operating Corporate Respondents and is not registered under the Act.

Individuals

15. Each Individual and Phoner [defined earlier to include Travis Arnold, Rylie Ableman, Richard Cartledge, Raymond Dove, Aaron Evans, Peter Forward, Altaf Goolab, Andrew Greig, Adrian Lee, Matthew Phillips, Jeffrey Seabrook, Jon Stanbrough, David Strong, Daniel Warburton and Raymond Wong] is employed by one or more of the Operating Corporate Respondents and none of them is registered under the Act.

The Conduct of Parties

16. On November 7, 2002, the staff of the Enforcement Division of the Commission (Staff) searched premises at 600 – 1100 Melville Street,

Vancouver (the Premises) under a Warrant to Search issued under the Offence Act, RSBC 1996, c. 338 (the Search).

17. In the course of the Search the Staff discovered a room in which the Staff observed:

(a) The Phoners grouped around desks using a bank of telephones.

(b) On the desks used by the Phoners and others:

(i) numerous phone scripts that appear to have been used by the Phoners and others to promote stocks of the Promoted Respondents;

(ii) hand-written notes by the Phoners and others detailing answers for questions or objections posed by persons whom they had called;

(iii) lists of names and telephone numbers, including persons in British Columbia, Alberta, Ontario, the United Kingdom, the United States of America and other countries, which appeared to be contact lists used by the Phoners and others; and

(iv) telephone call log sheets detailing:

- names of persons called;
- the dates of the calls;
- the names of the persons making the calls; and
- information concerning details of the calls.

(c) A projector prominently displaying real-time prices of the stocks of the Promoted Respondents and other issuers.

18. In the course of the Search, the Staff found documents and records that evidence a business association among the Parties for the purpose of conducting investor relations, promoting the stocks of the Promoted Respondents and other issuers, and engaging in acts in furtherance of trades of securities.

19. The Individuals, the Phoners, and the Associates were operating a boiler room whose purpose was to promote and create public interest

in the stock of the Promoted Respondents and other issuers and aggressively encourage trades in the securities of the issuers.

20. Biller and Wiltse managed the trading activities of the Phoners and assisted the Phoners in closing trades of securities by members of the public.

Post Search Activities

21. On November 8 and 13, 2002, the Staff observed certain individuals in the Premises, using the bank of telephones and apparently conducting the same activities as they were conducting before the Search.

Breaches of the Act

22. The Parties engaged in acts in furtherance of trades of securities and advising persons to purchase securities without complying with the registration requirements of the Act, contrary to section 34(1)(a) of the Act.

23. The Parties telephoned from inside British Columbia to the residences of persons inside and outside British Columbia for the purposes of trading in securities, contrary to section 49 of the Act.

24. The Phoners, Individuals and Associates, while engaging in investor relations activities and with the intention of effecting trades in securities and with the authorization, permission or acquiescence of the Corporate Respondents and Promoted Respondents:

    (a) gave undertakings relating to the future value or price of securities;

    (b) made statements that they knew or ought reasonably to have known were misrepresentations; and

    (c) engaged in unfair practices;

    contrary to sections 50(1)(b), (d), and (e) and section 168.2 of the Act.

Acts Contrary to the Public Interest

25. Biller has breached a February 16, 2000 order of the Commission prohibiting him from acting as a director or officer of any issuer and prohibiting him from engaging in investor relations activities for a period of 10 years, contrary to the public interest.

26. All the Parties have engaged in acts contrary to the public interest by virtue of the facts alleged above.

¶ 7 Several respondents filed affidavits in reply to staff's application, including William Friesen, Stephen Diakow, Anne McFadden and Johnny Pan. We have considered their evidence but do not need to describe it except as follows.

¶ 8 Johnny Pan, Chartered Accountant, stated that:

- he is the secretary of Communicate.com Inc. and David Jeffs is a director of Communicate.com
- Communicate.com's business is to construct and maintain intuitive named domain websites
- Fairtide Capital Corp. was retained to provide investor and public relations services for Communicate.com
- Communicate.com issued a public news release on October 2, 2002 announcing the arrangement with Fairtide
- the news release described Fairtide as representing a wide range of clients as a "full service venture capital, investor relations and strategic communications agency" and was expected to "increase Communicate.com's profile through a broad range of media and networks communications as well as through targeted communications to one of the largest proprietary databases of micro-cap investors …"
- Fairtide's retainer to provide public relations and investor relations services to Communicate.com Inc. has been terminated.

¶ 9 Staff filed two affidavits from staff investigators in support of their application. Staff argue that these two affidavits provide the necessary evidentiary foundation for the Commission to conclude that is necessary and in the public interest to extend the orders.

¶ 10 The respondents vigorously argue that the investigator's affidavits are so deficient that there is no reliable evidence upon which the Commission can conclude that it is necessary and in the public interest to extend the orders.

¶ 11 In summary the respondents argue that:

- the investigators' affidavits, on all substantive issues, are conclusory without any of the necessary supporting evidentiary foundation
- the investigators are obliged, but fail, to specifically identify the source document, person or underlying circumstances on which they rely to make their statement or observation

- the investigators' statements and observations are fatally vague by failing to identify the respondent to which the statements apply.

¶ 12 The first affidavit is that of Harveen Thauli. Except for some minor statements on facts that are not in dispute, her observations and beliefs mirror the allegations in the amended notice of hearing without providing the evidence upon which bases them. She states that her observations and beliefs were based on her review of some documents seized in the November 7, 2002 search, records available at the Commission and conversations with other Commission staff.

¶ 13 The second affidavit is that of Brian F. Edwards. He stated that he reviewed documents seized under the search, including forms that "listed the names of certain individuals who were apparently contacted by 'phoners' at 600 1100 Melville Street". He described the form as including the following:

- the date of call or subsequent calls
- the name of the "Qualifier"
- the symbol
- the share price
- fax number
- address
- time zone (various time zones including: HWII, ALSK, PST, MST, CST, EST, ATL, NFDL)
- email address
- whether the contact was an existing shareholder
- a section entitled: "In a position to participate?, YES"
- what appears to be a rating system out of 10 " ____ / 10"
- a section entitled: "Expecting C/B on what date?"
- a section entitled: "Notes"

¶ 14 Edwards stated that as a result of contacting the individuals identified on the forms he learned that:

- some of the individuals told me they believed that some of the phoners were trying to sell them stock;
- some individuals that were contacted by the phoners were not existing shareholders of Brek Energy Corporation, GlobeTrac Inc., or Communicate.com Inc, when they were contacted;
- some individuals that were contacted had not requested to be contacted;

- some individuals that were contacted were advised that the value of Brek Energy shares would increase in the future;
- one individual that was contacted was advised to place a purchase order for GlobeTrac stock at a specific price. This individual told me that the price he was told to purchase GlobeTrac stock by the phoner was below the market value on that date;
- some individuals were contacted numerous times by the phoners;
- some of the individuals were contacted by the phoners at their residence;
- some of the individuals understood the phoner worked for Fairtide Capital;

Issue

¶ 15 Is there sufficient evidence to determine it is 'necessary and in the public interest' to extend temporary orders without a hearing against each of the respondents?

Analysis

¶ 16 In answering this question, we must first consider the regulatory context.

¶ 17 The *Securities Act* is a regulatory statute with a public interest mandate. Its overarching purpose is to ensure investor protection, capital market efficiency and public confidence in the system. See: *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301; *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at 589; *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 at 26; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494.

¶ 18 The public interest purpose in imposing regulatory enforcement orders is neither remedial nor punitive but protective and prospective in nature. The purpose of these powers is to prevent likely future harm to the integrity of our capital markets not to punish.

¶ 19 To effectively discharge its mandate, the Commission must use the regulatory tools given to it. Some of the most effective tools the Commission has are the powers in section 161(1) of the Act.

¶ 20 Section 161(1) provides that the Commission or the executive director may, after a hearing, make any one of a variety of enforcement orders described in that section. These include orders of the kind made against the respondents.

¶ 21 Section 161(2) provides that if the Commission or the Executive Director considers that the length of time required to hold a hearing under subsection (1)

could be prejudicial to the public interest, they may make a temporary order, without a hearing, to have effect for not longer than 15 days after the date the temporary order is made.

¶ 22 Section 161(2) was intended to give securities regulators the power to act quickly if there is a threat to the integrity of the capital markets or the public interest. However, the section makes clear that the power to exercise this discretion is not open ended. Firstly, the regulators must have a reasonable belief that the length of time to hold a hearing 'could be prejudicial to the public interest' and secondly, the temporary orders cannot stay in effect for more then 15 days.

¶ 23 The 15-day limit indicates that some form of scrutiny should occur before or at the end of that period. This is so even though the following section 161(3) gives the commission or the executive director the authority to further extend temporary orders without first holding a hearing.

¶ 24 The Commission has established the practice of having the temporary orders, which are generally issued by the Executive Director, brought before a Commission panel before the 15-day period expires. This gives the respondents an opportunity to respond to the temporary orders before the Commission determines whether the orders should be further extended under section 161(3).

¶ 25 An extension order made under section 161(3) is not limited to a specific period as in section 161(2), but can be made until the hearing under section 161(1) is held and a decision is rendered. Again this discretion is not open ended. The Commission may make an extension order only if it meets the two-pronged test of being 'necessary and in the public interest'. The evidentiary threshold to conclude that an extension order is 'necessary and in the public interest' is obviously greater than that necessary to conclude (when first issuing the temporary order) that the length of time to hold a hearing 'could be prejudicial to the public interest'.

¶ 26 The case of *Re: Petrowest Resources Ltd. et al* (Corporate and Financial Services Commission Weekly Summary September 10, 1975) illustrates the point. In that case there was sufficient evidence for the Superintendent of Brokers (now Executive Director) to have a "well-founded suspicion" that there was a threat to the public interest that warranted immediate intervention by way of a temporary cease trade order. However, on an appeal of the Superintendent's decision to extend the temporary orders without a hearing, the Corporate and Financial Services Commission found that this evidence alone was not sufficient to extend the orders. The Commission concluded, even assuming that there was a breach of the legislation, that the evidence for the extension had to demonstrate a reasonable basis for apprehending a future threat to the public interest.

¶ 27 Furthermore, we recognize that the power to intrude upon, and disrupt, persons' lives and businesses by issuing section 161(1) enforcement orders before a hearing is held, is a significant one and must be justified. Affidavits that suggest 'little more than unsubstantiated suspicion' or 'guilt by association' fall far short of providing the kind of evidence necessary to support these kinds of orders. See: *Pessel v. BCSC* [1992] B.C.C.J. No. 2702 (B.C.C.A.).

¶ 28 What then is required for the Commission to conclude that extending temporary orders without a hearing is 'necessary and in the public interest'?

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

¶ 30 The three Commission decisions referred to us by Commission staff are examples of applications where we determined that it was necessary and in the public interest to extend the temporary orders. See: *Re: Axagon Resources Inc*. [1993] 25 BCSC Weekly Summary 34, *Re: DiCimbriani* [1995] 5 BCSC Weekly Summary 4 and *Re: Eron Mortgage Corp.* [1997] 48 BCSC Weekly Summary 134.

¶ 31 In each of these cases, Commission staff produced evidence for the Commission to conclude that there was *prima facie* evidence of the misconduct alleged and that the extension order was necessary and in the public interest. The evidence produced was not simply staff's opinion or belief, given under oath, that a respondent breached the legislation or acted contrary to the public interest. Instead, staff appropriately produced the evidentiary foundation upon which we could independently assess whether there was *prima facie* evidence of a respondent's alleged misconduct and whether, in the circumstances, the extension order was necessary and in the public interest.

¶ 32 Is there sufficient evidence to conclude that it is 'necessary and in the public interest' to extend the temporary orders made against each of the respondents?

¶ 33 The respondents do not dispute some of the evidence in Ms. Thauli's affidavit. Commission staff executed a search at 600, 1100 Melville. The communications room and its contents existed as she described. The room contained a number of telephones, phoners, scripts and notes, lists of names with phone numbers and telephone logs. The phoners were employed by Bayshore and were engaged in providing investor relations services. However, the respondents dispute all of the conclusions in Ms. Thauli's affidavit because they say there is no reliable,

identifiable evidentiary foundation for any of them. As a result, they say the affidavit of Ms. Thauli falls far short of providing the kind of evidence necessary to support the extension orders. We agree.

¶ 34 We find that Ms. Thauli's affidavit, on all substantive issues, was conclusory without the evidentiary foundation upon which she based her observations and beliefs. For example, Ms. Thauli makes two conclusions about Biller that are not supported by any evidence. The first is that Biller "is engaged as a sales trainer/supervisor and from the information reviewed to date, I believe that Biller is involved in investor relations activities on behalf of the Operating Companies". The second is "I am informed through information relayed to me by Staff, which information I believe to be true, and after my review of certain of the Seized Documents that Biller and Wiltse appear to have supervised the trading activities of the Phoners and may have assisted the Phoners in closing sales of shares to members of the public."

¶ 35 Similarly, Ms. Thauli fails to describe the evidence that supports her belief that each of the respondents breached the provisions of the Act. The evidentiary foundation supporting Ms. Thauli's conclusions must be provided if staff want us to consider coming to the same conclusions. It was not. Accordingly, we do not give any weight to Ms. Thauli's observations and beliefs except those that concern facts that are not in dispute.

¶ 36 Indeed, we expected to see evidence of the phone scripts, phoners' notes of answers to questions and objections posed by potential investors and information concerning details of the calls.

¶ 37 Furthermore, Ms. Thauli believes that staff are unable to use the power of compulsion under the Act as an investigative tool in relation to those parties against whom criminal charges may be laid. In our view, the prospect of potential criminal proceedings cannot be used as an excuse not to produce the evidence necessary to justify the extension of temporary orders under section 161(3) of the Act.

¶ 38 We find that the affidavit of Mr. Edwards provides some evidence. From the information asked for on the form itself, and the subsequent information Edwards obtained from some persons who were called, it is reasonable to conclude that the phoners, who were employees of Bayshore, were expected to, and did, call persons in various jurisdictions and in speaking with them obtained the information asked for in the form. Some individuals believed that some of the phoners were trying to sell them stock. Some individuals were called at the residences. Some understood the phoner worked for Fairtide Capital. We conclude

that the ultimate purpose of the calls was to get individuals "to participate" by investing in the promoted companies.

¶ 39 We have considered this evidence with that of Mr. Pan. Pan confirmed Fairtide was in the business of providing investor relations services to various clients, including his company Communicate.com. Indeed, because of their contract, Communicate.com expected Fairtide to increase Communicate.com's profile through targeted communications to one of the largest proprietary databases of micro-cap investors. It is reasonable to infer that Fairtide and Bayshore, with its phoners, were working together to provide the investor relations services the phoners actually provided.

¶ 40 Where does this evidence take us?

¶ 41 Under section 1(1) of the Act :

> "adviser" means a person engaging in, or holding himself, herself or itself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities or exchange contracts;
>
> "trade" includes
>
> (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, installment or otherwise, but does not include a purchase of a security…
>
> …
>
> (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to …

¶ 42 Section 34 (1) of the Act provides that a person must not trade in a security or act as an adviser unless the person is registered under the Act. Section 46 of the Act provides certain exemptions to the registration requirement in section 34(1). None of the respondents was registered and no exemptions from the registration requirements were available to the respondents.

¶ 43 Section 168.2 of the Act provides that:

> If a person, other than an individual, contravenes a provision of this Act or of the regulations, or fails to comply with a decision, an employee, officer,

> director or agent of the person who authorizes, permits or acquiesces in the contravention or non-compliance also contravenes the provision or fails to comply with the decision, as the case may be.

¶ 44 In our view, there is prima facie evidence that the phoners, on behalf of Fairtide and Bayshore, advised potential investors to buy the securities of the promoted companies. We find that there is prima facie evidence that Fairtide and Bayshore were in the business of advising others to invest in specific securities. Because Fairtide and Bayshore were acting on behalf of companies who were selling securities, the conduct we described were also acts in furtherance of trading.

¶ 45 As a consequence, we find that there is prima facie evidence that Fairtide, Bayshore and the phoners contravened section 34 of the Act. The directors and officers of these companies are responsible for ensuring that the companies complied with the Act. This they failed to do and they are accountable under section 168.2 of the Act.

¶ 46 There is some evidence that some targets of the calls were advised that the value of Brek Energy shares would increase in the future. However, this is not sufficient for us to conclude that there is prima facie evidence that any of the respondents gave an undertaking as to future value of Brek Energy. Furthermore, we do not find that there is prima facie evidence that each of the respondents made misrepresentations or engaged in unfair practices contrary to the Act.

¶ 47 Unregistered trading and advising are serious problems in our capital markets and pose a significant threat to investors, whether or not they reside in our province. To allow Fairtide and Bayshore to operate their investor relations business without restrictions, would pose a continuing threat to our capital markets. It follows that this includes the directors and officers of these companies and the phoners.

¶ 48 In coming to our conclusions on this application, we considered all of the affidavits that were filed. As for those respondents who did not file any affidavits, staff argue that they must come forward and offer some explanation of their involvement in the operation that would convince staff to let them out of the temporary orders. Staff argue that merely being in the premises in these circumstances is sufficient evidence to shift the onus to the respondents to explain themselves.

¶ 49 We disagree. The onus is on staff to produce evidence upon which we can determine that it is necessary and in the public interest to extend temporary orders against each respondent. As Mr. Justice Gibbs noted in *Pessel (supra),* affidavit evidence that "amounts to little more than unsubstantiated suspicion" or "guilt by

association" falls far short of providing the kind of evidence necessary to support these kinds of orders.

¶ 50 However, we also recognize, as did Chairman Getz in *Petrowest (supra)* when he noted that:

> [T]he Superintendent [Executive Director] is in an unenviable position. The line between mere suspicion, and well-founded suspicion, is an elusive one. The Superintendent is quite properly anxious not to intervene too hastily. In exercising a proper and responsible degree of caution, he incurs the risk that he may close the barn door after the horses have left. He is damned if he does, and damned if he does not, and we would not wish to say anything that makes his job more difficult than, in the nature of things, it is.

¶ 51 Therefore, although we did not extend the orders against Biller, we are of the view that, in light of Biller's regulatory history and existing orders, the Executive Director was justified in suspecting the existence of a threat to the public interest when Biller was found at Fairtide's and Bayshore's premises. As we stated earlier these circumstances alone are not sufficient to justify the extension of the temporary orders. Nonetheless, the section 161(1) orders made by the Commission against Biller on February 16, 2000 prohibiting him from acting as a director or officer of any issuer and prohibiting him from engaging in investor relations activities for a period of 10 years, are still in effect.

¶ 52 The temporary orders made here are very broad and far-reaching. They order that:

- each of the respondents comply with or cease contravening the Act;
- each of the respondents cease trading in, and be prohibited from purchasing any securities;
- each of the individual respondents resign any position each may hold as a director or officer of any issuer, and that each be prohibited from becoming or acting as a director or officer of any issuer (save the recent amendments to Da Costa and McFadden); and
- each of the respondents be prohibited from engaging in investor relations activities.

¶ 53 In particular, we find the evidence was not sufficient to convince us that it is necessary and in the public interest that each respondent be prohibited from selling or purchasing any securities and that each of the individual respondents resign any position each may hold as a director or officer of any issuer, and that each be prohibited from becoming or acting as a director or officer of any issuer.

¶ 54 Although we have described some of the evidence, we emphasize that we have made no final determinations with respect to the allegations made in the notice of hearing and we cannot do so until the hearing is held.

¶ 55 Accordingly, we consider it necessary and in the public interest to extend the temporary orders under section 161(3) of the Act against Fairtide, Bayshore, and directors and officers Leigh Jeffs, John Da Costa and Anne McFadden and the communications representatives, including Travis Arnold, Rylie Ableman, Richard Cartledge, Raymond Dove, Aaron Evans, Peter Forward, Altaf Goolab, Andrew Greig, Adrian Lee, Matthew Phillips, Jeffrey Seabrook, Jon Stanbrough, David Strong, Daniel Warburton and Raymond Wong as follows:

1. under section 161(1)(a) of the Act, that each comply with or cease contravening the Act; and

2. under section 161(1)(e) of the Act, that each is prohibited from engaging in investor relations activities;

until a hearing is held and a decision is rendered.

¶ 56 This means that the temporary orders have not been extended against Gibraltor Consulting Corp., Pacific Capital Markets Inc., Wet Coast Capital Corp., Brek Energy Corporation, GlobeTrac Inc., Communicate.com Inc., Francis Biller, David Jeffs, Richard Jeffs, Gordon Wiltse, Stephen Diakow, William Friesen, Jason Lintunen and Johnny Pan.

¶ 57 We are of the view that it is in the public interest not to proceed with the hearing until Commission staff conclude their investigation. The hearing is adjourned until 10 am February 10, 2003, to allow staff to report on their investigation, unless the parties are able to agree to a date when the matter should be brought back before the Commission.

¶ 58 December 11, 2002

¶ 59 **For the Commission**

Joyce C. Maykut, Q.C.
Vice Chair

2002 BCSECCOM 993

Neil Alexander
Commissioner

Marc A. Foreman
Commissioner