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

Citation: Re Posen, 2026 BCSECCOM 216 Date: 20260630

Shimshon Refoel (Shimmy) Posen

Panel	Gordon Johnson Karen Keilty Douglas Seppala	Vice Chair Commissioner Commissioner
Submissions completed	June 5, 2026	
Ruling date	June 30, 2026	

Counsel

Joven Narwal, KC	For Shimshon Posen
Elizabeth Allan Setareh Khasha	For the Executive Director

Ruling and Reasons for Ruling

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I. Introduction

[1] By a Notice of Hearing, 2025 BCSECCOM 124 (Notice of Hearing), dated March 26, 2025, the executive director alleges that the respondent, Shimshon Posen (Posen) directed a wash trade to artificially lower the share price of a Canadian Securities Exchange (CSE) listed company (Company) and that this conduct "contravened section 57(1)(a)" of the *Securities Act*, RSBC 1996, 418 (Act).

[2] The evidentiary portion of the liability hearing was held on May 29, 2026.

[3] At the outset of the hearing, the executive director verbally identified two "housekeeping items" with respect to the Notice of Hearing. Amendments were sought by the executive director which were opposed in part by Posen. The hearing panel deliberated and directed the executive director to apply to amend the Notice of Hearing.

[4] The executive director filed his application on May 29, 2026. The respondent provided his response on June 2, 2026. The executive director provided his reply submissions on June 5, 2026.

[5] For the reasons below, we grant the executive director's application to amend the Notice of Hearing.

II. Factual background

[6] Additional context for this application is provided in our prior decisions: *Re Posen*, 2025 BCSECCOM 505, issued on November 17, 2025, and *Re Posen*, 2026 BCSECCOM 159, issued on May 8, 2026.

[7] The Notice of Hearing includes the following language:

> 5. On January 24, 2024, the Respondent's law firm, on behalf of the Company, sought CSE approval for a private placement of 10 million shares at $0.03 per share.
>
> 6. CSE policy provided that listed companies may only conduct a private placement at less than $0.05 per share if the price is not lower than its volume weighted adjusted price (VWAP) over the prior 20 trading days.
>
> 7. On January 24, 2024, the CSE refused the Company's private placement request of $0.03 because the 20-day VWAP of its shares, at that time, was $0.078.
>
> **Misconduct**
>
> 8. On the morning of January 26, 2024, the Respondent placed an order to buy 50,000 Company shares at $0.005 per share, in an online investment account in his name. Later that day, the Respondent directed a matching sell order for 50,000 Company shares at $0.005 per share, by instructing a registered representative to enter the sell order in an investment account in the name of a holding company owned by the Respondent's wife, over which the Respondent had trading authority (the Wash Trade). By directing the Wash Trade, the Respondent intended to lower the VWAP of the Company's shares.
>
> 9. On January 29, 2024, the Respondent's law firm, on behalf of the Company, informed the CSE that the Company's 20-day VWAP was now below $0.03. The CSE then approved the private placement at $0.03.
>
> 10. The Respondent knew, or reasonably should have known, that the Wash Trade would result in or contribute to a misleading appearance of trading activity in, and an artificial price for, the shares of the Company.

[8] The positions of the parties regarding the proposed amendments have shifted somewhat during the course of submissions. We are focused only on the final positions taken.

III. Position of the executive director

[9] The executive director seeks the following amendments:

> 7. On ~~January 24, 2024~~ <u>January 25, 2024</u>, the CSE refused the Company's private placement request of $0.03 because the 20-day VWAP of its shares, at that time, was $0.078.
>
> 8. On the morning of January 26, 2024, the Respondent placed an order to buy ~~50,000~~ <u>70,000</u> Company shares at $0.005 per share, in an online investment account in his name. Later that day, the Respondent directed a matching sell order for 50,000 Company shares at $0.005 per share, by instructing a registered representative to enter the sell order in an investment account in the name of a holding company owned by the Respondent's wife, over which the Respondent had trading authority

> (the Wash Trade). By directing the Wash Trade, the Respondent intended to lower the VWAP of the Company's shares.

[10] Citing *CNR v Imperial Oil Ltd.*, 2007 BCSC 1193 [*CNR*], and *Diamond Willow Ranch v Oliver (Village)*, [1988] BCJ No. 880, the executive director submits that a five part test applies:

> A proposed amendment must:
>
> (a) not be inconsistent with the pleadings already filed on behalf of the party seeking the amendment,
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> (b) not be inconsistent with the evidence tendered by that party at trial and on discovery;
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> (c) not have changed the whole course of the trial, had it been requested at the outset of the trial;
>
> (d) not be unfair to the opposite party; and
>
> (e) be necessary for the purpose of determining the real issues raised or depending upon the proceedings.

[11] The executive director asserts that the amendment accurately reflects the evidence, does not introduce new facts and causes no prejudice to Posen. The executive director submits that the nature of the allegations are unchanged by the proposed amendments and the essential case to be met by Posen is unaffected.

[12] Counsel for the executive director submits that statements made during argument regarding the date of the refusal by the CSE being immaterial should be viewed in context. In context, those statements meant that it does not matter whether the refusal by the CSE occurred on January 24, as originally alleged, or January 25, as will be reflected in the proposed amendment. What matters is that the refusal occurred before the trades which are the subject matter of the Notice of Hearing.

IV. Position of Posen

[13] Posen does not oppose the amendment of paragraph 8, although Posen makes it clear that this concedes nothing about the characterization of the transaction.

[14] Posen opposes the amendment of paragraph 7. Posen submits that a regulatory pleading should always commit to when the events it alleges occurred, particularly where, as here, the timing of the refusal by the CSE forms part of the sequence of events about which the panel will be asked to draw inferences.

[15] Posen submits that regardless of what conclusion reaches regarding the amendment, the panel should hold the executive director to the position that the date of the refusal by the CSA is not material.

V. Analysis and conclusions

[16] It is not necessary for us, at this stage, to fully address the issue of the extent to which the executive director is bound by statements made about the materiality of the date of the CSE refusal. That is an issue which can be finally resolved during the hearing on the merits. We would observe that the Notice of Hearing as a whole, without reference to paragraph 7, expresses the executive director's allegation that Posen's trading was motivated by the refusal of the CSE.

[17] Turning to the amendments, the amendment to paragraph 8 is not opposed and it is granted.

[18] Regarding the amendment sought for paragraph 7, we agree with the executive director that the factors identified in *CNR* are a useful guide. Those factors all favor us granting the amendment. We note, in particular, that no prejudice has been alleged and there is no basis to conclude that Posen would have taken a different approach to the defence of this proceeding had the Notice of Hearing been issued originally in its amended form.

[19] The executive director's application to amend the Notice of Hearing is granted.

June 30, 2026

For the Commission

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner

Douglas Seppala
Commissioner