BCSC
British Columbia Securities Commission

Ian Gregory Thow,
611276 BC Ltd., 657594 BC Ltd., 679071 BC Ltd., 699109 BC Ltd.,
705671 BC Ltd., AYG Investments Inc., M600 Holdings Ltd.,
Thow Financial Planning Corp, Vancouver Island Jet Inc.,
and 1047145 Alberta Ltd.

Sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken	Vice Chair
	Kenneth G. Hanna	Commissioner
	Robert J. Milbourne	Commissioner
Submissions completed	November 30, 2007	
Date of Decision	December 20, 2007	
Submissions filed by		
J. Douglas MacKay	For the Executive Director (Original submissions on sanctions)	
Mark Hilford	For the Executive Director (Supplementary submissions on retrospectivity)	

Decision

I Introduction

¶ 1 This is a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. This decision should be read with our Findings in this matter made on October 16, 2007 (see 2007 BCSECCOM 627).

¶ 2 The executive director filed submissions on sanctions on November 2 and November 30, 2007. None of the respondents filed submissions.

II Background

A Facts

¶ 3 Thow misappropriated millions of dollars of his clients' funds through his promotion of securities other than the mutual funds he was registered to sell.

¶ 4 Thow was a mutual fund salesperson employed by Berkshire Investment Group Inc., a mutual fund dealer and member of the Mutual Fund Dealers Association of Canada. Thow was also an officer, director, and branch manager with Berkshire. Thow's registration permitted him to trade only in mutual funds. Berkshire terminated his employment in June 2005. Thow is no longer registered under the Act.

¶ 5 Thow persuaded some clients to invest in short-term construction loans. There is no evidence that these loans existed. Thow persuaded others to buy shares in National Commercial Bank Jamaica Limited. To some clients he identified the shares as preferred shares. Those shares did not exist. Thow persuaded one client to invest in Berkshire's initial public offering. Berkshire never had any plans to go public.

¶ 6 Thow advised clients to liquidate their mutual fund portfolios, to mortgage their homes, or to use other sources of borrowed funds, to raise the money to buy these investments. In several cases, Thow helped the clients arrange financing to do so.

¶ 7 To buy the investments that Thow promoted, his clients gave their funds to Thow personally, or to companies he owned and controlled. Thow used the money he received from his clients for these investments for other purposes, mostly for his own personal and business use.

B Findings

¶ 8 We found that Thow:

1. failed to deal fairly, honestly and in good faith with his clients, contrary to section 14(2) of the Rules and the rules of the MFDA, when he lied to them and took their money;
2. traded in securities without being registered to do so, contrary to section 34(1)(a) of the Act, when, while registered as a mutual fund salesperson, he traded securities that were not mutual funds;
3. made misrepresentations, contrary to section 50(1)(d), when he made untrue statements of material facts about the securities he offered to his clients, and when he omitted material facts about those securities; and
4. perpetrated a fraud, contrary to sections 57(b) and 57.1(b), when he made misrepresentations to his clients, and used their funds for his own purposes instead of investing them as his clients intended.

¶ 9 We found that seven of the corporate respondents, 611276 BC Ltd., 657594 BC Ltd., 679071 BC Ltd., 699109 BC Ltd., AYG Investments Inc., M600 Holdings

Ltd., and Vancouver Island Jet Inc., acted contrary to the public interest. We made no findings against 705671 BC Ltd., Thow Financial Planning Corp., or 1047145 Alberta Ltd.

¶ 10 Twenty-six of Thow's clients gave Thow $8.7 million to invest. Instead, he spent the money on himself, causing losses to these clients of $6 million.

¶ 11 In the Findings we described Thow's fraud one as of the most callous and audacious frauds this province has seen. We noted that Thow preyed on his clients by offering them non-existent securities and instead using the funds to support his lavish lifestyle. The Findings established that Thow took their money and betrayed their trust, leaving a trail of financial devastation and heartbreak in the process.

III Discussion and analysis

¶ 12 As in the Findings, the clients we refer to in this decision are those whose testimony formed part of the evidence in the hearing.

¶ 13 The executive director seeks permanent orders under section 161(1) of the Act against Thow denying him the use of the exemptions under the Act, prohibiting him from being a director or officer of any issuer, and prohibiting him from engaging in investor relations activities.

¶ 14 The executive director also seeks an order under section 162 of the Act imposing an administrative penalty on Thow of $250,000.

¶ 15 The executive director's submissions were silent on the subject of orders against the corporate respondents against whom we made findings.

A Retrospectivity

¶ 16 Thow's misconduct occurred between January 2003 and May 2005. Since that time, sections 161(1) and 162 have been amended.

¶ 17 Section 162 was amended first. It says that if the commission, after a hearing, determines that a person has contravened the Act or the regulations, it can order the person to pay the commission an administrative penalty. The *Securities Amendment Act*, SBC 2006, c. 32 increased the maximum administrative penalty the commission can order under section 162 from $250,000 to $1 million. The $1 million maximum is now expressed as "per contravention." (The section, absent those words, was interpreted by the British Columbia Court of Appeal to mean that the maximum amount specified in the section limited the penalty to that amount for the aggregate of all of the contraventions alleged in a notice of hearing. See *Biller v British Columbia (Securities Commission)* [2001] BCJ No.

515). The amendment came into force on May 16, 2006. The executive director issued the notice of hearing on June 29, 2006.

¶ 18 Section 161(1) authorizes the commission to make other enforcement orders. The *Securities Amendment Act*, SBC 2007, c. 37 added new powers to section 161(1), including powers to make orders against registrants, investment fund managers and promoters, and to prohibit a person from acting in a management or consultative capacity in connection with activities in the securities market. The amendments came into force on November 22, 2007.

¶ 19 We asked the parties for supplementary submissions on the issue of whether we had the jurisdiction to apply sections 161(1) and 162 as amended.

¶ 20 Only the executive director filed submissions. The executive director says we could apply section 161(1) as amended, but not section 162. In both cases, the executive director says we should not apply the sections as amended because to do so would be unfair to Thow.

Jurisdiction

¶ 21 The courts use the term "retrospectivity" to describe the issue. In *Brosseau v Alberta (Securities Commission)* [1989] 1 SCR 301, the Supreme Court of Canada considered the issue of retrospectivity in the context of securities legislation. In that case, the court referred to two earlier decisions of the Court. In *Nova, An Alberta Corporation v Amoco Canada Petroleum Co.* [1981] 2 SCR 437, the Court said that in dealing with an issue of retrospectivity, "each statute must, for the purpose of its interpretation, stand on its own and be examined according to its terminology and the general legislative pattern it establishes."

¶ 22 The Court then noted the general rule that statutes are not to be construed as having retrospective operation unless to do so is, expressly or by necessary implication, required by the statute, citing *Gustavson Drilling (1964) Ltd. v Minister of National Revenue* [1977] 1 SCR 271 (at p. 279).

¶ 23 The Court quoted Driedger *Construction of Statutes* (2d ed, 1983), which says that the presumption against retrospectivity does not apply to statutes "that impose a penalty on a person who is described by reference to a prior event, but the penalty is not intended as a further punishment for the event."

¶ 24 The Court said that this interpretation would also apply to a statute that "may impose a penalty on a person related to a past event, so long as the goal of the penalty is not to punish the person in question, but to protect the public," citing

(at para. 51) Dreidger in "Statutes: Retroactive, Retrospective Reflections" (1978), 56 Can. Bar Rev. 264, at p. 275:

> In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

¶ 25 The Court concluded by saying:

> 53 The present case involves the imposition of a remedy, the application of which is based upon conduct of the appellant before the enactment of ss 165 and 166. Nonetheless, the remedy is not designed as a punishment for that conduct. Rather, it serves to protect members of the public.
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> . . .
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> 55 The provisions in question are designed to disqualify from trading in securities those persons whom the Commission finds to have committed acts which call into question their business integrity. This is a measure designed to protect the public, and it is in keeping with the general regulatory role of the Commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

¶ 26 The executive director cautions against applying *Brosseau* too widely. The executive director says that *Brosseau* stands for the proposition that the presumption against retrospective operation is rebutted only in the case of penalties that are in the nature of a forward-looking statutory disqualification, or conduct restriction, based on past conduct.

¶ 27 Applying that reasoning to the amendments to section 161(1), the executive director concludes that because those amendments are akin to the amendments under consideration in *Brosseau*, the presumption against the retrospective operation of statutes is effectively rebutted, and that we could impose orders under that section as amended.

¶ 28 The executive director says that it is much more difficult to rebut the presumption for an amendment to section 162. In essence, the executive director takes the position that the goal of section 162 is not to protect the public, but to punish, and so the presumption against retrospective operation is not rebutted.

¶ 29 We disagree. It is true that the Court in *Brosseau* was considering only amendments in the nature of the commission's powers under section 161(1), so the case does not expressly state that the presumption would be rebutted in the case of an amendment to section 162. But neither does *Brosseau* stand for the proposition that the presumption could not be rebutted for amendments to section 162, for the same reason – penalties of the type contemplated in section 162 were not before the Court.

¶ 30 In any event, the law as it now stands does not differentiate between orders made under section 161(1) and those made under section 162. Both are part of the commission's overall protective and preventative jurisdiction. Whether the presumption against retrospectivity is rebutted depends:

- as stated in *Nova*, on the general legislative pattern of the Act, and
- as stated in *Brosseau*, whether the goal of the penalty is to punish the person in question or to protect the public.

¶ 31 The Supreme Court of Canada has considered these factors in the context of securities regulation.

¶ 32 In *Gregory & Co. v Quebec Securities Commission* [1961] SCR 584, the Court said (at p. 588):

> The paramount object of the Act is to ensure that persons who . . . carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public . . . from being defrauded . . . .

¶ 33 In *Brosseau*, the Court said:

> 32 Securities acts in general can be said to be aimed at regulating the market and protecting the general public. This role was recognized by this Court in [*Gregory*] . . .
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> 33 This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts.

¶ 34 In *Pezim v. British Columbia (Superintendent of Brokers)* [1994] 2 SCR 557, the Court described the securities regulatory framework in Canada as follows:

> 59 It is important to note from the outset that the Act is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor but other goals include capital market efficiency and ensuring public confidence in the system . . . .
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> 60 Within this large framework of securities regulation, there are various government administrative agencies which are responsible for the securities legislation within their respective jurisdictions. The Commission is one such agency . . . .

¶ 35 In *British Columbia Securities Commission v Branch* [1995] 2 SCR 3, the Court described the nature of the Act as follows:

> 59 . . . the *Securities Act* is essentially a scheme of economic regulation which is designed to discourage detrimental forms of commercial behaviour. The provisions provided by the legislature are pragmatic sanctions designed to induce compliance with the Act. . . .

¶ 36 In *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)* [2001] 2 SCR 132, the Court commented on the nature of the Ontario Securities Commission's jurisdiction as follows:

> 41 . . . the OSC's public interest jurisdiction is animated in part by both of the purposes of the Act described in s. 1.1, namely "to provide protection to investors from unfair, improper or fraudulent practices" and "to foster fair and efficient capital markets and confidence in capital markets". Therefore, in considering an order in the public interest, it is an error to focus only on the fair treatment of investors. The effect of an intervention in the public interest on capital market efficiencies and public confidence in the capital markets should also be considered.
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> 42 . . . the purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets" . . . . This interpretation . . . is . . . consistent with the objective of regulatory legislation in general. The focus of regulatory law is on the protection of societal interests, not punishment of an individual's moral faults . . . .
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> 43 Furthermore, the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a

> broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive . . . . Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.
> . . .
> 45 In summary, pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. However, the discretion to act in the public interest is not unlimited. In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation. . . .

¶ 37 In *Asbestos*, the Court considered the purpose of the Ontario *Securities Act* as stated in then section 1.1 of that Act. In *Re Cartaway Resources Corp.* [2004] 1 SCR 672, the Court recognized that the purposes of the British Columbia *Securities Act*, although not stated in the Act, are essentially the same as those stated in the Ontario *Securities Act*.

¶ 38 In *Asbestos*, it was the powers under then section 127 of the Ontario *Securities Act* that the Court concluded were protective and preventative. That section corresponds to section 161(1) of the Act. The Court in *Cartaway* made it clear that orders under section 162 ought to be similarly characterized.

¶ 39 In *Cartaway*, the commission made orders under both section 161(1) and section 162 against certain individuals. In making the orders, the commission considered general deterrence. The British Columbia Court of Appeal ruled that considering general deterrence as a factor was inconsistent with the commission's "protective and preventive" jurisdiction as described in *Asbestos*.

¶ 40 The Supreme Court of Canada disagreed. These are the relevant excerpts from its decision:

> 4 . . . general deterrence is an appropriate factor in formulating a penalty in the public interest. General deterrence is both prospective and preventative in orientation. As such, it falls squarely within the public interest jurisdiction of securities commissions to maintain investor confidence in the capital markets.
> . . .

26 In imposing sanctions on Hartvikson and Johnson under ss. 161 and 162 of the Act, the Commission weighed several important factors, including general deterrence, protecting the securities market, the settlement agreements and the circumstances of the case.

27 On one hand, the Commission considered the need to send a clear message that would deter inappropriate conduct by other participants in British Columbia's capital markets. . . .

28 On the other hand, the Commission took into account Hartvikson and Johnson's previously untarnished records and their positive contribution to the capital markets. Moreover, both respondents voluntarily surrendered their licences . . . and repented their actions.

29 After weighing these considerations, the Commission decided that a lengthy ban was unnecessary to protect the public interest. The Commission held that a limited suspension and the imposition of a financial penalty would be sufficient to protect the public interest. Under s. 161(1)(c) of the Act, it ordered that exemptions under [the Act] did not apply to the respondents for one year . . . . Under s. 161(1)(d)(ii) of the Act, it ordered that the respondents were prohibited from acting as directors or officers of any reporting issuer for a period of one year . . .

30 Finally, under s. 162 of the Act, the Commission ordered Hartvikson and Johnson each to pay an administrative penalty of $100,000. . . .

. . .

52 Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence . . . In both cases deterrence is prospective in orientation and aims at preventing future conduct.

. . .

60 In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos*, *supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. . . .

> 61 . . . A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. . . .
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> 62 It may well be that the regulation of market behaviour only works effectively when securities commissions impose *ex post* sanctions that deter forward-looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving confidence in our capital markets.
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> 63 Further, it was reasonable in all the circumstances for the Commission to conclude that general deterrence applies in respect of Hartvikson and Johnson's conduct. While a specific breach of the Act is required to trigger the application of s. 162, unlike s. 161, the penalty that the Commission ultimately imposes should take into account the entire context, as well as the preservation of the public interest. The public interest must be satisfied under both ss. 161 and 162, and is not restricted to situations where the Commission imposes a ban on market participation under s. 161. Where conduct could be addressed under the two sections, the Commission may use both provisions to craft the order that is most in the public interest.
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> . . .
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> 65 In my opinion, increasing the amount of the fine . . . sends a clear message to other actors in the British Columbia securities market that a breach of s. 61 will be dealt with severely, and it is rational to assume that this conduct will accordingly be deterred. The Commission stressed the seriousness of the respondents' conduct and the damage done to the integrity of the capital markets, and found that when making an order that is in the public interest, "[w]e are obliged to take whatever remedial steps we determine are appropriate to maintain the public's confidence in the fairness of our markets.

¶ 41 These cases establish that:

- the paramount objective of the Act, and the role of the commission, is to protect the public and ensure public confidence in our markets (*Gregory, Pezim, Brosseau, Branch, Asbestos, Cartaway*)
- the Act is designed to discourage detrimental forms of commercial behaviour (*Branch*)

- the purpose of the commission's public interest jurisdiction is not punitive; it is protective and preventive – the commission's orders are prospective in their orientation, used to prevent likely future harm to capital markets (*Asbestos*)
- this interpretation is consistent with regulatory legislation in general, "whose focus is on the protection of societal interests, not punishment of an individual's moral faults" (*Asbestos*)
- general deterrence is an appropriate factor in formulating an administrative penalty under section 162 in the public interest; it falls squarely within the public interest jurisdiction of securities commissions to maintain investor confidence in the capital markets (*Cartaway*)
- the deterrence, both specific and general, associated with an order made under section 162 is prospective in orientation and aimed at preventing future conduct (*Cartaway*)
- where conduct can be addressed under both section 161(1) and 162, the commission may use both provisions to craft the order that is most in the public interest (*Cartaway*)

¶ 42 It follows that:

- rebutting the presumption against the retrospective operation of the amendments to section 162 is consistent with the general legislative pattern of the Act, and
- the goal of orders made under section 162 are not to punish the person in question but to protect the public.

¶ 43 We therefore find that the presumption against the retrospective operation of the amendments to sections 161(1) and 162 is rebutted, and we have the jurisdiction to apply those sections as they now read.

Fairness

¶ 44 Having concluded that we have the jurisdiction to apply sections 161(1) and 162 as they now read, would it be unfair to do so in the context of this hearing?

¶ 45 The new order powers in s 161(1) came into force after all phases of the hearing had ended (except our rendering of this decision). In the notice of hearing, the executive director gave notice of the intention to seek orders under section 161(1), but these powers are entirely new powers and were not included in section 161(1) when the executive director issued the notice of hearing.

¶ 46 The increase in the penalty under section 162 came into force before the executive director issued the notice of hearing.

¶ 47 We raised the issue of retrospective operation of the amendments to sections 161(1) and 162 with the parties and gave them the opportunity to make submissions. They have had an opportunity to be heard on the issue.

¶ 48 In these circumstances, it is not unfair to apply the amendments to sections 161(1) and 162 retrospectively.

B Factors to consider

¶ 49 In *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly Summary 22, the commission discussed the factors relevant to sanction as follows (at page 24):

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
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> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
> - orders made by the Commission in similar circumstances in the past.

¶ 50 Thow contravened section 14(2) of the Rules, which requires registrants to deal fairly, honestly and in good faith with their clients.

¶ 51 Instead, this is how Thow treated his clients:

- He solicited funds from his clients to invest in the construction loans, the NCB Jamaica shares, and the Berkshire IPO. Then he used the funds his clients gave him to invest in those securities for other purposes.

- Most of the money he took was for investments that did not exist.
- He encouraged clients to sell their mutual funds and mortgage their homes to raise the money for these so-called investments.
- He "reinvested" their funds without their permission.
- He liquidated one client's mutual fund account without the client's permission and appropriated the proceeds before reversing the transactions at the client's insistence.
- He provided no documentation to evidence his clients' investments.
- He lied to them about where their money had gone, how much their investments were worth, and when they would be repaid.

¶ 52 As we said in our Findings, Thow's conduct represents as blatant a contravention of these rules as one could imagine: he dealt unfairly, dishonestly, and in bad faith with his clients.

¶ 53 Thow also contravened section 34(1) by trading securities he was not registered to sell. In fact, he traded securities that did not exist at all. The main issue here is not Thow's contravention of section 34(1), but his abuse of the trust of his clients who were his clients only because of their relationship with him as a mutual fund salesperson.

¶ 54 Most seriously, Thow made misrepresentations to investors that went to the heart of their intended investments, and he perpetrated a fraud on them.

¶ 55 This is what Thow told his clients:

- They would be investing in short-term construction loans, secured by mortgages and yielding high rates of return, with no risk.
- The construction loans were safe because they were documented by a Vancouver law firm and held by the firm or by Berkshire.
- They would be investing in preferred shares of NCB Jamaica and a result would earn significant profits.
- He had invested in NCB Jamaica preferred shares on their behalf and that the shares he so acquired had increased in value significantly.
- Their investment in NCB Jamaica preferred shares was "doing great".
- An investment in NCB Jamaica preferred shares was safe.
- Berkshire was about to go public and took money from the client to invest in the offering.

¶ 56 As we explained in the Findings, these were all misrepresentations and Thow knew it.

¶ 57 Thow committed fraud. He did not use his clients' money for the purposes they gave it to him. He told them it would be invested. Instead, he spent it on personal and corporate expenses, to reduce loans and overdrafts, and to pay other clients. He was enriched by using his clients' money to support his lavish lifestyle.

¶ 58 Thow deprived the 26 clients of their money. Of the $8.7 million they invested, they lost about $6 million.

¶ 59 Through his serious misconduct, Thow significantly harmed investors as described in the Findings and damaged the integrity of British Columbia's capital markets.

¶ 60 We are not aware of any mitigating circumstances.

¶ 61 Thow's conduct shows he is not fit to participate in our capital markets. We must also make orders that will demonstrate the consequences of his conduct, and that will have an appropriate deterrent effect.

C Orders in the public interest

¶ 62 This case involves a large and highly-publicized fraud. It calls for orders that are protective of our markets and preventative of likely future harm. One of the best ways to do this is to ensure that the orders we make communicate strong specific and general deterrence.

Thow's contraventions

Section 14(2) of the Rules

¶ 63 Thow contravened section 14(2) of the Rules in as fundamental a way as it is possible to do. That section sets out the principles that underpin the relationship of trust between the registrant and the client. It is one of the fundamentals on which our system of regulation is dependent to ensure that investors are protected and the reputation of our capital markets remains secure.

¶ 64 We found that instead of dealing fairly, honestly and in good faith with his clients, Thow treated them unfairly, dishonestly and in bad faith. In doing so he abused their trust and damaged the integrity of our markets.

¶ 65 It is in the public interest that our orders achieve both specific deterrence against Thow and general deterrence for other registrants. We must do our best to communicate that so blatant a contravention of such a fundamental aspect of our system of securities regulation will not be tolerated.

Section 34(1) of the Act

¶ 66 Thow contravened section 34(1) of the Act by trading securities that he was not registered to trade. Thow knew that – the Findings show that he instructed both his clients to make their investments directly to him (personally or through one of his corporations).

¶ 67 Thow used his position as a registrant to induce clients to invest with him. His status as a registrant helped him create the trust he cultivated in his clients. His selling them securities that he was not registered to sell was part of his abuse of that trust.

¶ 68 Registration is a privilege that puts the registrant in a position of trust in relation to the client. In addition to considering specific deterrence against Thow, we must ensure that we give proper emphasis to general deterrence for other registrants who may be tempted to abuse that position of trust.

Section 50(1)(d)

¶ 69 Thow contravened section 50(1)(d) by making misrepresentations to both the loan group and the bank group. The misrepresentations were gross, widespread, and ongoing. Thow made them to induce his clients to invest, to stay invested, and to keep quiet. These misrepresentations were the tool Thow used to obtain his clients' funds and to facilitate the fraud.

¶ 70 Complete and accurate disclosure is another fundamental of our system of regulation. Those who make misrepresentations to investors about the securities being traded harm not just the investors, but the integrity of the market as a whole.

¶ 71 Therefore a contravention of the prohibition against misrepresentations is another one where we have to consider the value of both specific and general deterrence. The market as a whole must understand that cases of misrepresentation will attract an appropriate response.

Sections 57(b) and 57.1(b)

¶ 72 Thow contravened section 57(b) and 57.1(b) perpetrating a fraud on his clients. We have already characterized his fraud as one of the most callous and audacious frauds seen in the province.

¶ 73 We have described other provisions that Thow contravened as fundamental to our system of regulation. The prohibition against fraud, however, is the most fundamental of all. Nothing strikes more viciously at the integrity of our capital markets than fraud. When the fraud is committed by a registrant, the damage is even greater.

¶ 74 Thow's contravention of the prohibition against fraud is therefore a particular consideration in assessing both specific and general deterrence in our orders. The market as a whole must understand that a finding of fraud will result in a significant penalty.

Orders under section 161(1)

¶ 75 The executive director asked us to order that the exemptions in the Act not apply to Thow. Instead we have ordered that Thow not trade or purchase securities, another route to the same outcome.

¶ 76 The new powers in section 161(1)(d) to make orders against registrants and to prohibit a person from acting in a management or consultative capacity with activities in the securities market seem to us to be well-suited to the circumstances of this case. We have therefore made orders under the new powers in that section.

¶ 77 We have not included provisions in the orders allowing Thow to trade in the capital market for his own account. As a registered mutual fund salesperson, senior executive of Berkshire, and its branch manager, Thow cultivated his clients' trust, then repaid that trust by treating them unfairly, dishonestly, and in bad faith. As a result, many of those clients are unlikely to trade in our markets again, either because they have lost faith in markets, or because they have no money left to invest. In our opinion, Thow ought to be forever prohibited from trading or purchasing securities in British Columbia, whether for only his own account or otherwise.

Order under section 162

¶ 78 Section 162 allows us to order payment of the maximum administrative penalty for each contravention. We found that Thow contravened one section of the Rules and three sections of the Act (treating the two fraud sections, 57(b) and 57.1(b) as one). Thow contravened all of those sections in his dealings with each of the 26 clients. He also contravened those sections multiple times in his dealings with each client. There are therefore hundreds of contraventions for which we could order an administrative penalty.

¶ 79 Rather than deal with each of Thow's contraventions with each of his clients separately, we have considered his conduct globally, and made an order under section 162 that imposes an administrative penalty for all of his contraventions.

¶ 80 In amending section 162, the Legislature quadrupled the maximum penalty and authorized the maximum to be applied "per contravention". It seems clear that the

Legislature's intent was that the commission have the power to impose significant penalties where appropriate in the circumstances.

¶ 81 This is the first decision in which the commission is ordering an administrative penalty since the Legislature amended section 162, so we have no precedent.

¶ 82 We anticipate future panels will apply section 162 in varying ways, depending on what is appropriate in the circumstances of the cases before them. In the circumstances of this case, we have chosen to consider Thow's conduct as a whole, and to order a global penalty we think appropriate in the circumstances.

¶ 83 We consider the administrative penalty we are ordering appropriate in light of Thow's blatant disregard of all of the most important fundamentals of our system of regulation, the seriousness of his conduct, the harm suffered by his clients, the damage he inflicted on the integrity of our capital markets, and the extent of his enrichment.

¶ 84 In these circumstances, we think an administrative penalty of the same order of magnitude of the amount his clients lost is appropriate. As noted above, Thow committed hundreds of contraventions, so the penalty we are ordering is far smaller than the maximum penalty allowed for each contravention, but in our opinion it is large enough to achieve the protective and preventative effect that these circumstances demand.

IV Orders

¶ 85 Therefore, considering it to be in the public interest, we order:

Thow

1. under section 161(1)(b) of the Act, that Thow cease trading permanently, and is prohibited permanently from purchasing, securities or exchange contracts;

2. under section 161(1)(d)(i), that Thow resign any position he holds as a director or officer of an issuer, registrant or investment fund manager;

3. under section 161(1)(d)(ii), that Thow is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

4. under section 161(1)(d)(iii), that Thow is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter,

5. under section 161(1)(d)(iv), that Thow is prohibited permanently from acting in a management or consultative capacity in connection with activities in the securities market;

6. under section 161(1)(d)(v), that Thow is prohibited permanently from engaging in investor relations activities;

7. under section 162, that Thow pay an administrative penalty of $6 million;

Corporate respondents

8. under section 161(1)(b), that 611276 BC Ltd., 657594 BC Ltd., 679071 BC Ltd., 699109 BC Ltd., AYG Investments Inc., M600 Holdings Ltd., and Vancouver Island Jet Inc. cease trading permanently, and are prohibited permanently from purchasing, securities or exchange contracts; and

9. under section 161(1)(b), that all persons cease trading permanently, and are prohibited permanently from purchasing, any securities of 611276 BC Ltd., 657594 BC Ltd., 679071 BC Ltd., 699109 BC Ltd., AYG Investments Inc., M600 Holdings Ltd., and Vancouver Island Jet Inc.

¶ 86 December 20, 2007

¶ 87 **For the Commission**

Brent W. Aitken
Vice Chair

Kenneth G. Hanna
Commissioner

Robert J. Milbourne
Commissioner