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

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Thomas Arthur Williams, Global Wealth Creation Opportunities Inc., Global Wealth Creation Opportunities Inc. (Belize), Global Wealth Financial Inc., Global Wealth Creation Strategies Inc., CDN Global Wealth Creation Club RW-TW, 2002 Concepts Inc., Susan Grace Nemeth, Renee Michelle Penko, Paul Finney, Irene G. Beilstein, Christina Kiemel, Helena Yvonne Becker, Dennis Carl Weigel, Daniel Quoming Sam, Eric Clark, Sharon Downing and Robert Laudy Williams

Panel	Nigel P. Cave	Vice Chair
	George C. Glover, Jr.	Commissioner
	Don Rowlatt	Commissioner
Hearing Dates	May 11, 13, 14, 15, 19, 20, 21, 22, 2015 and July 8, 2015	
Submissions Completed	September 21, 2015	
Date of Findings	January 14, 2016	
Appearances		
Mila Pivnenko Brigeeta Richdale	For the Executive Director	
	For Thomas Arthur Williams For Global Wealth Creation Opportunities Inc. For Global Wealth Creation Opportunities Inc. (Belize) For Global Wealth Financial Inc. For Global Wealth Creation Strategies Inc. For CDN Global Wealth Creation Club RW-TW For 2002 Concepts Inc.	
Susan Grace Nemeth	For Susan Grace Nemeth	
Renee Michelle Penko	For Renee Michelle Penko For Paul Finney	
Irene G. Beilstein	For Irene G. Beilstein For Christina Kiemel For Dennis Carl Weigel	
Eric Clark	For Eric Clark	

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Findings

I. Introduction

[1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418. These are the reasons of all panel members on all issues, except for the findings with respect to the limitation period applicable to certain of the allegations of contraventions of sections 61 and 34 of the Act. Vice Chair Cave's dissenting reasons on that issue are below.

[2] On July 2, 2014, the executive director issued a notice of hearing against the respondents (2014 BCSECCOM 191).

[3] On October 17, 2014, the executive director issued an amended notice of hearing against the respondents (2014 BCSECCOM 494).

[4] On March 30, 2015, the executive director entered into a settlement agreement with Sharon Downing and discontinued proceedings against her (2015 BCSECCOM 64 and 104).

[5] On April 20, 2015, the executive director discontinued proceedings against Helena Yvonne Becker (2015 BCSECCOM 131).

[6] On April 27, 2015, the executive director entered into a settlement agreement with Daniel Quoming Sam and discontinued proceedings against him (2015 BCSECCOM 121, 122 and 147).

[7] On May 7, 2015, the Executive Director entered into a settlement agreement with Robert Laudy Williams and discontinued proceedings against him (2015 BCSECCOM 171, 172 and 173).

[8] In the amended notice of hearing, with respect to the remaining respondents, the executive director alleges that:

a) Global Wealth Creation Opportunities Inc., Global Wealth Creation Opportunities Inc. (Belize), Global Wealth Financial Inc., Global Wealth Creation Strategies Inc., CDN Global Wealth Creation Club RW-TW, 2002 Concepts Inc. (collectively, the Global Entities) and Thomas Williams perpetrated a fraud against investors, contrary to section 57(b) of the Act;

b) Susan Grace Nemeth, Renee Michelle Penko, Paul Finney, Irene G. Beilstein, Christina Kiemel, Dennis Carl Weigel and Eric Clark (collectively the Finders), the Global Entities and Thomas Williams traded and distributed securities without being registered under the Act and without filing a prospectus, and, in each case, without an exemption therefrom, in contravention of sections 34 and 61 of the Act;

c) Thomas Williams, as a director and officer of each of the Global Entities, authorized, permitted or acquiesced to the contraventions of the Act committed by each of the Global Entities and therefore contravened the same provisions of the Act pursuant to section 168.2 of the Act; and

d) the conduct of the respondents is contrary to the public interest.

[9] During the hearing, the executive director called a total of 11 witnesses - one Commission investigator, Becker and nine investors - and tendered documentary evidence. Penko called one witness, and testified at the hearing. Nemeth and Beilstein each testified at the hearing. Each of Penko, Nemeth and Beilstein tendered documentary evidence and made submissions during the hearing.

[10] Clark did not attend the hearing but tendered written submissions. Clark's written submissions contain a number of factual assertions which were not supported by any testimony (from Clark or any other witness) given under oath or any documentary evidence. Following the filing of his written submissions, Clark was given a further opportunity to submit evidence in support of the factual assertions made in his submissions. He made further written submissions but did not tender any oral or

documentary evidence. Therefore, although we have admitted Clark's submissions in the proceedings, we have not given the factual assertions therein, which are not supported by any evidence in these proceedings, any weight.

[11] Thomas Williams did not attend the hearing, nor did he tender any evidence or provide any submissions. There were no representatives of any of the Global Entities at the hearing and none of them tendered any evidence or provided any submissions.

[12] None of Weigel, Finney or Kiemel attended the hearing, tendered any evidence or provided any submissions.

[13] Following oral submissions, the panel asked the executive director to provide further written submissions on changes to the regulations that pertain to the application of section 34 of the Act that occurred during the time period relevant to the amended notice of hearing. Specifically, the panel asked for submissions on what impact, if any, these changes had on the legal analysis applicable to the allegations against the respondents relating to contraventions of section 34. The respondents were given an opportunity to respond to these further written submissions, although no responses were provided.

[14] Subsequent to these further written submissions, the panel asked the executive director to provide further written submissions on the Commission's jurisdiction to make orders against Finney and Kiemel, residents of the United States, for alleged contraventions of sections 61 and 34. The respondents were given an opportunity to respond to these further written submissions, although no responses were provided.

[15] All currency figures are in Canadian $ unless other otherwise noted below.

II. Summary of Investment Scheme

[16] This is a case of fraud involving 123 investors who invested $11.7 million. Those investors, collectively, received back approximately $4.9 million; there is no evidence that the investors have any hope of recovering the rest.

[17] Thomas Williams (Williams) was the mastermind of the investment scheme. Williams used the various Global Entities to perpetrate the fraud. In reality, all of these entities were a single sham investment scheme, which we will refer to as the Global Scheme. There is little in the evidence to differentiate the role of any one of the Global Entities in the Global Scheme versus any of the other entities and all of them acted as the alter ego of Williams. None of the Global Entities had any legitimate business purpose.

[18] The Global Scheme used "associates" or finders to bring in new investors. Those associates earned commissions for their efforts. All of the individual respondents, other than Williams, were finders.

[19] Williams and the Finders induced investors to lend money into the Global Scheme and told them that their money would be put into safe investments. Williams told investors that their returns on the invested funds would come from his investments in something he

termed the managed risk opportunity and otherwise. Williams promised investors, in writing, a minimum monthly rate of return of 2%. The majority of investors were told orally that they would receive 4 to 6% per month.

[20] All of this was untrue. Investor funds were not invested in safe investments; instead, investor funds were used to make payments to earlier investors in the Global Scheme, to pay commissions to Williams and the Finders and were sent to other entities that were controlled by individuals with a history of criminal or securities regulatory fraud. The Global Entities had no revenue other than the loans from investors. In reality, the Global Scheme was a Ponzi scheme.

III. Background

Thomas Williams

[21] Williams is a resident of British Columbia. Williams was licensed by the Insurance Council of British Columbia from 1991 until the original notice of hearing was issued. Williams had been registered in various capacities under the Act at various times; however, he was not registered in any capacity under the Act during the time period relevant to the amended notice of hearing.

[22] During the time period relevant to the amended notice of hearing, Williams was the sole director and officer of Global Opportunities, Global Opportunities (Belize), Global Strategies, Global Financial and 2002 Concepts.

[23] Williams and his brother Robert Laudy Williams were the two partners in Global Club; however, the brothers both provided evidence to Commission investigators that Williams controlled Global Club.

The Global Entities

[24] Global Opportunities was a British Columbia corporation that was incorporated in February 2007. Global Opportunities has never been registered and has never filed a prospectus under the Act. Global Opportunities was dissolved for failing to file Annual Reports in November 2011.

[25] Global Opportunities (Belize) is a company incorporated in Belize that was incorporated in July 2007. Global Opportunities (Belize) has never been registered and has never filed a prospectus under the Act.

[26] Global Strategies was a British Columbia corporation that was incorporated in October 2006. Global Strategies has never been registered and has never filed a prospectus under the Act. Global Strategies was dissolved for failing to file Annual Reports in April 2012.

[27] Global Financial is a British Columbia corporation that was incorporated in October 2006. Global Financial has never been registered and has never filed a prospectus under the Act.

[28] 2002 Concepts was a British Columbia corporation that was incorporated in February 2002. 2002 Concepts has never been registered and has never filed a prospectus under the Act. 2002 Concepts was dissolved for failing to file Annual Reports in August 2008.

[29] Global Club is a general partnership that was registered with the British Columbia Registrar of Companies in May 2006. The only partners shown on its registration are Williams and Robert Laudy Williams. Global Club has never been registered and has never filed a prospectus under the Act.

The Finders

[30] Nemeth is a resident of British Columbia. Nemeth was previously licensed by the Insurance Council of British Columbia. She has been registered in a number of capacities under the Act at various times; however, she was not registered in any capacity under the Act during the time period relevant to the notice of hearing.

[31] Penko is a resident of British Columbia. She is currently registered under the Act; however, she was not registered in any capacity under the Act during the time period relevant to the notice of hearing.

[32] Beilstein is a resident of British Columbia. She has never been registered under the Act.

[33] Kiemel is a resident of the United States and was not a resident of British Columbia during the time period relevant to the notice of hearing. She has never been registered under the Act.

[34] Finney is a resident of the United States and was not a resident of British Columbia during the time period relevant to the notice of hearing. He has never been registered under the Act.

[35] Weigel is a resident of British Columbia. He has never been registered under the Act.

[36] Clark is a resident of Ontario and was not a resident of British Columbia during the time period relevant to the notice of hearing. He has never been registered under the Act.

Overview of the Global scheme

[37] Williams started promoting investments in the Global Entities in February 2007 and continued this activity through to at least April 2010. In total, Williams and the Global Entities raised $11.7 million from 123 investors. In some cases, the funds were converted to US dollars or Euros**.**

[38] In an interview under oath with Commission investigators, Williams acknowledged that he was the principal and the sole directing mind of each of the Global Entities. This is consistent with what was told to each of the investors who gave testimony during the hearing. Further, Williams was the only person who signed investment documents on behalf of the Global Entities.

[39] Over time, investors lent money to differing Global Entities. They did so under differing agreements:

a) a Participation Agreement when money was lent to Global Club;
b) an Agreement when money was lent to Global Opportunities;
c) a Loan Agreement when money was lent to Global Opportunities Belize; and
d) an Agreement when money was lent to Global Financial.

[40] Even though, over time, money was lent by the investors to different Global Entities under the terms of different agreements, what investors purportedly received in return, in substance, was generally consistent as between the different Global Entities and throughout the 2007-2010 time period. Investors were promised, in their agreements, minimum monthly returns of 2%, although most were told that they would receive 4% per month, and the return could go up to 6% per month. Investors were given the choice of receiving their monthly returns in cash or leaving their monthly returns with the Global Entities to compound.

[41] Global Strategies was used as the vehicle through which Williams hired the Finders (described in greater detail below) to assist him in persuading investors to lend money to the Global Entities. Global Strategies did not issue securities to investors but did have investor funds flow through its accounts when commission payments were required to be made to the Finders.

[42] 2002 Concepts Inc. did not issue securities to investors; however, its accounts were used to deposit investor funds. There was no evidence led during the hearing to explain further the role of this entity in the investment scheme**.**

[43] It is clear that Williams was intent on calling the money, given by investors to the Global Entities, "loans" and not "investments". He instructed the Finders to refer to these as loans and not investments. Several of the witnesses indicated that they were told by Williams or the Finders that if they were "loans" and not "investments" then they would fall outside the purview of the Act.

[44] Some investors did receive cash distributions on their investments consistent with what they were promised – at least for some period of time following their investments. All other investors received account statements which showed the investors as having their accounts credited with the promised returns.

[45] Investors were initially told that their funds were being invested, by the applicable Global Entity, in something called a "managed risk opportunity". It is difficult to discern from the evidence exactly what the managed risk opportunity purported to be, because its description in the materials provided to investors was little more than financial "bafflegab". Large multi-syllable words, taken from the financial headlines of the day, were thrown together to describe the managed risk opportunity, as can be seen from the following description of the investment distributed to some investors (in the exact text of the written materials):

> Managed Risk Philosophy consists of those financial products that fist[sic] and foremost deliver the protection of ones[sic] principle[sic]. On a best efforts basis or at market rates the performance is delivered. Some examples of mainstream financial products (eg. CIBC MTN's) that provide performance are bonds, which are AA or AAA rated and sometimes can be Medium Term Notes or "MTN's" (these bonds are rated by Standard and Poor's, Moody's and Fitch) and settling Oil Contracts.
> - AAA rated Banks
> - Held in Euros
> - Short & Medium Term Notes
> - Currencies
>
> These types of opportunities are carried out in such a way whereby the risk is managed before any execution in a product. The financial instrument is pre-sold under contract. The Buy/Sell or contract is pre-negotiated so that NO financial instrument is acquired prior to it being sold. The instrument is in a position of managed risk, eliminating any loss or downside.

[46] A number of Investors testified that the managed risk opportunity was described to them by Williams as involving the deposit of funds in a foreign financial institution where it would serve as security for further financial transactions by that foreign financial institution. How that foreign financial institution would do this or be able to pay the astronomically high returns to the Global Entities that would allow them to pay investors 4 to 6% per month was not explained during the hearing.

[47] A number of the investors and two of the respondents named the Banco de Roma as the foreign financial institution in which they were told the investor funds were to be deposited.

[48] The investor witnesses were consistent in testifying that they were advised by Williams that the funds would be secure and sitting in a financial institution. The investors' funds would not be put at risk.

[49] One of the investors testified that he requested written confirmation of this and Williams provided the following in a letter to the investor:

> This letter is to confirm that Global Wealth Creation Opportunities Inc, ("GWCOI") does have a bank guarantee securing the principle [sic] deposit with the Loan Agreement in a trust account.
> The firm manages its funds in the Managed Risk Opportunity ("MRO") as we have discussed in the past.
> Currently GWCOI has diversified its funds to 3 and soon to be 4 different opportunities.
> GWCOI is unable to copy and distribute documentation similar to those documents we discussed recently. Should you require to review the

> documentation to assure yourself ones [sic] principle[sic] is backed by a secure financial instrument please contact me to arrange a mutually convenient time to meet.

[50] Although the letter is far from clear in its description, we find in it a clear intent to indicate to the investor that his funds were secure and guaranteed.

[51] At some point during the Global Scheme, the evidence was that certain investors were advised that investors' funds were to be invested by Williams in investments other than the managed risk opportunity. Or, alternatively, that a specific investment would be considered part of the managed risk opportunity. Three of the investors who invested late in the Global Scheme testified that they were told that their funds were to be invested in the development of a new type of pump by a company called M&M Technologies in Washington State. An investment by the Global Entities in a start-up company (which, by very definition, is high risk), even if true, would not be consistent with what was told to investors about the security of the investor funds (ie. that it would be kept safe and secure).

Actual use of investor funds

[52] The banking records of the Global Entities confirm that $11.7 million of the $12.3 million deposited to the bank accounts of the Global Entities came from investors. The remaining $600,000 came from a variety of sources (existing cash, cash received by Williams on tax-shelter products, etc.) unrelated to the matters in the amended notice of hearing.

[53] Williams confirmed, in an interview with Commission staff under oath that no money was ever received by any Global Entity from investments. This was confirmed from a review of the banking records of the Global Entities. The Global Entities had no revenue other than investor loans. Investors were never told that this was the case.

[54] The banking records indicate that $4.9 million was returned to investors. Many of these payments were allegedly interest payments on their investments. To the extent that these payments were made, the lack of revenue of the Global Entities meant that these payments were clearly paid from the investments of later investors. Williams, in a compelled interview with Commission staff, confirmed this.

[55] Other payments were made to Williams and to the other individual respondents (described in paragraph 75 below).

[56] No funds were ever paid by the Global Entities to the Banco de Roma or to any other entity that could conceivably be viewed as an investment consistent with that described as the managed risk opportunity.

[57] In fact, the banking records of the Global Entities show that approximately $6 million was sent to the following entities by the Global Entities

- during April through July 2007, Williams sent $309,000 to Horizon FX
- in March 2008, Williams sent 300,000 Euros to Jonathan Guggenhaim Capital Partners LLC
- in April 2008, Williams sent 300,000 Euros and $3,026,000 to SwiftWater Capital LLC
- between February and November 2008, Williams sent $185,000 to Irene Stevenson (part of the Jonathan Guggenhaim investment)
- between August 2008 and August 2009, Williams sent $836,000 to M&M Consulting
- between March 2008 and December 2009, Williams sent $1,130,000 to Milowe Brost and related entities.

[58] The evidence was insufficient to determine the exact basis upon which this money was sent. We do not know if any or all of these payments were for investments (and if so, what type of investments) or if some of them were simply disbursements of funds. The evidence shows that no returns were received by any of the Global Entities from these payments.

[59] What is clear is that most of the $6 million was sent to entities that were controlled by, or otherwise connected to, individuals who had a history of criminal or securities regulatory fraud.

[60] Williams admitted in his compelled interview that most of the entities that he sent funds to were introduced to him by an individual named Mac Stevenson.

[61] On February 20, 2008, the Commission found that Stevenson had committed fraud (in relation to activities unrelated to the matters set out in the notice of hearing) and permanently banned him from the securities markets.

[62] On April 9, 2007, the SEC started a civil action (in relation to activities unrelated to the matters set out in the notice of hearing) against Mac Stevenson and they also named Terry Martin and his company, M&M Consulting, as defendants in the action.

[63] Williams confirmed that one of the persons behind the SwiftWater entity was Michael Slamaj. On September 18, 2003, Slamaj was sentenced to prison (in relation to activities unrelated to the matters set out in the notice of hearing) in the UK for six years after having been found guilty of conspiracy to commit fraud and possession of fake bonds.

[64] One of the directors of Horizon was Cem Ali. On December, 14, 2009, Ali admitted in a settlement agreement (in relation to activities unrelated to the matters set out in the notice of hearing) with the Commission that he had illegally distributed US$34 million of

securities, made misrepresentations to investors and contravened a previous order of the Commission.

[65] On February 16, 2007, the Alberta Securities Commission found that Milowe Brost committed fraud (in relation to activities unrelated to the matters set out in the notice of hearing). Brost was permanently banned by the ASC from its capital markets as a result.

[66] There was no evidence that investors were advised of the funds disbursed to these entities let alone the backgrounds of any of the individuals behind the entities receiving these funds.

[67] In fact, the following e-mail from Stevenson to Slamaj on April 5, 2008 suggests that there was a concerted effort to keep this background from investors:

> Hi Michael,
> It is better to have both of our names out of the market right now (this is why Tom is working with me) – I can't have my name around anywhere and IF there was ANY chance that your name and my name come up together then the whole deal will collapse and I just want to get the deal done for all …

The "Tom" referred to in the email is Williams.

Activities of Williams and Finders in relation to distributions of securities

[68] Williams personally identified, and sold securities of the Global Entities to, investors. In addition, in order to assist him in selling securities, Williams also engaged persons whom he called associates. Although tagged with the title of associate, it is clear that each of these individuals acted principally as a finder. They tried to find investors to bring to Williams and the Global Entities.

[69] Two of the Finders, Nemeth and Beilstein, also performed administrative functions on behalf of Williams and the Global Entities.

[70] In particular, Nemeth assisted in identifying other finders and helped organize training sessions for other finders. Nemeth also travelled to Rome with Williams on behalf of the Global Entities to meet with Mac Stevenson and Terry Martin.

[71] Nemeth and Beilstein prepared account statements for the individual investors. They also dealt with questions and other administrative requests from individual investors and other finders. The account statements were summaries of amounts invested, monthly interest amounts (purportedly) earned and withdrawals/payments to investors, if any. The account statements also contain the name of the finder who had introduced the investor to the scheme.

[72] Account statements were provided to s following their investments in a Global Entity. Nemeth and Beilstein both say that Williams told them what to put on the account statements and when to make cash payments.

[73] Beilstein also described herself as a bookkeeper for the Global Entities and wrote cheques to investors and finders (for commissions).

[74] The role of each finder was substantially similar to the other finders. The finders found potential investors. The finders acted as intermediaries between their investors and Williams. This included delivering documents, answering investor questions (or organizing Williams to answer these questions), delivering funds and subsequent follow-up on investor account statements.

[75] The following is a summary of the number of investors Williams and the Finders introduced to the Global Scheme and the total amount invested by these investors:

- Williams – 12 investors (20 total investments) for $597,381
- Kiemel – two investors for $55,000
- Weigel – four investors (five total investments) for $173,750
- Clark – four investors (five total investments) for $235,000
- Beilstein – five investors (10 total investments) for $336,500
- Finney – five investors (seven total investments) for $186,506
- Penko – 22 investors (31 total investments) for $1,171,003
- Nemeth – 19 investors (34 total investments) for $1,249,723

[76] Williams signed every investment agreement on behalf of the Global Entities. The evidence of both Nemeth and Beilstein was that Williams had sole control over the banking affairs of the Global Entities. However, Beilstein did have signing authority over certain of the accounts of the Global Entities, had access to banking records of the Global Entities and communicated with banking officials on behalf of certain of the Global Entities.

Payments to Respondents

[77] Williams and the Finders received the following payments from the Global Entities:

- Williams received $440,300
- Beilstein received $112,619
- Nemeth received $307,740
- Penko received $166,858
- Finney received $128,750
- Kiemel received $1,076
- Weigel received $33,167
- Clark received $24,006

[78] The Global Entities paid commissions (or trailer fees) to finders for identifying investors who invested in the Global Entities. It is not clear if the total amounts set out in paragraph 77 represent commissions or if they represent other payments like wages, cash

payments on investments (several of the Finders also invested in the Global Entities) or something other.

[79] We find that commissions were paid by the Global Entities as a percentage of investments. We do not need to determine the exact quantum of those commissions paid to each individual respondent at this stage of the proceedings. To the extent that this issue is relevant at the sanctions phase of this proceeding, then the parties are free to introduce further evidence or make further submissions on this issue.

Collapse of the Global Scheme

[80] The Global Entities started missing payments to investors in mid to late 2009. Ultimately, in the first half of 2010, the Global Scheme collapsed as investor demands for cash payments continued to be unmet.

[81] When this occurred, Williams did not provide investors with a clear indication of what had happened to their money or that their money had been lost. Instead, he engaged in a prolonged exchange of communications with finders and investors that was clearly a stalling tactic.

[82] There were many e-mails tendered as exhibits that were written by Williams to demonstrate this behavior. Many of these e-mails are almost indecipherable as to their specific meaning. The gist of them was that Williams was on the verge of completing a transaction, but had encountered some unexpected delay and that, as a result, the investors' money was not immediately forthcoming.

[83] Several investors suggested that they might approach the police or the Commission and report Williams. In response, Williams made it clear that this would only lead to a loss of investors' ability to get their money back.

[84] Williams has never told investors that their money had been lost.

[85] In 2010 when the Global Scheme was collapsing, a number of the finders formed something they called the Associate Coordinating Committee or ACC. Members of the ACC included Penko, Clark, Becker and Weigel.

[86] Becker testified that the ACC spent considerable time compiling records to determine the investment amounts, notional earned interest and payments received by each investor. The ACC also collected legal documents associated with the Global Entities and investors. Becker says they also tried to find where investors' funds had been sent.

Investor witnesses

[87] Nine investors and Investor B (who was both a finder and an investor) testified at the hearing. They described how Williams and the various finders represented the investment to them, the history of their investments in the Global Entities and how the loss of their investment has affected them.

Investor S

[88] During the relevant time period, Investor S was a resident of British Columbia. She is a registered nurse and has been one for 32 years.

[89] Investor S learned about the Global Scheme during a flight to Rome in May 2007 in which she sat next to Nemeth and Williams. Investor S had funds to invest at the time as she had just received a small inheritance. Nemeth introduced the idea of investing in the Global Entities. Nemeth did most of the talking during the flight but Williams contributed to the conversation and showed Investor S some promotional materials. Prior to meeting on the plane, Investor S had never met either Nemeth or Williams.

[90] Investor S and Nemeth continued to communicate after the flight. Investor S was told by Nemeth that any funds invested in the Global Entities would be invested in a bank in Europe.

[91] Investor S made three separate loans to the Global Entities in August 2007, November 2007 and March 2008 for a total of $123,300. The first two loans came from her inheritance, the third loan arose after Nemeth suggested that Investor S take funds out of her RRSP.

[92] Investor S was promised a return of 4% per month and was told that Williams was the directing mind of the scheme. She was told that her investment would be secure. Investor S met with Williams once more after her flight before she made any investment. Nemeth provided most of the information to Investor S, although some investment materials were provided directly from the Global Entities.

[93] Investor S received monthly account statements following her investment until at least November 2008 which showed her earning a return of 4% per month. Although she invested in Canadian dollars, her account statement showed her account in Euros. She did not question this as she assumed her funds were held in a European bank.

[94] Investor S received two payments in January and February 2009 from the Global Entities for a total of $11,800. Investor S asked for all of her money back but has not received any further funds.

Investor C

[95] During the relevant time period, Investor C was a resident of British Columbia. She was formerly retired but for the past two years has been working part time with a financial organization.

[96] Investor C was hired by Nemeth to assist her in staging her home. While Investor C was engaged in this task, Nemeth raised with her the idea of investing in the Global Scheme.

[97] Nemeth told Investor C that her invested funds would be held in a bank in Europe and then used by that bank as a base for making short term loans. Investor C was told that she would get a return of 4% per month. Investor C was told that there was no risk to the

investment as the principal amount held by the bank could never be touched. Investor C was told that Williams was the principal of the Global Entities.

[98] Investor C says that both Nemeth and Williams called the investments loans and that the reason for structuring them as loans was to avoid them being securities and governed by the Act.

[99] Investor C made three loans in June 2008, July 2008 and December 2008 for a total of $256,000. The source of those funds was a combination of liquidating existing investments, drawing on an equity line of credit on her home and taking money out of an RRSP.

[100] Investor C met with Williams once as part of her investment process. Nemeth acted as an intermediary with respect to the investment. Nemeth delivered investment documents and answered Investor C's questions.

[101] Investor C received at least one account statement in August 2009 from the Global Entities following her investment. Although she invested in Canadian dollars, her statements showed her investment in Euros. She believed her funds to be invested in a Euro denominated account. The account statements showed her earning a return of 4% per month on her investment.

[102] The evidence shows that Investor C chose to receive monthly cash payments rather than let her returns compound. The evidence did not show the exact amount she received back, although her August 2009 account statement suggests that she was paid approximately $50,000 between July 2008 and July 2009.

Investor F

[103] During the relevant time period, Investor F was a resident of British Columbia. Investor F is retired, having previously been in administration at an engineering company for many years.

[104] Investor F first learned about the Global Scheme through Nemeth. Investor F worked with Nemeth's husband and met Nemeth from time to time. Investor F has never met Williams. Investor F was told by Nemeth that her investments would be placed in "offshore investments" and that there was no risk involved in the investment. Investor F was told that she would receive a return of 4% per month on her investment.

[105] Investor F understood that Williams was the principal of the Global Entities. Nemeth acted as the intermediary between Investor F and Williams.

[106] Investor F made three loans to the Global Entities in February 2007, July 2008 and January 2009 for a total of $119,000. The source of those loans was a combination of funds from an inheritance and funds taken out of an RRSP. Investor F received monthly account statements following her loans until at least January 2009 and those statements showed her earning the promised 4% per month.

[107] Investor F received approximately $80,000 to $85,000 in payments back from the Global Entities. The remainder of her money has not been repaid.

Investor K

[108] During the relevant time period, Investor K was a resident of British Columbia. He is a millwright at a bakery.

[109] Investor K first learned about the Global Scheme through Beilstein. Beilstein was working for Investor K helping him prepare his tax returns. Beilstein first introduced Investor K to a tax shelter product and then, when Investor K received a sizeable refund from that investment, she suggested that he invest that refund in the Global Entities.

[110] Investor K testified that what he was told what the Global Entities invested in changed over time. At first he was told that they invested in currency exchange. Later he was told that they invested in several projects, one of which was a housing project in Alberta.

[111] Investor K was told by Beilstein that he would receive a return of 4% per month on his investment. He also says that Beilstein told him that there was no risk to the investment.

[112] Investor K has never met Williams. Beilstein acted as the intermediary between Williams and Investor K.

[113] Investor K made two loans to the Global Entities in August 2007 and May 2008 for a total of $16,000. Investor K decided not to receive monthly payments from the Global Entities and to let his returns (purportedly) compound. Investor K received monthly account statements following his investment until at least November 2008 that showed him earning the promised return of 4% per month. He has not received any money back.

Investor N

[114] During the relevant time period, Investor N was a resident of British Columbia. Investor N is 75 years old and is retired.

[115] Investor N first heard about Williams from Investor N's brother who had previously invested in products promoted by Williams. Investor N called Williams about investing. Williams and Nemeth came to his house and presented two investment opportunities, one a tax shelter product, and the other, the Global Scheme. Thereafter, Investor N only dealt directly with Williams.

[116] Investor N was told by Williams that the Global Entities would invest in foreign currency exchange. There was no discussion of the risks associated with the investment. He was told that he would receive a return of 4% per month on his investment. Investor N chose to receive monthly payments from the Global Entities. He initially received the promised return of 4% per month. He says that as the monthly payments were paid he was induced to make additional investments.

[117] Investor N and his wife made eight loans to the Global Entities, over time, commencing in June 2007 through to April 2009 totaling $100,380. Investor N also received monthly account statements that showed him earning the promised return of 4% per month. Investor N received payments until December 2009. At one point, Williams told Investor N that he had overpaid him interest and Investor N repaid Williams $2,000 as a consequence. The evidence does not establish the exact quantum that Investor N received back from the Global Entities.

Investor B

[118] Investor B was both a finder and an investor in the Global Entities. During the relevant time period Investor B was a resident of British Columbia. Investor B has been selling exempt market products, with the exception of a short time period working in another industry, for the last decade. Investor B is currently registered under the Act but during the time period covered in the amended notice of hearing she was not registered in any capacity under the Act.

[119] Investor B had previously met Williams in 2006 in connection with some tax shelter investments but she first learned of the Global Scheme in early 2007 from Nemeth. Nemeth and Investor B were friends. Nemeth told Investor B that the Global Entities were investing in bank deposits in the Banco de Roma and that the bank deposits were secured. Nemeth told Investor B that the Global Entities were earning a 4% per month return. Nemeth told Investor B that she had gone to Rome with Williams to put the Banco de Roma deal together.

[120] Investor B also met with Williams and he said that the Global Entities were invested in guaranteed bank deposits and were in a pooled fund of $100 million. These funds were then going to be used as leverage by the financial institution for stand-by letters of credit and other investments. He said the funds invested by the Global Entities never left the bank and were fully guaranteed. He said the funds were deposited with the Banco de Roma.

[121] Williams said that when investors brought money to the Global Entities they were to be called loans because this would mean that they were not securities and would not be subject to the Act. Williams also said that the investment agreements all referred to a return of 2% per month but that they would actually pay a return of 4% per month. Investor B said that Williams said he did that because if the stated rate of return in the agreements was too high then the authorities would be suspicious.

[122] Nemeth described to Investor B how finders were paid and indicated that the Global Entities kept lists of investors brought in by each finder. Investor B was told that the commission structure would be 1.5% per month on all funds invested by investors introduced by that finder. In addition, if a finder found another finder then that finder would receive 0.5% per month on all funds raised by that other finder. At some point in the investment scheme, Williams apparently reduced the commission structure to 0.75% and 0.25% respectively.

[123] Investor B loaned $10,000 to the Global Entities in her husband's name. She did not receive any payments from the Global Entities on that investment.

[124] In May 2008, Investor B says that she met someone who had previously worked with Williams. That person said that Williams was not investing the funds raised by the Global Scheme in European banks but, instead, had sent the money to people with a history of criminal or securities regulatory fraud. This person indicated that some or all of the money was lost. Investor B says that on behalf of all of her investors she demanded that Williams repay their money. Williams did not repay the money. Williams reduced the purported return on money invested by the people who had asked for repayment to 2% per month.

[125] Investor B said that when several of her investors threatened to report Williams to the police or the Commission he threatened to cut off the interest payments to everyone if they did that.

[126] Investor B says that she repeatedly tried to get her and her investors' money back for the next three years; however, Williams repeatedly stalled and made excuses for why he was unable to return investors' money.

Investor IK

[127] During the relevant time period, Investor IK was a resident of both Alberta and British Columbia. She is a free-lance casting director in the film industry.

[128] Investor IK learned about the Global Scheme from Penko. She and Penko were long-time friends. Investor IK and her siblings were looking at investing some of the equity in their father's house. Investor IK and Penko discussed investment opportunities and Penko suggested the Global Entities. Penko introduced Investor IK to Williams before Investor IK invested in the scheme. During the meeting with Williams, Investor IK wanted to know if the funds invested by the Global Entities were fully secured. Williams confirmed that they were. Penko then provided to Investor IK a number of promotional materials about the Global Entities and acted as the intermediary between Williams and Investor IK.

[129] Investor IK was told that the Global Entities would invest in a number of financial transactions. She says that these transactions were described very vaguely other than in one respect, that Williams would invest some money in M&M Technologies. Investor IK was given a chance to meet with representatives of M&M Technologies.

[130] Investor IK loaned $100,000 to the Global Entities in November 2009. The funds were obtained by an equity line of credit secured by her father's home. Investor IK was told that she would receive 4% per month as a return on her investment. She was told by Penko and Williams that her funds would be a loan and not an investment. She received one account statement that showed her purported return of 4% per month and mistakenly also showed her withdrawing her return. Investor IK says she never received that

payment. Investor IK says that she only ever received one payment of $1,500. The remainder of her invested funds have not been repaid.

Investor RK

[131] During the relevant time period, Investor RK was a resident of British Columbia. Investor RK has been a framing contractor for over 30 years.

[132] Investor RK first learned about the Global Scheme through Penko, who was a neighbor. Penko introduced Investor RK to Williams in late 2007. Penko and Williams provided information to Investor RK on the investment.

[133] Investor RK says that Williams told him that the Global Entities would be investing their funds offshore and in a manner consistent with what large financial institutions would do. In particular, Investor RK says that he was told that his invested money would be invested in offshore banks that offered a high rate of return. Investor RK says that Williams answered most of his questions about the investment and Penko acted as an intermediary between him and Williams. He says that Williams showed him documents which purported to set out the historical rates of return of the Global Entities. Investor RK says he was told that the investment was very safe and secure.

[134] Investor RK made two loans to the Global Entities in January and April of 2008 for a total of $135,000. Investor RK and his wife borrowed against their RRSPs to make the loans. He says that he was promised a return of 4% per month on the money. Following his loans, he received monthly payments from the Global Entities and received monthly account statements until at least November 2008 showing that his money was purportedly earning a return of 4% per month.

[135] Investor RK received at least $15,000 in monthly payments. The remainder of his funds have not been repaid.

Investor A

[136] During the relevant time period, Investor A was a resident of British Columbia. Investor A is a registered psychologist and has been one for over 11 years.

[137] Investor A first learned about the Global Scheme from the respondent Daniel Quoming Sam when they were both in a men's group. In addition, one of Investor A's friends introduced him to Penko in the summer of 2008. Penko then introduced Investor A to Williams.

[138] During the meeting with Williams, Investor A says that his most important consideration was whether the investment was secure. Williams told him that the investment was fully secured and that the worst case scenario was that an investor would get his or her original investment amount back. Williams said that the funds were secured through a bank and that the invested funds would remain invested in a bank. Notwithstanding this, Williams told Investor A that the Global Entities would invest in a number of investments, the only specific one that was mentioned was M&M Technologies. Williams promised Investor A

a minimum return of 2% per month but told him that the Global Entities were actually paying a return of 4% per month.

[139] Investor A made loans to the Global Entities three times in August 2008, December 2008 and July 2009 for a total of $256,000. The source of these funds was savings, lines of credit and scholarship money. Investor A started receiving monthly account statements and monthly payments, equal to a 4% per month return, immediately after his initial investment and they continued until the summer of 2009. In total, he received $70,500 in payments from the Global Entities. The remainder of his funds have not been repaid.

Investor J

[140] During the relevant time period, Investor J was a resident of British Columbia. Investor J is a pilot.

[141] Investor J was introduced to the Global Entities in January 2009 by Penko who had previously assisted him in making some investments. Investor J did not invest immediately but in August of 2009 he met Williams with Penko and Terry Martin at the facilities of M&M Technologies. He understood Williams to be the principal of the Global Entities but that any money that he invested would, in some way, be invested in M&M Technologies. Penko described that the investment was not risky.

[142] Investor J made two loans in October 2009 and January 2010 for a total of $30,000. The source of those funds was a line of credit. He was promised a 4% per month return on his funds. He elected not to receive any monthly cash payments and to allow his funds to compound. He received four or five monthly statements following his initial loans. Those statements showed him purportedly earning his promised return of 4% per month. None of Investor J's money has been repaid.

III. Analysis and Findings

Law

Standard of Proof

[143] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall* 2008 SCC 53, the Supreme Court of Canada held:

> 49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[144] The Court also held (at paragraph 46) that the evidence must be "sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test.

[145] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35.

Prospectus requirements

[146] The relevant provisions of the Act are as follows:

a) Section 1(1) defines "trade" to include "(a) a disposition of a security for valuable consideration" and "(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)".
b) Section 1(1) defines "security" to include "(a) a document, instrument or writing commonly known as a security", "(b) a document evidencing title to, or an interest in, the capital, assets, property, profits, earnings or royalties of a person", "(d) a bond, debenture, note or other evidence of indebtedness ..." and (i) "an investment contract."
c) Section 1(1) defines "distribution" as "a trade in a security of an issuer that has not been previously issued".
d) Section 61(1) states "Unless exempted under this Act, a person must not distribute a security unless…a preliminary prospectus and a prospectus respecting the security have been filed with the executive director" and the executive director has issued receipts for them.

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

[148] In *Solara Technologies Inc. and William Dorn Beattie* 2010 BCSECCOM 163, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

> 37 The determination of whether an exemption applies is a mixed question of law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.
>
> 38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship…

Registration Requirements

[149] Section 34(1) states "A person must not… trade in a security …unless the person is registered in accordance with the regulations…"

Liability under section 168.2(1)

[150] Section 168.2(1) of the Act states that if a company contravenes a provision of the Act an individual who is an employee, officer, director or agent of the company also contravenes the same provision of the Act, if the individual "authorizes, permits, or acquiesces in the contravention".

Fraud

[151] Section 57(b) states

> A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct
> . . .
> (b) perpetrates a fraud on any person.

[152] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at page 20):

> … the actus reus of the offence of fraud will be established by proof of:
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the mens rea of fraud is established by proof of:
> 1. subjective knowledge of the prohibited act; and
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Position of the parties

The respondents

[153] None of the Global Entities, Williams, Weigel, Finney or Kiemel made any submissions during the hearing. Each of Penko, Beilstein, Nemeth and Clark provided written and/or oral submissions on liability. We have considered those submissions; however, none of their submissions is relevant to the issue of liability. Their submissions go to:

a) their knowledge of and/or their involvement in the factual matters that are specific to the allegations of fraud against the Global Entities and Williams;
b) whether they took appropriate due diligence measures to understand the nature of the Global Scheme;
c) the quantum of commissions received by them related to investments in the Global Scheme;
d) whether they personally invested in the Global Entities;
e) their remorse; and

f) the role of the ACC and their role in the ACC.

[154] As these respondents were not alleged to have participated in the fraud contraventions under section 57(b) alleged against Williams and the Global Entities, then to the extent that these submissions are relevant, they are relevant only to the issue of sanctions. None of these submissions goes to the issue of liability for contraventions of sections 34 and 61.

The executive director

a) Fraud

[155] The executive director says that each of the Global Entities and Williams committed fraud. He says that there were two separate acts of deceit:

a) that the Global Scheme was a Ponzi scheme – with payments to investors stemming from the subsequent loans by other investors - all without disclosure of this fact to investors; and

b) that Williams deceived investors as to the true nature of the use of proceeds by the Global Entities – namely, Williams told investors that the Global Entities would deposit the invested monies in a financial institution or instrument that would ensure the security of those funds, yet, in fact, the funds provided by investors were either used to pay cash demands of earlier investors, pay commissions to the finders and Williams or were sent to entities that were controlled by individuals with a history of criminal or securities regulatory fraud.

[156] The executive director says that as the mastermind of the investment scheme and with full control of the Global Entities and their bank accounts, Williams has the requisite subjective knowledge of both "deceits" for us to determine that Williams and the Global Entities had the necessary *mens rea* for of fraud.

b) Contraventions of Section 61

[157] The executive director submits that each of the respondents traded in securities in contravention of section 61 the Act. In particular, the executive director says that of the total $11.7 million invested in the Global Scheme between February 2007 and April 2010, 101 investors (ie. a subset of the 123 total investors) acquired securities of the Global Entities (through a total of 156 distributions of securities) for a total of $5,301,715, without a prospectus and without a valid exemption from so doing.

[158] The executive director says that Williams should be held liable for contraventions of section 61 with respect to all 156 distributions for a total of $5.3 million. He submits that Williams directly solicited 12 of the investors. In addition, he submits that Williams was directly involved in all distributions of securities of the Global Entities through his execution of subscription documents as well through meetings with individual investors, provision of informational materials and other acts in furtherance of these trades.

[159] The executive director did not identify which of the Global Entities was connected to which of the 156 illegal distributions or for what monetary amount. The executive director submits that as investor funds were comingled and all the Global Entities were part of the same investment scheme that we should find each Global Entity "jointly and severally" liable for contraventions of section 61 for all 156 distributions for a total of $5.3 million.

[160] The executive director says that each Finder contravened section 61 with respect to the number of trades and the total amount invested by investors as set out in paragraph [75]. In particular, the executive director alleges that the Finders carried out acts in furtherance of trades to the investors that each of then found including providing information to investors, answering questions about the investment and the investment documents and being paid a commission directly related to an investor's investment.

c) Contraventions of section 34

[161] The executive director submits that each of the Global Entities, Williams and each of the Finders also contravened section 34 in connection with the distribution of securities by the Global Entities.

[162] There were amendments to the rules applicable to section 34 that were implemented during the time period in which the trades covered by the allegations in the notice of hearing took place.

[163] Prior to September 28, 2009, contraventions of section 34 were determined based upon a "trade trigger". Generally, this meant that each person engaged in an individual trade in securities was required to be registered under the Act or have an exemption therefrom.

[164] On September 28, 2009, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and its Companion Policy – NI 31-103CP – came into force. This Instrument set out new registration requirements and the Companion Policy contains interpretations of the Instrument by the Canadian Securities Administrators. The Canadian Securities Administrators is comprised of the securities regulators of all of the provinces and territories of Canada.

[165] Under NI 31-103, although certain exemptions from the requirement to be registered, using the "trade trigger" approach, continued both on a transitional basis and on a permanent basis, contraventions of section 34 were thereafter determined based upon a "business trigger". Generally, persons are required to be registered under the Act when they are in the business of trading in securities.

[166] The following from the Companion Policy are factors that regulators consider relevant to the determination of whether a person is in the business of trading:

- engaging in activities similar to a registrant – including whether the person is acting as an intermediary between the buyer and seller of securities

- directly or indirectly carrying on the activity with repetition, regularity or continuity – including the frequency of transactions (but the activity does not have to be the sole or even the primary endeavor of the person) and whether the activity is carried out with a view to making a profit, the person's various sources of income and amount of time allocated to the activity
- being compensated for the activity – receiving or expecting to be compensated for carrying on the activity indicates a business purpose
- directly or indirectly soliciting – contacting potential investors to solicit securities transactions suggests a business purpose

[167] Companion Policies do not have the force of law. Their function is to inform market participants of the regulators' interpretation of certain aspects of securities law.

[168] We find that the statements of policy in NI 31-103CP outlined above to be appropriate to the interpretation of some of the factors to be considered in determining whether a person is required to be registered under the Act.

[169] The executive director submits that all of the trades in securities of the Global Entities that occurred prior to September 28, 2009, that contravened section 61, also contravened section 34. He says that the respondents were engaged in acts in furtherance of the trades made during that time period and that there were no exemptions available from the requirement for the respondents to be registered.

[170] Following September 28, 2009, the executive director submits that each of the Global Entities and each of Penko, Beilstein, Nemeth and Williams was in the business of trading in securities and therefore required to be registered pursuant to section 34 of the Act. None of Weigel, Kiemel, Finney or Clark found any investors after September 28, 2009 and therefore, this issue is not relevant to our consideration of the allegations against them.

d) Limitation Period

[171] The original notice of hearing for this matter was issued on July 2, 2014. The limitation period under the Act with respect to allegations under sections 34, 57, 61 and 168.2 is six years. Therefore, the presumptive outside date of the limitation period would be July 2, 2008.

[172] Certain of the misconduct described in the notice of hearing and alleged to be in contravention of sections 34, 57, 61 and 168.2 occurred prior to July 2, 2008. The executive director says that notwithstanding the limitation period, we may still find the respondents liable for all of their alleged misconduct (whether prior to or following July 2, 2008) under the continuous course of conduct doctrine.

e) Non-resident finders

[173] Finney and Kiemel are residents of the United States. Clark is a resident of Ontario.

[174] Kiemel introduced two investors to Williams and the Global Entities; one investor was resident in the United States and one investor was resident in Ontario.

[175] Finney introduced five investors to Williams and the Global Entities; one investor was resident in Australia and the other four investors were resident in the United States.

[176] Clark introduced four investors to Williams and the Global Entities; one investor was resident in Alberta and the other three were resident in Ontario.

[177] The executive director has alleged that Finney, Kiemel and Clark carried out acts in furtherance of trades that contravened sections 61 and 34 of the Act.

[178] The executive director submits that we have jurisdiction to find that these non-resident finders have contravened sections 64 and 31 of the Act (and make orders against them), using the test for jurisdiction set out in *Torudag*, 2009 BCSECCOM 9. That test provides that we have such jurisdiction where there is a real and substantial connection in their conduct to British Columbia.

[179] The executive director says that the following factors support a finding that there was a real and substantial connection between these respondents' conduct and British Columbia:

- two of the Global Entities, whose securities were sold by these respondents, were BC incorporated issuers and had offices in BC;
- Williams, the mind and management of the Global Entities, was resident in BC, signed investment documents in BC and sent those documents back to non-resident investors from BC;
- the finders were employed by Global Strategies which is a BC incorporated company;
- most of the funds provided by non-resident investors were deposited into bank accounts located in BC;
- interest payments to non-resident investors were made from bank accounts located in BC;
- commission payments to non-resident finders were made from bank accounts located in BC;
- promotional documents provided to some non-resident investors were sent from BC; and
- monthly investment statements were generated in and sent from residents of BC.

IV. Analysis

Fraud

a) Nature of the Allegation

[180] The executive director has alleged that Williams and the Global Entities engaged in a fraud against investors, contrary to section 57(b) of the Act.

[181] The amended notice of hearing says that these respondents committed "a fraud against investors" contrary to section 57(b). The first issue is whether, by virtue of this wording, the executive director is making one allegation of fraud or allegations of a separate act of fraud against each investor. We interpret the allegation to be the latter, that Williams and the Global Entities committed a separate act of fraud against each investor. We do so because the wording implies multiple acts and, in fact, each investor was dealt with separately with respect to his or her investment and his or her investment process.

b) Are the loan agreements issued by the Global Entities securities?

[182] In order to contravene section 57(b), the impugned conduct must relate to securities. All of the agreements issued by the Global Entities were similar in substance; they were structured as loan contracts.

[183] Section 1(1) of the Act defines a security to include, among other things, "a bond, debenture, note or other evidence of indebtedness" and an "investment contract".

[184] The loan agreements issued by the various Global Entities were evidences of indebtedness. Investors loaned principal amounts to the Global Entities with an expectation of repayment (which right was made clear in each of the agreements used with investors) and the payment of interest while the loan was outstanding.

[185] These loan agreements were also investment contracts. The decision in *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112 sets out the well-known definition of an investment contract – where there is an investment of money in a common enterprise with profits to come from the efforts of others. In this case, investors were required to make an investment of money. The investors' profits were to come from the efforts of other persons other than themselves – in this case Williams. The evidence is clear that investors were not required to do anything else other than deposit their money to earn their returns.

[186] We find that the Global Entities' loan agreements (regardless of the form of agreement) were securities.

c) Prohibited act and deprivation

[187] The executive director alleges two separate elements of deceit (or the prohibited act)

- that the Global Scheme was really a Ponzi scheme, where the funds from later investments were used to pay promised returns on earlier investments, all without disclosing that the Global Scheme had no actual revenues; and

- that Williams misrepresented the nature of the investments of the Global Entities – he promised that the funds would be invested in a safe, secure investment structure through certain financial instruments but instead the funds were used to pay earlier investors, pay commissions to the finders and Williams and sent to entities which were controlled by individuals with a history of criminal and securities regulatory fraud.

[188] While the evidence provides clear and convincing proof of both of these deceits, we see both of the above deceits as part of one large overriding deceit – the Global Scheme was a sham which was clearly a Ponzi scheme and a way for Williams to direct funds in a manner that was not disclosed to investors. There is clear and convincing proof of deceit and a deceit that was perpetrated against each investor with the intention of effecting a trade in securities.

[189] Instead of investing the funds as Williams represented, investor funds were used to make payments to earlier investors, pay commissions to the finders and Williams and to pay money to third parties. This was simply a Ponzi scheme.

[190] The deceit clearly caused deprivation. Investors invested money based upon the deceit and, from the moment of their investment, each investor's pecuniary interests were at risk and, in fact, most lost their investments.

d) Subjective knowledge

[191] Williams was the mind and management behind each of the Global Entities and the Global Scheme. Williams controlled all of the investor funds through his control of the bank accounts of the various Global Entities. Williams knew that the funds that he paid to early investors came from investments made by later investors. He knew that the Global Entities had no revenue other than funds from subsequent investors. Williams knew where funds were sent and to whom. Williams would have known that he did not put any investor funds into secure financial instruments that would meet the description of the investment that he sold to investors.

[192] Williams signed all of the investment documentation. Williams personally received $440,000 of investor funds.

[193] We find that Williams had the requisite subjective knowledge of the prohibited act and the deprivation to find fraud. As Williams was the mind and management of each of the Global Entities, we find that each of the Global Entities had the requisite subjective knowledge of the prohibited act and the deprivation to find fraud.

[194] We find that Williams and each of the Global Entities contravened section 57(b) with respect to $11.7 million of securities sold to 123 investors.

Illegal Distributions

a) Jurisdiction over non-resident Finders

[195] None of Finney, Kiemel or Clark was a resident of British Columbia when they were involved with the Global Scheme. None of the investors introduced to Williams and the Global Entities by these individuals was a resident of British Columbia. There is no evidence that any of Finney, Kiemel or Clark carried out any acts in furtherance of trades to investors while they were physically in British Columbia (for example, if they had contacted investors while visiting British Columbia).

[196] Most of the connections between this jurisdiction and the trades to investors that are the subject matter of the allegations against Finney, Kiemel and Clark relate to the issuers of the securities, the Global Entities (ie. that the issuers are BC incorporated entities and have BC offices, mind and management of the issuers are located in BC, the issuers' bank accounts are located in BC and payments to and from investors were made from and to BC). The only connection directly between British Columbia, the trades (and acts in furtherance thereof) and Finney, Kiemel and Clark is that they received commissions from Global Strategies for their introductions from a BC bank account. We do not think this is a sufficiently real and substantial connection to British Columbia for us to take jurisdiction over Finney, Kiemel and Clark with respect to their acts in furtherance of trades in securities of the Global Entities.

[197] This finding is consistent with the general regulatory policy of the Commission with respect to its registration regime. Generally, the Commission is of the view that it does not require that non-resident persons be registered under our Act when those persons deal from a foreign jurisdiction and only with non-resident investors, regardless of whether the issuer is resident in BC or not.

[198] Similarly, while the Commission's regulatory policy is that when an issuer, resident in BC, distributes its securities to a non-resident purchaser that distribution engages section 61 of our Act, a non-resident person who engages in acts in furtherance of that trade in another jurisdiction to a non-resident person would not, generally, in his or her own right, engage section 61 of the Act.

[199] Therefore, in this case, the distributions of securities by the Global Entities to non-resident investors, from a jurisdictional perspective, engage section sections 61 and 34 of the Act, but the acts in furtherance of those trades by Finney, Kiemel and Clark do not.

[200] We dismiss the allegations of contraventions of section 61 and 34 against Finney, Kiemel and Clark.

b) Did the other respondents trade securities in British Columbia?

[201] Each of the Global Entities was based in British Columbia. Several of them were incorporated in British Columbia and all of them had offices here.

[202] The Global Entities produced promotional materials here, raised funds from investors both within and outside of the province and they kept records and bank accounts where investor funds were deposited within the province.

[203] Williams was the mind and management of each of the Global Entities and he was a British Columbia resident. All of the key actions taken by the Global Entities with respect to investments (i.e. promoting, signing investment documents, banking, etc.) were carried out directly or at the direction of Williams.

[204] Therefore, with respect to Williams and the Global Entities, all of the trades in securities to investors (whether resident in British Columbia or not) were carried out in the province by the Global Entities and by acts in furtherance of the trades in the province.

[205] The executive director has only alleged that a subset of the $11.7 million of issuances of securities by the Global Entities contravened sections 61 and 34. In total, the executive director alleges that 156 distributions of securities totaling $5.3 million contravened sections 61 and 34. The notice of hearing does not articulate which of the respondents was connected to which of these distributions. However, in his submissions the executive director alleges that Williams and each of the Global Entities contravened sections 61 and 34 with respect to all 156 of these distributions. Penko, Nemeth, Beilstein and Weigel are alleged to have contravened sections 61 and 34 with respect to all of the distributions to investors set out next to their names in paragraph 75.

[206] We agree with the executive director that the evidence is clear and convincing that Williams carried out acts in furtherance of all of the trades in securities to all of the investors.

[207] We also agree that there is clear and convincing evidence that there was a commission structure in place for the distribution of securities by the Global Entities. That commission structure was effected through Global Strategies. The commissions were an integral part of ensuring that the trades to investors took place. The commission payments helped sustain the Global Scheme. We find that Global Strategies carried out acts in furtherance of all trades of Global Entities' securities to the investors.

[208] We do not agree with the executive director that each of the Global Entities was connected to each of the distributions of securities. Nor do we agree that the Global Entities could be "jointly and severally liable" for contraventions of sections 61 and 34. This submission does not make sense. Parties may be jointly and severally liable to perform an obligation (for example, to pay a section 161(1)(g) order). They cannot be found to have jointly and severally contravened a provision of the Act.

[209] With one exception, it is clear that when an agreement with an investor was entered into, it was entered into with one of the Global Entities. Each individual investment was made with one Global Entity. However, the evidence is less clear as to which of the Global Entities were connected to which issuances of securities to which investor. The best evidence of which Global Entity was involved in each distribution is the investment documentation. There is not a complete record in evidence of the investment documents for all 156 investments by all 101 investors. Where there are no investment documents, we do not have sufficient evidence to identify which Global Entity was connected to that distribution.

[210] The loan agreements involving Global Opportunities and Global Opportunities (Belize) were used inter-changeably. From a documentary perspective, the two entities (as far as the loans were concerned) were treated as one and the same. We consider both entities to have made the same distributions.

[211] Based upon the investment documents tendered into evidence we have sufficient evidence to determine that, of the distributions that are alleged to be illegal distributions, the following Global Entities issued the following securities:

- Global Opportunities/Global Opportunities (Belize) - $2,893,307 to 51 investors for 83 investments
- Global Financial - $25,000 to one investor
- Global Club - $244,000 to five investors for seven investments.

[212] 2002 Concepts Inc. was dissolved in August 2008. There was no evidence of it having issued any securities to investors prior to its dissolution. There is no clear and convincing evidence that it carried our acts in furtherance of any trade. We dismiss the allegations of contraventions of sections 34 and 61 against 2002 Concepts Inc.

[213] The evidence is clear and convincing that each of Penko, Nemeth, Beilstein and Weigel carried out acts in furtherance of trades to the investors set out next to their names in paragraph 75. Those acts in furtherance of trades included explanations of the investment structure, answering investor questions or arranging to have them answered and forwarding investment documents for signature and the investment of funds. For those efforts, these individuals received commissions.

c) Were there any exemptions available for the distributions to investors?

[214] None of the Global Entities filed a prospectus in connection with the distribution of its securities. None of the respondents was registered under the Act. As such, the question is whether any of the distributions to investors qualified for an exemption from the prospectus and registration requirements.

[215] The evidence is clear that Williams structured the Global Scheme to try to avoid securities laws. There is no evidence that any of the respondents considered whether investors qualified for an exemption from the prospectus and registration requirements. As a consequence, there is no evidence that any of the respondents carried out any investigations or other due diligence matters to satisfy themselves that an investor qualified for such an exemption.

[216] As set out in *Solara*, the respondents have the onus of proving that a trade to an investor qualified for an exemption from the prospectus and registration requirements. As there is no evidence of any kind in support of this, each of the respondents has failed to satisfy the evidentiary burden necessary to establish the factual basis for any exemptions.

d) Contraventions of section 34

[217] Prior to September 28, 2009, the question whether there was a contravention of section 34 was conducted on a "trade trigger" basis. What is meant by that is that each person who was involved in each trade in a security needed either to be registered under the Act or be exempt from the requirement to be so registered. The exemptions from the

registration requirement under section 34 largely mirrored the exemptions available under section 61.

[218] As in the analysis associated with contraventions of section 61, the respondents must establish the factual basis for an exemption from the requirement to be registered under section 34. The respondents have similarly failed to meet the evidentiary onus to do so. As such we find that the respondents have contravened section 34 with respect to all trades that the executive director alleges are illegal distributions and were completed prior to September 28, 2009.

[219] For trades that occurred after September 28, 2009, the question is whether there was a contravention of section 34 on a "business trigger" basis. What is meant by this is to determine if the person is in the business of trading. If the answer to that question is "yes" then the person must be registered in the correct category of registration to carry out their trading activity or have an exemption from being so registered.

[220] The following respondents carried out acts in furtherance of trades in respect of the following issuances of securities following September 28, 2009:

- Williams – 13 investments for $407,381
- Beilstein – five investments for $170,500
- Penko – 14 investments for $458,660
- Nemeth – seven investments for $382,800
- Global Entities – 39 investments for $1,419,341.

[221] In this case, each of the Global Entities, Williams, Penko, Nemeth, and Beilstein meets each of the criteria described in the Companion Policy to NI 31-103 for carrying on the business of trading. Each of Global Entities raised funds on a repeated basis, employed finders to bring them investors and actively solicited investors. Each of Williams, Penko, Nemeth and Beilstein acted as an intermediary, carried out that behavior frequently and repeatedly, was compensated for his or her activity and actively solicited investors.

[222] We find that each of the Global Entities, Williams, Penko, Nemeth and Beilstein was in the business of trading after September 28, 2009.

[223] None of these respondents provided any evidence that they qualified for any exemption from the requirement to be registered following September 28, 2009. Therefore we find that they have contravened section 34 with respect to all trades that took place, and that they carried out acts in furtherance of, following September 28, 2009.

e) Summary

[224] Subject to the limitation period issue discussed below, we find that each of the Global Entities, Williams, Penko, Nemeth, Beilstein and Weigel contravened sections 61 and 34 with respect to the following distributions

- Williams and Global Strategies - $5.3 million to 101 investors for 156 investments
- Global Opportunities - $2,893,307 to 51 investors for 83 investments
- Global Opportunities (Belize) - $2,893,307 to 51 investors for 83 investments
- Global Financial - $25,000 to one investor
- Global Club - $244,000 to five investors for seven investments
- Penko - $1,171,003 to 22 investors for 31 investments
- Nemeth - $1,249,723 to 19 investors for 34 investments
- Beilstein - $336,500 to six investors for 10 investments
- Weigel - $173,750 to four investors for five investments

Limitation Period

[225] Section 159 of the Act states the following:

> Proceedings under this Act, other than an action referred to in section 140, must not be commenced more than 6 years after the date of the events that give rise to the proceedings.

[226] The original notice of hearing in this matter was issued July 2, 2014. Six years before that is July 2, 2008. The amended notice of hearing alleges some conduct that occurred before and some that occurred after July 2, 2008 contravened the Act. This suggests that some of the allegations may be statute-barred.

[227] However, the executive director submits that we may find that the conduct that occurred before July 2, 2008 is not statute barred, using a legal concept called a continuous offence or continuing contravention. The application of this concept may effectively extend a limitation period.

a) Fraud allegations and the limitation period

[228] This Commission has applied the continuing contravention concept in several decisions where fraud was alleged. For example, in *Carey Brian Dennis*, 2005 BCSECCOM 65, the panel applied the concept in relation to a fraud allegation, and found that the allegation was not statute-barred.

[229] As we find above, the Global Scheme was a Ponzi scheme. By its nature, those perpetrating a Ponzi scheme must keep up the appearance that it is a successful investment scheme in order to attract new investors and continue the scheme. To keep up appearances, perpetrators continue their deceit against investors, by making payments or issuing account statements, for example. These acts of deceit continue the fraud beyond an investor's initial investment.

[230] In *N'Drin Beugre c. R.*, 2014 QCCA 2002 the court explained the continuing nature of an investment fraud as follows:

> [101] In this case, even if the constitutive elements of fraud were present from the moment of withdrawal of funds belonging to investors and until

> then held by Northern Trust, I find that the perpetration of the fraud continued as long as there were dishonest acts that caused, aggravated, or perpetuated the harm or risk to investors.
> …
> [107] It was only when this scheme ceased that the fraud offence in fact ended.

[231] The Global Scheme was similar. The fraud Williams and the Global Entities perpetrated on a particular investor may have commenced with the taking of that investor's funds but the fraud against that investor was ongoing until the Global Scheme collapsed.

[232] After July 2, 2008, investors were sent account statements which purported to show their promised returns on investment, and some received monthly payments of some or all of their promised returns. These deceitful actions were designed to keep the Global Scheme going, and to prevent initial investors from discovering their investment was a sham and to show later investors the Global Scheme was paying expected returns, thereby inducing further investment. There is clear evidence that the deceit carried on from February 2007 until at least April 2010.

[233] We find that Williams and the Global Entities continuously carried out fraud on investors from the commencement of the Global Scheme in February 2007 until at least early 2010. This means that none of the fraud allegations is statute-barred.

b) Illegal distribution allegations and the limitation period

[234] In *Saafnet Canada Inc., Nizam Dean and Vikash Sami*, 2013 BCSECCOM 442, it was alleged that 34 of 65 distributions of Saafnet shares made by the respondents between September 2000 and July 2007 were illegal. The limitation date was August 6, 2006. Of the alleged illegal distributions that took place before the limitation date, 18 were made in 2000 and 2001, two in 2003 and four in February and May 2006. The 10 remaining alleged illegal distributions took place between the limitation date and July 2007.

[235] The panel found that the distributions in 2000-2001 were statute-barred. In making this finding, the panel distinguished *Dennis* and *Barker* on the basis that the continuity of the misconduct in those cases was obvious. The panel said that a gap of more than four years between Saafnet's financing activities in 2000-2001 and 2006-2007 was too great to be considered a "continuing course of conduct". The panel also found that the financings made in 2000-2001 and 2006-2007 were distinct as to purpose. The first funded Saafnet's start-up and the second funded Saafnet's research, development and commercialization of a new product. The distributions in 2003 were distinguished as isolated transactions.

[236] The panel found that the four distributions in 2006 were part of a continuing course of conduct, being Saafnet's 2006-2007 financing, and the allegations relating to those distributions were not statute-barred. In reaching this conclusion, the panel stated at paragraph 49:

> ….. It is true that a distribution is defined to include a single trade, but in our opinion the approach taken in *Dennis* is appropriate in considering continuing financing activity, such as that Saafnet undertook beginning in 2006. In our opinion, a series of contraventions of section 61(1) in connection with ongoing financing could well constitute a "continuing contravention" and a "continuing course of conduct", and *Bapty* would apply. In this case, there is the additional factor that each of the four investors continued investing in Saafnet after the limitation date.

[237] In *British Columbia (Securities Commission) v. Bapty*, 2006 BCSC 638, the Supreme Court of British Columbia said at paragraph 36:

> Where there is a finding that there is a continuing contravention, the limitation period does not begin until the entire "transaction" is complete and discrete activities that occur outside of the limitation period are not statute-barred if they form part of the same transaction as events falling within the limitation period [cite omitted].

[238] In *Re Wireless Wizard*, 2015 BCSECCOM 100, at paragraph 70, the panel set out its views on elements that may support a finding of a continuous course of conduct or continuing offence in relation to allegations of illegal distribution:

> We are of the view that a series of separate distributions, whether legal and/or illegal, could constitute a continuing course of conduct that would span a limitation period if the evidence established that there were continuing elements of the offence within the limitation period. For instance, evidence of acts in furtherance of the distributions throughout the period in issue, such as advertisements of the offering, marketing presentations to potential investors or other ongoing efforts to solicit investors could form the basis of a finding of a continuing course of conduct that would include distributions that took place outside the limitation period.

[239] In *Wireless*, the panel ultimately found that the executive director had not established the factual basis for a continuing course of conduct, and therefore found that some of the allegations were statute-barred.

[240] In this case, we find that Williams, the Global Entities, Nemeth and Penko participated in continuing financing activity that spanned July 2, 2008. Investors invested in the Global Entitles before and after July 2, 2008, and the purported use of their funds was the same before and after that date. The debt instruments issued also were substantially similar, even though the underlying agreements varied and the nominal issuers within the Global Entities varied. We find these variations were insignificant and helped obfuscate the scheme.

[241] As part of the continuous financing, Williams signed all subscription agreements, solicited finders and investors, paid fees to finders, took the proceeds of securities issued, provided false and misleading information to finders and prospective and actual investors and disbursed proceeds otherwise than in accordance with promises made to investors.

[242] Similarly, as part of the continuous financing, Nemeth solicited and was the finder for investors who invested before and after July 2, 2008. She also identified other prospective finders, organized and participated in training sessions for finders and, as an administrator for the Global Entities, fielded inquiries from prospective investors and provided marketing material.

[243] Penko solicited and was the finder for investors who invested before and after July 2, 2008. She was very involved in communications not only with the investors whom she helped persuade to invest in one or more of the Global Entities but also with other investors.

[244] We therefore find that the illegal distribution allegations against Williams, the Global Entities, Nemeth and Penko for distributions that happened before July 2, 2008 are not statute-barred.

[245] We do not find, however, that Beilstein and Weigel participated in a continuing financing activity that spanned July 2, 2008.

[246] There is little evidence of what conduct Beilstein or Weigel engaged in before July 2, 2008, beyond the record of investors for whom they were finders. Although the evidence shows they were finders for investors who acquired securities of one or more of the Global Entities before and after July 2, 2008, there is no evidence that any investors for whom they were finders purchased securities of one or more of the Global Entities both before and after July 2, 2008.

[247] We therefore find that the illegal distribution allegations against Beilstein and Weigel for distributions that happened before July 2, 2008 are statute-barred. In this case, Weigel was alleged to have contravened sections 61 and 34 with respect to two trades of securities totaling $133,750 that occurred prior to July 2, 2008. Those allegations are dismissed. Beilstein was alleged to have contravened sections 61 and 34 with respect to five trades of securities totaling $166,000 that occurred prior to July 2, 2008. Those allegations are also dismissed.

[248] As noted elsewhere in these Findings, we do find that Beilstein and Weigel contravened sections 34 and 61 with respect to those issuances of securities of the Global Entities attributed to them as finders that took place on or after July 2, 2008.

Contraventions of section 168.2

[249] The executive director submits that Williams should be held liable under section 168.2 for the Global Entities' contraventions of sections 57(b), 61 and 34.

[250] Under section 168.2, an officer or director of a corporate entity may be liable for the contraventions of that corporate entity if that director or officer "authorizes, permits or acquiesces" to the misconduct. There have been many decisions which have considered the meaning of the terms "authorizes, permits or acquiesces". In sum, those decisions require that the respondent have the requisite knowledge of the corporate entity's contraventions and ability to have influence over the actions of the corporate entity (through action or inaction).

[251] In this case, Williams was the sole controlling mind of the Global Entities. Williams had control of the corporate entity bank accounts, all investment decisions and signed all investment documents. Williams clearly had the requisite level of knowledge and ability to influence the activities of each of the Global Entities in order to have authorized, permitted or acquiesced to their contraventions of the Act. We find Williams liable under section 168.2 with respect to each of the Global Entities' contraventions of sections 57(b), 61 and 34.

Public interest

[252] The executive director submits that, if we find a respondent has committed contraventions of sections 57(b), 61 and 34, then it is not necessary to make a separate finding that that conduct constitutes conduct contrary to the public interest.

[253] We have made findings that certain of the respondents have contravened sections 57(b), 61 and/or 34, as applicable. We have found that certain of the respondents have not contravened any section of the Act. In these circumstances we will not make any separate orders that any respondent's conduct is contrary to the public interest. The conduct that the executive director submits as the basis for a separate order is identical to the conduct that the executive director says forms the basis for a specific contravention of the Act. As set out in *Re Carnes*, 2015 BCSECCOM 187, it would not, generally, be appropriate, where the executive director has failed to prove that certain conduct contravenes the Act, to use that same conduct as the basis for making an order that that conduct constitutes conduct contrary to the public interest. We see no reason to depart from that approach in this case. In addition, the basis of our determining that certain respondents did not contravene the Act was a lack of jurisdiction. Where we find that we do not have the jurisdiction to find that certain conduct contravened the Act, we would not have the jurisdiction to make an order that that conduct is contrary to the public interest.

[254] We dismiss the executive director's application to make separate orders that the respondents' conduct was contrary to the public interest.

V. Summary of Findings

[255] We find that Williams and each of the Global Entities contravened section 57(b) with respect to $11.7 million of securities sold to 123 investors.

[256] We find that each of the Global Entities, Williams, Penko, Nemeth, Beilstein and Weigel contravened sections 61 and 34 with respect to the following distributions

- Williams and Global Strategies - $5.3 million to 101 investors for 156 investments
- Global Opportunities - $2,893,307 to 51 investors for 83 investments
- Global Opportunities (Belize) - $2,893,307 to 51 investors for 83 investments
- Global Financial - $25,000 to one investor
- Global Club - $244,000 to five investors for seven investments
- Penko - $1,171,003 to 22 investors for 31 investments
- Nemeth - $1,249,723 to 19 investors for 34 investments
- Beilstein - $170,500 to three investors for five investments
- Weigel - $40,000 to three investors.

[257] We find Williams liable under section 168.2 with respect to each of the Global Entities' contraventions of sections 57(b), 61 and 34.

VI. Submissions on Sanctions

[258] We direct the parties to make their submissions on sanction as follows:

By February 4, 2016	The executive director delivers submissions to the respondents and to the secretary to the Commission.
By February 18, 2016	The respondents deliver response submissions to each other, the executive director and to the secretary to the Commission. Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).
By February 25, 2016	The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

January 14, 2016

For the Commission

George C. Glover, Jr. Commissioner	Don Rowlatt Commissioner

Reasons of Nigel P. Cave, Vice Chair

VII. Introduction

[259] I concur with the majority's decision in all respects other than its finding that certain of the allegations of contraventions of sections 61 and 34 in connection to trades that occurred outside the limitation period are not out of time.

[260] I would find that all of the alleged contraventions of sections 61 and 34, against all of the respondents, in connection to trades that occurred prior to July 2, 2008 (ie. outside of the limitation period) are statute barred.

[261] The majority has found that these allegations are not statute barred because the conduct of certain of the respondents (in respect of trades in securities) constituted a continuous course of conduct.

[262] For the reasons set out in my dissent in *Wireless*, I do not, generally, believe that the concept of a continuous contravention (or a continuous course of conduct) can be applied to contraventions of sections 61 and 34. I also do not find that the notice of hearing in this case alleges a continuous course of conduct as that principle is used in the context of limitation periods.

[263] On the contrary, the notice of hearing alleges as many as 156 instances of unregistered trading and illegal distribution, each of which forms the basis for a separate allegation. It does not contain one allegation based on numerous acts. In other words, it does not allege one contravention of sections 61 and 34 which is proven by 156 instances of misconduct. (If that were the case, then the executive director would only be able to argue one contravention at the sanctions stage, which has not been his practice in the past). Instead, there are multiple "single acts",

[264] The purpose of section 61(1) is to ensure that investors receive a prospectus at the time of the purchase of securities in order to assist them in making an informed investment decision. It is critical that the information be provided at the time of the purchase. The breach is the failure to provide an investor with information, before he or she invests. A respondent can do nothing after a contravention of section 61(1) to rectify the failure to provide the required prospectus at the time of the trade. It is a past event. Failure to provide a prospectus at the time of a trade is a single, discrete event. It does not give rise to a continuous breach of the law.

[265] Similarly, the purpose of section 34(a) is to ensure that trades in securities are carried out with the assistance of a person properly registered under the Act. Persons who are registered under the Act play important investor protection roles in the marketplace. Those protections can only apply when a registrant is involved with the investor at the time of the trade. Again, there is nothing that a respondent can do to rectify a breach of section 34(a) after the trade.

[266] Trades that contravene those sections, but fall outside of the limitation period under section 159 of the Act, cannot be the subject of allegations by relying on the continuous contravention concept. Those illegal distributions are complete and are separate and distinct contraventions for the purposes of section 159 of the Act.

[267] We assess contraventions of sections 34(a) and 61(1) on a trade by trade basis. In other words, we look at each trade separately to determine if the trade complied with the Act or whether an exemption from the prospectus requirements existed for that trade.

[268] The factors that the majority relies upon to discern a continuity of illegal distributions looks at those trades in the collective sense. This is not consistent with a trade by trade analysis of contraventions of sections 61 and 34.

January 14, 2016

Nigel P. Cave
Vice Chair