

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

Citation: Re Pegasus Pharmaceuticals, 2021 BCSECCOM 374

Date: 20210922

**Pegasus Pharmaceuticals Group Inc., Careseng Cancer Institute Inc.
and Winter Huang (also known as Dong Huang)**

Panel	Judith Downes Deborah Armour, QC	Commissioner Commissioner
Hearing dates	January 19 – 22, 25 – 27, February 1, June 8 and 9, 2021	
Submissions completed	July 13, 2021	
Date of Findings	September 22, 2021	
Appearing		
Mila Pivnenko Shaneel Sharma	For the Executive Director	
Owais Ahmed Erin Hatch	For Pegasus Pharmaceuticals Group Inc. and Winter Huang	

Findings

I. Introduction

- [1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, and c. 418.
- [2] The notice of hearing in this matter was originally issued on January 28, 2016. Subsequently, an amended notice of hearing was issued on October 17, 2018 (2018 BCSECCOM 326) in which the executive director alleged that:

Illegal distribution

- a. Between April 2008 and August 2012, Pegasus Pharmaceuticals Group Inc. and Winter Huang (also known as Dong Huang) contravened section 61 of the Act by illegally distributing approximately USD \$65 million of bonds issued by Pegasus (Pegasus Bonds).
- b. Under section 168.2 of the Act, Huang, as director and control person of Pegasus, also contravened section 61 by authorizing, permitting or acquiescing in Pegasus' contravention of that section.

- c. Careseng Cancer Institute Inc. contravened section 61 by illegally engaging in acts in furtherance of Pegasus' trades in Pegasus Bonds by guaranteeing approximately USD \$22.9 million of Pegasus Bonds.

Fraud

Georgia Bonds

- d. Between January 2011 and August 2012, Pegasus committed fraud in contravention of section 57(b) of the Act when it stated in promotional materials for four series of Pegasus Bonds (Georgia Bonds) issued in connection with Pegasus projects in the Republic of Georgia that the capital raised would be used for those projects and, instead, only a small portion of the capital raised was applied for that purpose. The balance was applied to make payments to earlier Pegasus investors, to pay commissions to Pegasus Bond sales agents and to pay Pegasus' operational costs unrelated to the Georgia projects.
- e. Under section 168.2, Huang, as a director and control person of Pegasus, also contravened section 57(b) by authorizing, permitting or acquiescing in Pegasus' contravention of that section.

Dalian Bonds

- f. Between January 2011 and August 2012, Pegasus committed fraud in contravention of section 57(b) when Pegasus' website and promotional materials for three series of Pegasus Bonds (Dalian Bonds) issued in connection with a Pegasus project in Dalian, China made it seem that the capital raised would be used for that project and, instead, only a small portion of the capital raised was applied for that purpose. The balance was applied to make payments to earlier Pegasus investors, to pay commissions to Pegasus Bond sales agents and to pay Pegasus' operational costs unrelated to the Dalian project.
- g. Under section 168.2, Huang, as a director and control person of Pegasus, also contravened section 57(b) by authorizing, permitting or acquiescing in Pegasus' contravention of that section.

Careseng Cancer Guarantees

- h. Between January 2006 and August 2012, Careseng guaranteed (Careseng Guarantees) approximately USD \$38 million owing under approximately 1,300 promissory notes issued by Pegasus (Careseng Guaranteed Bonds). Each time the respondents participated in the issuance of the Careseng Guaranteed Bonds, they committed fraud in contravention of section 57(b) as these guarantees were false in that, at the time, Careseng had no operations, employees or revenues and less than USD \$50,000 in assets.
- i. Under section 168.2, Huang, as a director of Pegasus and Careseng, also contravened section 57(b) by authorizing, permitting or acquiescing in Pegasus' and Careseng's contraventions of that section.

[3] In his written submissions, the executive director advised that he was no longer pursuing allegations of illegal distributions of Pegasus Bonds that took place prior to January 28, 2010.

- [4] At the hearing, the executive director called four witnesses: a Commission forensic accountant, a Commission investigator and two former Pegasus employees. The executive director also tendered documentary evidence and made written and oral submissions.
- [5] Pegasus and Huang did not call any witnesses but tendered documentary evidence and made written and oral submissions.
- [6] Careseng did not participate in the hearing or make written or oral submissions. The executive director advised that it had been dissolved.

II. Background

The respondents

- [7] Pegasus is a British Columbia company incorporated in March 1997 with offices in Richmond, British Columbia. According to its promotional materials, it is a high tech biopharmaceutical company involved in research, development, production, sales and medical services.
- [8] Careseng was a British Columbia company incorporated in October 2002. It shared the Pegasus offices in Richmond, British Columbia. It was dissolved on April 20, 2015.
- [9] Huang was a resident of British Columbia at all times relevant to the allegations in the amended notice of hearing. He was a director of Pegasus and Careseng and president of Pegasus during that entire period.

The Georgia projects

- [10] In 2005, Pegasus commenced activities in the Republic of Georgia by engaging in clinical work with the National Cancer Centre of the Republic of Georgia (NCCG) which was then owned by the Georgian government. Subsequently, on November 19, 2010, Pegasus entered into an agreement with the Georgian government to purchase the NCCG. Under the terms of the purchase agreement, Pegasus was required to invest USD \$20 million by May 2013 to renovate and expand the NCCG. Failure to comply with this requirement could have resulted in termination of the purchase agreement.
- [11] By May 2013, Pegasus had spent less than USD\$2 million on renovations of the NCCG.
- [12] There was also reference in some of the materials prepared by Pegasus to the construction of manufacturing facilities in Georgia (together with the project relating to the renovation and construction of the NCCG, the Georgia Projects).

The Dalian project

- [13] In July 2009, the municipal government of Dalian, China approved the development of the Pegasus Biopark (Dalian Project). There was little evidence introduced relating to the details of this project.

The Pegasus Bonds

- [14] Between 2006 and 2012, Pegasus issued approximately USD \$76 million of securities in 34 different series of Pegasus Bonds to investors in Taiwan.

- [15] Between January 2011 and August 2012, Pegasus raised approximately USD \$15.3 million through four series of Georgia Bonds, series H03, M18, G02 and PG02. Only approximately USD \$1.4 million of the funds raised were spent on payments relating to the Georgia Projects. Approximately USD \$14 million was used to make payments to investors in earlier bond series, pay commissions to Pegasus bond sales agents and for Pegasus operational costs unrelated to the Georgia Projects.
- [16] Between January 2011 and August 2012, Pegasus raised approximately USD \$11.2 million through three series of Dalian Bonds, series IP01, IP02 and IP04. Only approximately USD \$560,000 of the funds raised were spent on payments relating to the Dalian Project. Approximately USD \$10 million was used to make payments to investors in earlier bond series, pay commissions to Pegasus bond sales agents and for Pegasus operational costs unrelated to the Georgia Projects.
- [17] No preliminary prospectus, prospectus, offering memorandum or exempt distribution reports were filed with the Commission with respect to the distribution of the Pegasus Bonds.
- [18] Pegasus engaged agents in Taiwan to assist in the sales of Pegasus Bonds and paid commissions to the agents for their services.
- [19] Pegasus prepared various promotional materials relating to its business and the Pegasus Bond offerings as well as documents to effect the issuance of the Pegasus Bonds (together, the Pegasus Investment Materials). These materials included:
- a. two websites – www.ppginco.com (PPGInco website) and www.pegasusbonds.com (Pegasus Bonds website),
 - b. various business plans relating to different series of Pegasus bonds,
 - c. a form of subscription application,
 - d. investment certificates, certificates of undivided land rights and promissory notes evidencing the Pegasus Bonds issued, and
 - e. plan disclaimers to be signed by investors in connection with their purchase of the Pegasus Bonds.

Pegasus Investment Materials

Websites

- [20] Both the PPGInco website and Pegasus Bonds website were partly in English and partly in Chinese.
- [21] The PPGInco website was a general corporate website for Pegasus which included information regarding its culture, corporate structure, management, products, technologies and healthcare services. In the website capture dated July 5, 2012, there were four references to each of the NCCG project and the Dalian Project in the 130 pages of the English section of the website. In every case, the project descriptions were part of an overall discussion of various Pegasus projects and, in no case, was there any reference to the Georgia Bonds or the Dalian Bonds. There was a photograph included in the one of the sections relating to the Dalian Project but there was no text identifying the subject of the photograph. Over one-half of the website was in Chinese.

- [22] The PPGInco website also contained reference to Careseng stating the date it was registered and its future plans to establish Careseng Health Clubs worldwide in the next 10 years. This statement was followed by reference to the website www.careseng.ca but no evidence was introduced as to the content of this website.
- [23] The earliest version of the PPGInco website introduced into evidence was dated July 5, 2012 which is just one month prior to the end of the relevant period for the fraud allegations relating to the Georgia Bonds and the Dalian Bonds. There was no evidence as to the contents of this website during the rest of this period which extended from July 2011 to August 2012.
- [24] The Pegasus Bonds website provided information regarding the offering and purchase of Pegasus Bonds. The website capture dated July 4, 2012 included a general description of the nature of the securities offered, a listing of bond types and terms and information on how to make an investment in Pegasus Bonds including a form of subscription application and wire transfer instructions. There was no reference in the main body of the website to the use of proceeds other than a general statement that the funds raised would be used for the expansion of a global cancer therapy clinics network, new drug development and the upgrade of GMP manufacturing facilities. There was a reference to certain Pegasus Bonds being guaranteed by Careseng.
- [25] The executive director stated that the Pegasus Bonds website included two-page summaries and full business plans in Chinese for certain bond types. However, a translation of only one of these business plans (PGO2) was introduced into evidence. As a result, the contents of the balance of business plans posted on the website and the two-page summaries cannot be confirmed. Over 85% of the website was in Chinese.
- [26] The earliest version of the Pegasus Bonds website introduced into evidence was dated July 4, 2012 which is just one month prior to the end of the relevant period for the fraud allegations relating to the Georgia Bonds and the Dalian Bonds. There was no evidence as to the contents of this website during the rest of this period which extended from July 2011 to August 2012.

Business plans

- [27] Pegasus prepared what it described as “business plans” for each series of Pegasus Bonds. These documents are titled “prospectus” and, while they do not conform to the form of prospectus mandated under the Act, the content of the business plans was typical of that contained in an offering document.
- [28] Generally, the first page of the business plans set out:
- a. the alphanumerical series of the bond,
 - b. the name of the bond,
 - c. a table setting out the investment terms for the bond including the interest rate, the special dividend (if applicable), the guarantor (if any) and the method of purchase, and
 - d. if the business plan related to a bond guaranteed by Careseng, a statement to that effect.
- [29] The business plans also contained a description of Pegasus, its business, research, products and management and scientific research teams.

- [30] Some of the business plans contained information regarding the total amount of money to be raised through the offering and/or detailed descriptions of particular Pegasus projects. There was also reference to the future plans of Careseng to build a network of health and medical centres for global cancer prevention and treatment.
- [31] Two of the business plans, including the GO2 business plan, contained financial projections of income and cash flow from the Pegasus project which was the focus of the plan.
- [32] Most of the business plans, including the GO2 business plan and the HO3/M18 business plan, included the following statements:

...HSBC (HSBC) and Royal Bank of Canada (RBC) provide bank services to Pegasus Guaranteed Capital Bond.

- (1) Before the capital is invested into the construction project of National Cancer Center of Georgia, manage investment principal, entrusted to invest in short term US and Canadian Bonds;
- (2) Manage the investment income of the construction of National Cancer Center of Georgia; ...

Subscription application

- [33] The form of subscription application provided to investors included a check box to permit an investor to designate the series of bond they wished to purchase. In some cases, the name of the bond referenced a Pegasus project e.g. “Dalian Park Fixed Asset Bonds”.
- [34] The subscription application also included a statement to be signed by the investor confirming they had read the “bond subscription documents” in full and were aware of the nature of the bond being purchased. There was no explanation in the subscription application as to what the “bond subscription documents” comprised.

Investment certificates and certificates of divided land right

- [35] The investment certificates issued with respect to the Georgia Bonds contained the name of Pegasus, the certificate number, the bond type, the investment amount, the name of the investor and the signature of Huang on behalf of Pegasus. There was a photograph of an unidentified building on the face of the certificate.
- [36] The investment certificates issued with respect to the Dalian Bonds contained the name of Pegasus, the certificate number, the bond type, the investment amount, the name of the investor and the signature of Huang on behalf of Pegasus. These investment certificates also included the statement “guaranteed by Pegasus BioPark (Dalian) Co., Ltd. (see Certificate of Divided Land Right for details)”.
- [37] The investment certificates issued with respect to the Careseng Guaranteed Bonds contained a statement that they were guaranteed by Careseng.
- [38] The certificates of divided land right were issued only in connection with the Dalian Bonds. They included statements that the investor was the beneficiary of a specified area of land in

Dalian, China and the certificate would be redeemed by Pegasus on maturity along with the certificate of corporate bond. There was a photograph of unidentified land on the face of the certificate.

- [39] The investment certificates and the certificates of divided land right for both the Georgia Bonds and the Dalian Bonds were issued by Pegasus after Pegasus had received from investors a signed subscription application and other documents relating to their bond purchase and a wire transfer of their subscription funds.

Promissory notes

- [40] The promissory notes for the Georgia Bonds were in Chinese except for the English words “Promissory Note”. The promissory notes also included the numerical and alphabetical identifier of the series in which the investor was investing.
- [41] Uncertified translations of the names of the GO2 promissory note and the PGO2 promissory note were also tendered into evidence which stated that, in the case of the GO2 promissory note, the name was “Corporate Bond Trust Bond Promissory Note of Georgian National Oncology Centre Construction Bond” and in case of the PGO2 promissory note, the name was “Corporate Bond Trust Bond Promissory Note of PPG CIMG Georgian GMP Pharmaceutical Manufacturing Center Construction Bond”.
- [42] The promissory notes for the Dalian Bonds were also in Chinese except for the English words “Promissory Note”. The promissory notes also included the numerical and alphabetical identifier of the series the investor was investing in.
- [43] A certified translation of one of the Dalian Bond promissory notes was tendered into evidence which stated that the name of the promissory note was “Corporate Bond Trust Promissory Note Bond Beneficiary Certificate of Dalian Pegasus Pharmaceuticals Industrial Park Real Property Bond”. The promissory note also included the statement “The organization providing the guarantee: Pegasus Pharmaceuticals Industrial Park (Dalian) Company Limited, license number Enterprise Independent Liao Da General Number 018214”.
- [44] Some of the promissory notes for the Careseng Guaranteed Bonds which were in English or were translated include a reference to the Careseng Guarantee. However, many of the promissory notes for these bonds were in Chinese except for the words “promissory note”.
- [45] Most of the promissory notes introduced into evidence were signed by Huang on behalf of Pegasus and, for the promissory notes guaranteed by Careseng, by Huang’s sister on behalf of Careseng. A few of the promissory notes were unsigned.

Plan disclaimers

- [46] The plan disclaimers were signed by investors in connection with their purchase of Pegasus Bonds. They included the name of the bond series being purchased and a statement that the investor was “clear about the details and every charge” of the bonds series being purchased. Additionally, there was a statement that “I/we received a copy of the plan brochure outlining its key features”.

[47] The plan brochure was not introduced into evidence nor was any evidence adduced as to the content of this document.

Use of Georgia Bonds and Dalian Bonds proceeds

[48] Pegasus received proceeds of USD\$15,320,600 from distribution of the Georgia Bonds. Of that amount, USD\$1,400,900 was applied towards toward the NCCG project.

[49] Pegasus received USD\$11,172,850 from the distribution of the Dalian Bonds. Of that amount, USD\$559,800 was applied to the Dalian Project.

[50] The balance of the Georgia Bond proceeds and the Dalian Bond proceeds, which together totaled USD\$30,808,540, were co-mingled with other funds on deposit in Pegasus' bank accounts and applied to costs not directly related to either the Georgia Projects or the Dalian Project.

III. Preliminary application

A. Introduction

[51] Prior to commencement of the hearing, Pegasus and Huang (the applicants) objected to the admission into evidence of various documents included in the executive director's reliance list. The applicants' objections to admissibility of the documents fell into two general categories: relevance and translation.

[52] The parties agreed that the relevance objections would be dealt with in the course of the liability hearing as the executive director sought to introduce documents as evidence.

[53] The panel chair directed the parties to make written and oral submissions on the translation objections and set a date for hearing of the application on January 19, 2021 prior to the commencement of the hearing of the merits on January 20, 2021.

[54] After considering the submissions of the parties, the panel dismissed the application with reasons to follow. These are our reasons.

B. Background

[55] The applicants objected to the admissibility of certain untranslated Chinese language documents and what they characterized as improperly translated documents. They requested that some or all of these documents be struck from the executive director's reliance list.

[56] Specifically, the applicants objected to the admissibility of the following:

(a) documents that were in Chinese or mostly in Chinese, and for which the executive director provided no translation, and

(b) documents for which the executive director had provided some form of translation on the basis that:

(i) the documents had not been properly translated by way of a certified translation from an impartial translator,

(ii) many of the documents were only partially-translated, and

(iii) some of the documents had been translated by way of “Google Translate”.

[57] Prior to commencement of the hearing of the application, the executive director deleted the documents translated by way of “Google Translate” from his reliance list. As a result, we did not consider the submissions of the applicants relating to this category of documents.

[58] The applicants said that many of the documents to which their objections related were central to the allegations of fraud made against them in the amended notice of hearing and, therefore, bore directly on their right to know the case they had to meet.

[59] The executive director submitted that the applicants’ translation objections went to the weight to be accorded to these documents rather than their admissibility into evidence.

C. Law applicable to the preliminary application

Statutory and related provisions

Administrative Tribunals Act

[60] As set out in section 4.1 of the Act, section 11 of the *Administrative Tribunals Act*, SBC 2004, c. 45, applies to the Commission and states, in part:

General power to make rules respecting practice and procedure

11 (1) Subject to an enactment applicable to the tribunal, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.

(2) Without limiting subsection (1), the tribunal may make rules as follows:

...

(c) respecting receipt and disclosure of evidence, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a party on oath, affirmation or by affidavit...

The Securities Act

[61] The provisions of the Act governing receipt by the Commission of evidence are set out in section 173 and BC Policy 15-601 – *Hearings*.

[62] Section 173 of the Act states:

The person presiding at a hearing... (b) must receive all relevant evidence submitted by a person to whom notice has been given and may receive relevant evidence submitted by any person...

BC Policy 15-601

[63] Section 1.2 of BC Policy 15-601 states:

The Commission holds administrative hearings, which are less formal than the courts. The Commission’s goal is to conduct its proceedings fairly, flexibly and efficiently. The procedures set out in this Policy are in furtherance of this goal and the provisions of this policy are to be interpreted in light of this goal. Where the circumstances require a

variation of the procedures set out in this policy in order to achieve this goal, the Commission may do so.

[64] Section 2.1 of BC Policy 15-601 codifies the general expectations that the Commission is master of its own procedures and will take steps to ensure that a proceeding is fair, flexible and efficient. Section 2.1 states:

2.1 Procedures – The Act and Regulation prescribe very few procedures the Commission must follow in hearings. Consequently, the Commission is the master of its own procedures, and can do what is required to ensure a proceeding is fair, flexible and efficient. In deciding procedural matters, the Commission considers the rules of natural justice set by the courts and the public interest in having matters heard fully and fairly, and decided promptly.

[65] Section 4.1 of BC Policy 15-601 deals specifically with the admission of evidence. It says:

4.1 Evidence (a) Admission of evidence – In enforcement hearings, the primary test for the admission of evidence is its relevance to the allegations in the notice of hearing. The Commission will receive all relevant evidence from a party, unless some other reason precludes the evidence from being entered as an exhibit, such as being privileged. The Commission is not bound by the formal rules of evidence that apply in the courts. Generally, evidence should be the best evidence. The Commission expects that the party entering any evidence as an exhibit will properly describe it in a list of documents, and make submissions on its relevance during the hearing. A party may dispute the admission of any evidence before or during a hearing.

[66] Section 4.1 of BCP 15-601 establishes that the primary test for admissibility of evidence in Commission proceedings is relevance to the allegations in the notice of hearing. In every case, the decision of whether to admit evidence or not is an exercise of the panel's discretion under section 173 of the Act.

D. Common law authorities

[67] The technical rules of evidence developed for the courts can hamper the procedures and mandate of administrative tribunals. In *Rheume v. Canada (Attorney General)*, 2002 FCT 98 (CanLII), a decision of the Federal Court of Canada, the Court said that administrative tribunals have a very wide latitude to admit evidence so that they will not be paralyzed by objections and procedural maneuvers. The Court said this makes it possible to hold a less formal hearing in which all relevant points may be put to the tribunal for expeditious review.

[68] In *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, the BC Court of Appeal stated the principle of administrative law that administrative tribunals are masters of their own procedure is a practical principle which reflects the role administrative agencies play in carrying out aspects of government policy. At paragraph 39, the Court cited a quote from an academic article¹ which stated that in administrative proceedings, evidence is considered, on the whole, to be a matter of

¹ *Evidence before Administrative Agencies: Let's All Forget the "Rules" and Just Concentrate on What We're Doing* (1995), 8 C.J.A.L.P. 263 at 266

procedure or a means of how one enforces or goes about bringing into effect one's rights rather than a substantive right itself.

- [69] When an administrative tribunal is determining the admissibility of a particular piece of evidence, consideration should be given to the evidence as a whole. In *Teganya v. Canada (Citizenship and Immigration)*, 2012 FC 42 (CanLII), the Court said at paragraph 25:

...Not every piece of evidence must be directed to every specific point in issue. A party must be allowed to build its case, certain parts are background, other parts fill in gaps. The evidence as a whole is to be considered. No piece [of evidence] should be dismissed simply because it is a piece.

- [70] The administrative law principle that administrative tribunals are masters of their own procedure does not mean that panel members need not be concerned with evidence. Procedural fairness always applies and tribunals such as securities commissions must be alive to fairness concerns.

- [71] In *Lavallee v. Alberta (Securities Commission)*, 2009 ABQB 17 (CanLII), at paragraph 206, the Court said:

The ASC is not required to be procedurally perfect. However, considering that an order from the ASC may have a devastating effect on respondents before the ASC, ...an ASC panel will need to exercise its discretion not to admit relevant evidence in appropriate circumstances to preserve the mandated level of procedural fairness. In my opinion, due process requires this.

E. Categories of objections

Chinese language documents that are not translated at all

Parties' submissions

- [72] The applicants argued the law is clear that documents tendered in British Columbia court proceedings must be in English.
- [73] The applicants cited the Supreme Court of Canada decision in *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2013 SCC 42. In that case, the appellants sought to rely on an affidavit to which were attached documents in the French language the contents of which they intended to rely. The Supreme Court of Canada upheld a BC Court of Appeal decision that a judge presiding over civil proceedings in British Columbia does not have the discretion to admit documentary evidence in a language other than English without a certified translation.
- [74] The applicants argued it is well established that the applicants are entitled to a high level of procedural fairness at Commission hearings and there is no reason why the principles applicable in court proceedings ought not to be applicable in the proceedings before us. They said that both the decision maker and the parties need to be able to read the contents of the documents in English. They stated that some of the Chinese-only documents had been identified by the executive director as "promotional materials" and were of particular importance to the applicants' case.

- [75] The executive director advised this matter required a large-scale and complex investigation. Staff obtained thousands of documents and many were predominantly in Chinese. He said that it was not possible to translate every portion of every document into English. The executive director argued that hearings before the Commission are to be fair and flexible and, as an administrative tribunal, the Commission has very wide latitude to admit evidence.
- [76] The executive director stated that, in any event, he would not rely on the Chinese language portion of documents for the truth of their contents. He argued, however, these documents still were relevant to these proceedings. He said, for example, Chinese-only documents may be used as evidence that Pegasus communicated directly with investors. He stated the utility of each document may not be clear at the preliminary stage of the proceedings and acknowledged there may be issues as to the weight which can be attributed to a document that is partially or wholly in Chinese. He argued, however, the documents are not inadmissible for that reason.

Analysis

- [77] The fact that a document is not in English does not, in and of itself, mean it is not admissible as evidence in Commission hearings. In circumstances such as this case where the executive director is not relying on the Chinese-only documents for the truth of their contents, they may still be admissible if they are relevant and the admission of the documents does not result in procedural unfairness to the applicants.
- [78] We agree with the executive director that individual documents cannot be considered in isolation. It is clear from *Teganya* that the relevance of a particular piece of evidence need not be readily apparent. A party must be allowed to build its case and the evidence considered as a whole.
- [79] We saw no reason, at the preliminary stage of the proceedings, to rule that the Chinese-only documents on the executive director's reliance list were inadmissible.
- [80] We did not see any procedural unfairness to the applicants in proceeding in this manner as they would have a full and fair opportunity to test the relevance and probative value of these documents during the liability phase of the hearing by questioning witnesses and making submissions regarding the relevance and/or weight of the documents.
- [81] The applicants' objection to the admission into evidence of the Chinese-only documents included in the executive director's reliance list is dismissed.

Translations without a translation certificate

Parties' submissions

- [82] The applicants submitted that there are certain requirements which must be met regarding certification of a translated document for it to be admissible into evidence. They acknowledged that in *Conseil scolaire*, neither the Supreme Court of Canada nor the BC Court of Appeal considered what is meant by a translation being certified. However, the applicants argued that based on principles distilled from case law with respect to the admissibility of translated documents, for a translated document to be admitted into evidence, it must include the following:

- (a) a copy of the original document being translated,
- (b) an English translation of the entire document which is a “mirror” translation of the original document,
- (c) a signed certificate/declaration from the translator stating, at a minimum:
 - (i) the name of the translator,
 - (ii) confirmation, in this case, that the translator is fluent in Mandarin Chinese and English,
 - (iii) the name of the source document being translated, and
 - (iv) confirmation that the translation is an accurate translation.

[83] Additionally, the applicants submitted that a translator must be impartial, objective and unbiased.

[84] The applicants stated that none of the translated Chinese to English and English to Chinese documents included in the executive director’s reliance list met the above requirements. They said the translation certificate provided by the executive director, which purported to certify documents in “bulk” by listing the translated documents in an appendix to the certificate, did not comply with the above requirements. They argued that even if the translation certificate did comply with these requirements, the certified translations would not be admissible because the translator was not impartial.

[85] The applicants stated that the translator worked full-time for the Commission as a contract employee during the period when the majority of the translations she provided were performed. They alleged that the translator’s involvement in this matter went beyond acting as mere translator and interpreter and included, from time to time, taking an active role in the investigation. The applicants submitted that, as a result, the translator could not be fairly considered as impartial, unbiased or objective and her translations could not be admitted into evidence.

[86] The executive director submitted there is no requirement to provide a certified translation of a foreign language document for it to be admissible in Commission proceedings. He argued a translated document remains relevant evidence without certification and is therefore admissible. He suggested that if a panel has less confidence in a translated document that is not certified, they could give the document less weight.

[87] The executive director also submitted that if he elects to provide a certified translation, it is not required to be in the form proposed by the applicants. At the application hearing, the executive director advised that, nonetheless in this instance, he would obtain individual certificates for each translated document included in his reliance list. He provided the proposed form of the certificate which met all of the applicants’ requirements for a translation certificate set out in subparagraph 82(c) above.

[88] The executive director took issue with the applicants’ submissions regarding the impartiality of the translator and stated these submissions mischaracterize the translator’s work in this matter.

The executive director argued that, in any event, in the context of an administrative proceeding, the issue of bias goes to weight, not admissibility.

Analysis

- [89] In this case, the executive director has chosen to provide translation certificates in the form suggested by the applicants. However, we agree with the executive director is not obligated to do so and there is no requirement that the translation of a foreign language document into English be certified for it to be admissible into evidence in Commission proceedings.
- [90] It is clear from the statutory and common law authorities that the Commission is master of its own proceedings and is not bound by the rules of evidence applicable to judicial proceedings. As noted above, the primary test for admissibility of evidence in Commission proceedings is relevance to the allegations in the notice of hearing. Generally, we see no procedural unfairness to a respondent resulting from the admission of an uncertified translation of a foreign language document that is relevant to the allegations in a notice of hearing. A respondent has a full and fair opportunity to question witnesses relating to the reliability of the translation and to make submissions as to the weight to be given to the document.
- [91] We received conflicting submissions as to the nature of the translator's relationship with the Commission during the period at issue and the potential bias arising therefrom. At the preliminary stage of the hearing, we did not have the evidence before us to make a determination of this issue.
- [92] We saw no reason at the preliminary stage of the proceedings to rule that the translated documents on the executive director's reliance list were inadmissible. The time to determine the nature and effect of any bias resulting from the translator's employment with the Commission is during the liability phase of hearing.
- [93] We did not see any procedural unfairness to the respondents in proceeding in this manner. The applicants would have a full and fair opportunity at the liability hearing to question the executive director's witnesses regarding circumstances of the translator's employment and the direction and guidance provided to her by Commission investigators and to make to submissions regarding the nature and effect of any bias.
- [94] The applicants' objection to the admission into evidence of the translations included in the executive director's reliance list is dismissed.

Chinese language documents which contain only a partial English translation

Parties' submissions

- [95] The applicants stated that the executive director's reliance list included numerous emails and documents the executive director received from investors and investor agents that were only partially-translated into English. They said that "mirror" translations into English of the entire text of each of these documents were required, particularly as the executive director was relying on these documents to advance fraud allegations against the applicants.

- [96] The applicants submitted that the failure to provide “mirror” translations was inherently unfair as:
- (a) partial translations can be confusing and difficult to follow. As an example, they said certain partial translations included “ad hoc” translation instructions by the Commission investigator to the translator which made the translations confusing and difficult to follow, and
 - (b) partial translations can mean that passages related to translated sections are not made available. As an example, they said that in some instances, only an investor’s email response was translated and the prior emails between the investor and the investigator in the email thread remained in Chinese so that the applicants did not know what was asked of the investor. The applicants said they were entitled to notice of the statements and information communicated by the investors/investor agents.
- [97] The executive director argued that the test for admissibility of these documents is their relevance to the allegations in the notice of hearing and that the applicants’ submissions go to the issue of weight, not admissibility.
- [98] The executive director submitted that he is not required to translate all documents into English. He said that only the relevant documents or portions of documents had been translated. He said that this was not detrimental to the evidence being admitted, as Commission proceedings are to be flexible and efficient.
- [99] The executive director submitted that evidence that is difficult to follow should not result in that evidence being ruled inadmissible. He argued that evidence that is confusing is rectifiable but that evidence that is not admitted can result in procedural unfairness in the presentation of the executive director’s case.
- [100] The executive director also pointed out that the documents in issue were a limited subset of the evidence. He submitted that while it may not be clear with respect to a particular document what role it played in the totality of evidence, there was sufficient other evidence where the nature of the case against the applicants was clear.

Analysis

- [101] There is no requirement that the entire text of a foreign language document be translated into English for it to be admissible in Commission hearings. As noted in *Rheaume*, administrative tribunals have a very wide latitude to admit evidence so that they will not be paralyzed by objections and procedural maneuvers. This makes it possible to hold a less formal hearing in which all relevant points may be put to the tribunal.
- [102] As noted above, the primary test for admissibility of evidence in Commission proceedings is relevance to the allegations in the notice of hearing. If the executive director establishes that a partially-translated document is relevant, that document may be admissible, subject to any procedural fairness concerns. However, there may well be an issue as to the weight which can be

attributed to a partially-translated document if the panel cannot understand the context in which the translated statements were made.

[103] We agree with the executive director that the fact certain evidence is confusing or difficult to follow does not result in it being inadmissible. The admission of potentially confusing evidence is not procedurally unfair to the applicants as they will have a full and fair opportunity to question the executive director's witnesses during the liability phase of the hearing regarding the points they find confusing and, to the extent there are outstanding issues as to clarity, to make submissions as to the weight that can be attributed to the documents.

[104] Similarly, to the extent a document contains translations of only selected sections of a document, the applicants will have a full and fair opportunity to question the executive director's witnesses during the liability phase of the hearing regarding the communications and other documents received by the executive director from the investor/investor agents and to make submissions regarding the weight that can be attributed to the partially-translated documents.

[105] The applicants' objection to the admission into evidence of the partially-translated documents included in the executive director's reliance list is dismissed.

IV. Law applicable to liability submissions

A. Standard of proof

[106] The onus of proof lies with the executive director who must prove the allegations in the amended notice of hearing on a balance of probabilities, meaning that "it is more likely than not that an alleged event occurred". The evidence must be "sufficiently clear, convincing and cogent" to satisfy the balance of probabilities test (*F.H. v. McDougall*, 2008 SCC 53, at paragraphs 49 and 46).

B. Prospectus requirements

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

- b) 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 "distribution" as "a trade in a security of an issuer that has not been previously issued", and
- c) 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.

[108] The onus is on the respondents to meet the evidentiary burden of establishing the factual basis for the existence of an exemption from the prospectus requirements of section 61.

C. Fraud

[109] Section 57(b) of the Act 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.

[110] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited, at paragraph 27, the elements of fraud from *R. v. Theroux*:

... 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).

D. Liability under section 168.2

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

[112] There have been numerous decisions that have considered the meaning of the terms "authorize, permit or acquiesce". In sum, these decisions require that the respondent have the requisite knowledge of the corporate contraventions and the ability to influence the actions of the corporate entity (through action or inaction).

[113] In *Re Momentas Corp.*, 2006 ONSEC 15, the Ontario Securities Commission panel considered the meaning of "authorized, permitted and acquiesced" for a director's or officer's liability for the issuer's non-compliance with the Act, and stated, at paragraph 118:

Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.

E. Limitation period under section 159

[114] Section 159 of the Act states that proceedings under the Act must not be commenced more than six years after the date of the events that gave rise to the proceedings. For the purposes of the

matters before us, the relevant date is January 28, 2010 being six years before the date of issuance of the original notice of hearing in this case.

V. Positions of the parties

A. Executive director's position

Illegal distributions

[115] As noted above, the executive director advised in his written submissions he was no longer pursuing allegations of illegal distributions of Pegasus Bonds that took place prior to January 28, 2010 which is the limitation date established pursuant to section 159 of the Act.

[116] The executive director then submitted that between January 28, 2010 and August 24, 2012:

- (a) Pegasus and Huang distributed 1,473 Pegasus Bonds for proceeds of approximately USD \$53 million,
- (b) 40 of the distributions of the Pegasus Bonds totaling approximately USD \$8 million were exempt from the prospectus requirements of the Act pursuant to section 2.10 of National Instrument 45-106 *Prospectus Exemptions* then in effect (NI 45-106), and
- (c) the remaining 1,433 distributions of Pegasus Bonds totaling approximately USD \$45 million were made by Pegasus and Huang in contravention of section 61 of the Act.

[117] The executive director also submitted that between January 28, 2010 and July 13, 2012:

- (a) Careseng participated in the distribution of 455 Careseng Guaranteed Bonds for proceeds of approximately USD \$14.7 million by guaranteeing the principal of these bonds,
- (b) eight of these distributions totaling approximately USD \$12.8 million were exempt pursuant to section 2.10 of NI 45-106, and
- (c) Careseng participated in the distribution of the remaining 447 Careseng Guaranteed Bonds totaling approximately USD \$12.8 million in contravention of section 61.

Fraud

Georgia and Dalian Bonds

[118] In his written submissions, the executive director submitted that:

- (a) the Pegasus Investment Materials relating to the Georgia Bonds, when viewed in their entirety, showed that Pegasus represented the investment funds raised through the Georgia Bonds would be used on the Georgia Projects. He said these representations were specific and did not support any alternative inferences, and
- (b) the Pegasus Investment Materials relating to the Dalian Bonds, when viewed in their entirety, led to the conclusion that Pegasus represented the purpose of the investments in the Dalian Bonds was the Dalian Project.

[119] In his oral submissions, the executive director amended his written submissions to say that the Pegasus Investment Materials did not need to be considered in their entirety to find the alleged representations as to the use of the investment funds but that each of the relevant Pegasus Offering Materials contained these representations.

Careseng Guaranteed Bonds

[120] In the amended notice of hearing, the executive director alleged that the Careseng Guarantees provided by Careseng in the Careseng Guaranteed Bonds were “false” as Careseng had no operations, no employees, no revenue and less than USD \$50,000 in assets. He alleged that each time the respondents participated in the issuance of these bonds, they perpetrated a fraud against investors.

[121] In his written submissions, the executive director amended his allegations to state that the respondents committed acts of deceit against the Careseng Guaranteed Bond investors by including the Careseng Guarantees in the Careseng Guaranteed Bonds and representing the investments as guaranteed. He stated the Careseng Guarantees were promises that Careseng would ensure payment to the investors if Pegasus defaulted in its obligations and that each of the respondents knew that Careseng was not in a financial position to guarantee Pegasus’ obligations.

[122] The executive director argued that the Pegasus Investment Materials relating to the Careseng Guaranteed Bonds, when viewed in their entirety, showed that the investments in the Careseng Guaranteed Bonds were represented to investors as being guaranteed by Careseng.

[123] The executive director also submitted that the Careseng Guaranteed Bonds issued prior to January 28, 2010 are not statute barred by operation of the limitation period under section 159 of the Act as they form part of a continuing course of conduct.

B. Respondents’ position

Illegal distributions

[124] The respondents did not contest the amended allegations with respect to illegal distributions made by the respondents set out in paragraphs 116 and 117.

Fraud

[125] The respondents submitted that in order to prove the allegations of fraud against the respondents with respect to the Georgia Bonds and the Dalian Bonds, the executive director must establish the alleged representations regarding the use of investment proceeds were made by the respondents and received by the Pegasus investors prior to making their investment decisions. The respondents submitted that the executive director had failed to prove the allegations and they should be dismissed.

[126] With respect to the allegations of fraud relating to the Careseng Guaranteed Bonds, the respondents submitted that the allegations set out in the amended notice of hearing were deficient in that they failed to identify exactly what dishonest conduct the respondents engaged in and how such conduct led to deprivation suffered by the investors. The respondents stated that these deficiencies were fatal to the executive director’s allegations. They argued that the executive

director's attempts to recast these allegations in his written submissions should not be accepted by the panel and that, in any event, the executive director had failed to prove even these amended allegations.

[127] The respondents also submitted that the distribution of the Careseng Guaranteed Bonds made on or prior to January 28, 2010 were statute barred under section 159. They stated that the manner in which the executive director framed his allegations in the amended notice of hearing was inconsistent with the type of conduct that can be fairly described as a "continuing contravention".

VI. Analysis and findings

A. Illegal distributions

[128] There is no dispute that:

- (a) Pegasus engaged in the trades in Pegasus Bonds described in paragraph 116(c),
- (b) Careseng engaged in acts in furtherance of trades in the Careseng Guaranteed Bonds described in paragraph 117(c) when it guaranteed the principal of those bonds,
- (c) the Pegasus Bonds and the Careseng Guaranteed Bonds were securities,
- (d) the trades in the Pegasus Bonds and the Careseng Guaranteed Bonds were distributions under the Act,
- (d) no prospectus was filed in connection with these distributions, and
- (f) there were no exemptions from the prospectus requirements of the Act available for these distributions.

[129] Therefore, we find that:

- (a) Pegasus contravened section 61 of the Act by distributing 1,433 Pegasus Bonds totaling approximately USD \$45 million (Pegasus Illegal Distributions) without a prospectus and for which no exemptions from the prospectus requirements of the Act applied, and
- (b) Careseng contravened section 61 by engaging in acts in furtherance of trades in Careseng Guaranteed Bonds by providing guarantees in connection with the distribution of 447 Careseng Guaranteed Bonds totaling approximately USD \$12.8 million without a prospectus and for which no exemptions from the prospectus requirements applied.

[130] The executive director also alleged that:

- (a) Huang directly contravened section 61 by engaging in the Pegasus Illegal Distributions, and

(b) Huang, as director and control person of Pegasus, also contravened section 61 by authorizing, permitting or acquiescing in Pegasus' contravention of that same provision under section 168.2 of the Act.

[131] Huang was a director of Pegasus and Careseng and President of Pegasus during the entire period relevant to these allegations. He controlled Pegasus, decided which projects Pegasus would pursue, decided how to finance projects and decided how to raise money from investors. He signed the promissory notes and the investment certificates related to the Pegasus Bonds issued in the Illegal Distributions.

[132] Based on the foregoing, we find pursuant to section 168.2 of the Act that Huang contravened section 61 of the Act by authorizing the Pegasus Illegal Distributions.

[133] Having found that Huang contravened section 61 pursuant to section 168.2, it is not necessary to consider whether he also directly contravened section 61 by engaging in the Pegasus Illegal Distributions.

B. Fraud

Georgia Bonds and Dalian Bonds

[134] The first step in the analysis of whether Pegasus perpetrated a fraud against investors contrary to section 57(b) of the Act in connection with the Georgia Bonds and the Dalian Bonds is to determine whether the executive director has established the *actus reus* of the alleged frauds.

[135] The fraud allegations relating to both the Georgia Bonds and the Dalian Bonds are centered on deceitful representations alleged to have been made by Pegasus to investors regarding the use of investment funds raised through the offerings of those bonds.

[136] The executive director submitted that it is not necessary to prove that any specific investors received any specific representations or Pegasus Investment Materials. He said that these "deceits" were presented to all investors because the deceits were "transmitted globally" through the Pegasus business plans, websites, investment certificates, promissory notes and other materials.

[137] We do not agree with the executive director's submission. For there to be a deceit, there must be evidence of communication of the false statement to the person alleged to have been deceived. It is clear from previous decisions of this Commission that, in cases involving fraud allegations, the exact nature of the representations made to an investor and the context in which they made are critical. In *Re SPYru Inc.*, 2015 BCSECCOM 277 at paragraph 141, the panel said that the very nature of the contraventions of fraud makes it important that the trier of fact understand exactly what was said to an investor, by whom and in what context.

[138] The executive director alleges that the following representations were made to investors regarding the use of the investment funds:

- (a) with respect to the Georgia Bonds, the capital raised would be used, in three series of Pegasus Bonds, for construction works on the NCCG and, in one series of Pegasus Bonds, to build manufacturing facilities in Georgia (Georgia Bond Representation), and
- (b) with respect to the Dalian Bonds, the capital raised would be used, in three series of Pegasus Bonds, for the Dalian Project (Dalian Bond Representation).

[139] The first issue to determine is whether the alleged representations were made by the respondents.

[140] The respondents made various submissions on evidentiary issues related to the Pegasus Investment Materials and communications between Commission staff and investors. Before we consider these submissions, we will first determine whether the evidence on its face establishes that the alleged representations were made.

[141] As noted above, we do not agree with the executive director that he does not need to prove that any specific investor received a specific representation. At the hearing, we asked the executive director to prepare a schedule (Document Schedule) listing for each investor to whom he alleges the representations were made, the documents containing the representations and the evidence establishing that that investor received those documents. We have focused our analysis on the documents identified in the Document Schedule as we have assumed that, in accordance with our request, it lists all the evidence the executive director is relying on to support his allegations.

Georgia Bond Representation

[142] The executive director submitted that the Georgia Bond Representation was made in the Pegasus Investment Materials set out below.

Georgia Bond business plans

[143] In his written submissions, the executive director argued that the following statements in the H03M18 business plan were representations by Pegasus that the proceeds of the Georgia Bonds would be used to build the Georgia Projects:

- (a) the heading of the section of the document describing the Careseng International Medical Centre which was “Prospectus for Public Offering of Careseng International Medical Centre of Georgia”,
- (b) the name of the H03/MI8 bonds which was “Corporate Bond of Careseng International Medical Centre of Georgia”, and
- (c) statements that Pegasus planned to upgrade and modify the NCCG and to spend USD \$50 million in upgrades of the NCCG by investing USD \$10 million itself and raising USD \$40 million from investors.

[144] We find that none of the above statements, alone or read together, constitutes the Georgia Bond Representation. The heading of the section describing the Careseng International Medical Centre is simply a reference to the subject matter of the section that follows. The name of the bond series identifies the Pegasus project related to the offering but is not a representation as to how

the proceeds of the offering will be used. Similarly, the reference to the plans to upgrade and modify the NCCG and the related cost and source of financing is a description of the nature, cost and source of funding for the project but not a representation as to the use of the proceeds of the offering.

[145] In the Document Schedule, the executive director identified additional content in the HO3/MI8 business plan that he said constituted the Georgia Bond Representation:

- (a) the statements set out in paragraph 32 above, describing services to be provided by two banks in connection with the Pegasus Guaranteed Capital Bond, that before capital was invested into the NCCG construction project, the banks would manage the investment capital and that they would manage the investment income of the construction of NCCG, and
- (b) the inclusion in the business plan of a photograph the executive director said was of the NCCG.

[146] The respondents objected to the inclusion in the Document Schedule of these and other additional submissions not raised by the executive director at the hearing or in his written submissions. The respondents were given an opportunity to respond, and did respond, to these additional submissions.

[147] The description of the services to be provided by the two banks contains no reference as to how Pegasus will use the investment funds from the HO3/MI8 offering. It is a statement as to who will hold and manage the investment funds pending their deployment and the income from the construction project when received. The photograph referred to by the executive director was not reproduced in the certified translation of the HO3/MI8 business plan and, even if it was included and was identified as the NCCG, it would not constitute a representation as to how Pegasus would use proceeds from the HO3/MI8 offering. It would simply be an illustrative photograph of the NCCG.

[148] The executive director identified similar statements in the GO2 business plan as constituting the Georgia Bond Representation. He referred to the heading of the section of the document describing the project to upgrade and modify the NCCG, which was “Prospectus for Stage One of the Project for the Upgrade and Modification of National Cancer Centre of Georgia by Careseng International Medical Group”, the name of the GO2 bonds which was “Corporate Bond of National Cancer Center of Georgia Construction Bond” and the description of the plans to upgrade and modify the NCCG and the related cost and sources of financing.

[149] In the Document Schedule, the executive director identified the same statements regarding the services to be provided by the two banks and a photograph he said was the NCCG as representations made by Pegasus regarding the use of proceeds of the GO2 bond offering.

[150] Our analysis with respect to these submissions is the same as our analysis regarding similar statements and photograph identified by the executive director in the HO3/MI8 business plan.

We find that these statements and photograph do not constitute the Georgia Bond Representation.

Georgia Bond investment certificates

[151] The executive director submitted that the background photograph of a building on the investment certificates for the HO3/MI8 bond series, the GO2 bond series and the PGO2 series, which the executive director identified as the NCCG, constituted the Georgia Bond Representation. The identification of the photograph was based on a comparison to photographs in the Chinese versions of the related business plans.

[152] As noted above, these investment certificates were issued by Pegasus after the investors had made their investment decision and paid the purchase price for their Pegasus Bonds. Accordingly, they are not relevant to our analysis of fraud allegations in this case.

[153] In any event, even if we were able to conclude that the photograph on the investment certificates was of the NCCG, we would simply consider it to be an illustrative photograph and not a representation as to the use of the proceeds of the Georgia Bond offerings.

Georgia Bond promissory notes

[154] The executive director submitted that the names of the bond series set out in the Georgia Bond promissory notes constituted the Georgia Bond Representation.

[155] As noted above, the promissory notes for the Georgia Bonds were in Chinese except for the words “Promissory Note”. Uncertified translations of the names of the GO2 promissory note and the PGO2 promissory note stated that, in the case of the GO2 promissory note, the name was “Corporate Bond Trust Bond Promissory Note of Georgian National Oncology Centre Construction Bond” and in case of the PGO2 promissory note, the name was “Corporate Bond Trust Bond Promissory Note of PPG CIMG Georgian GMP Pharmaceutical Manufacturing Center Construction Bond”.

[156] The names of these promissory notes, while making reference to the Georgia Projects, are not representations that the proceeds of the Georgia Bond offerings will be used only for the Georgia Projects. The names are identifiers of the Pegasus projects to which the offerings relate.

[157] We find that the names of the bond series included in the Georgia Bond promissory notes do not constitute the Georgia Bond Representation.

Georgia Bond subscription application

[158] The executive director submitted that the check-box included in the Georgia Bonds subscription application by which an investor designated the bond series they were purchasing and the statement the investor signed acknowledging they had read the bond subscription documents in full and were aware of the nature of the bond constituted the Georgia Bond Representation.

[159] The designation by the investor of the bond series they were purchasing is not relevant to an analysis regarding what representations were made to the investor with respect to how the proceeds from the offering of that bond series would be used.

[160] As to the acknowledgement to be signed by the investor, there was no evidence as to what comprised the “bond subscription documents” which makes the acknowledgment meaningless in the context of our fraud analysis.

[161] We find that neither the check-box nor the investor acknowledgement constitutes the Georgia Bond Representation.

Pegasus websites

[162] The executive director submitted that the following statements from the PPGInco website, taken in their entirety, showed that Pegasus represented that investment funds raised through Pegasus Bonds series GO2, PGO2, HO3 and MI8 would be used for the Georgia Projects:

- (a) Pegasus had introduced the acquisition, renovation and expansion of the NCCG to representatives of the Chinese embassy in Georgia who had praised and supported the acquisition,
- (b) Pegasus Georgia Inc. and Careseng Medical International Group Inc. are wholly-owned subsidiaries of Pegasus,
- (c) Pegasus had signed the purchase agreement for the NCCG with the government of Georgia, and
- (d) Pegasus will invest \$20 million for the renovation and expansion of the NCCG with the goal of establishing a world class large medical system in line with the EU.

[163] None of these statements makes any reference to the Georgia Bond offerings or how the offering proceeds will be used. We find that these statements, when read together, do not constitute a representation that investment proceeds raised through the Georgia Bond offerings would be used for the Georgia Projects.

[164] As noted above, there is no reference in the PPGInco website to the Georgia Bonds or the Dalian Bonds.

[165] The executive director said that the Pegasus Bonds website identified the four series of Georgia Bonds in the section listing the bonds offered by Pegasus. He also said that the business plans for HO3/MI8 and PGO2 were posted in full as were two-page summaries regarding the investment terms for the four Georgia Bond series.

[166] The listing of the Georgia Bonds on the website simply identifies the bond series offered for sale and is not a representation as to how the proceeds from the Georgia Bonds offerings will be used.

[167] As noted above, there are translation issues regarding the Georgia Bond business plans and two-page summaries posted on the website. In any event, we have found that the Georgia Bond business plans did not contain the Georgia Bond Representation and therefore the fact that they were posted on the Pegasus Bond website is not relevant to our fraud analysis.

Investor Communications

[168] The executive director introduced into evidence various communications between the Pegasus Bond investors and Commission staff.

[169] In his written submissions and at the hearing, the executive director relied on these investor communications to establish that the Pegasus Investment Materials had been received by investors. As we have found that these materials did not include the Georgia Bond Representation or the Dalian Bond Representation, these submissions are not relevant to our analysis.

[170] In the Document Schedule, the executive director also relied on these communications to prove that Pegasus made the Georgia Bond Representation and the Dalian Bond Representation directly to investors.

[171] The investor communications (Investor Communications) related to this issue fell into three categories:

- (a) emails from investors responding to a list of set questions posed by email by Commission staff,
- (b) notes of telephone interviews with investors by Commission staff, and
- (c) transcript of an interview of an investor by Commission staff.

[172] Before we consider the Investor Communications, we will address the weight to be given to this evidence. The Commission looked at this issue in *Re Barker*, 2005 BCSECCOM 146. That case also involved allegations of fraud.

[173] In *Re Barker*, the evidence before the panel included testimony of investors, a transcript of an interview of the respondent by Commission staff, notes of telephone interviews with investors with Commission staff and questionnaires completed by investors. At paragraphs 98 to 101, the panel found the following regarding the weight to be attributed to the evidence tendered:

- a) Testimony of investors at the hearing. The Panel concluded that this was the best evidence because the Panel was able to hear the investors' stories directly, observe their demeanor, and to ask them questions,
- b) Transcript of the investigator's interview with the respondent. Although the Panel was unable to observe the respondent's demeanor or ask questions, the Panel concluded that it was able to assess the evidence with confidence because it came from sworn testimony with counsel for the witness present,
- c) Staff investigator's notes of telephone interviews with investors. The Panel gave no weight to this evidence because the statements were not sworn, nor was there a transcript of the conversations, so the Panel did not have the context of the questions that

Commission staff put to them, or their *verbatim* answers. Nor was the evidence, for the most part, corroborated by other, more reliable evidence, and

- d) Questionnaires completed by investors who were not interviewed by Commission staff. The Panel gave no weight to this evidence because, while they may be a useful tool to help staff determine which investors may have relevant evidence in an investigation, on their own they have little probative value when considering the allegations of misrepresentation and fraud.

[174] In *Re SPYru*, the panel affirmed the *Re Barker* principles. The panel also found the analysis in *Re Barker* regarding the weight to be attributed to questionnaires conducted through Commission staff applied equally to questionnaires sent electronically to investors by Commission staff and these questionnaire should be given no weight.

Investor emails

[175] The executive director sent a set list of questions to Pegasus Bond investors by email. For the purposes of our analysis, the key questions were: “1. How did you find out about Pegasus bonds?”, “3. What were you told about Pegasus Bonds?” and “4. What were you told the money you invested in Pegasus would be used for? Who told you this?”

[176] In her email response, investor PSY said that she learned about the Pegasus Bonds from the “deputy” of Pegasus. She was told the corporate bonds were used in investing in the construction of the NCCG in Europe. She said that she was told the money she invested would be used in the NCCG and “there was also the research and development of new drugs”. Those responses are inconsistent with each other and the executive director’s submission that the investors were told by Pegasus that their investment funds would be used only for the Georgia Projects.

[177] The email responses to these questions from investor WP were identical to investor PSY.

[178] Investor WP also responded by email to a separate email from Commission staff with a different set of questions. In response to the question “What were you told your money would be used for?”, he responded “For the Georgia National Cancer Centre”. This response is inconsistent with his response to question 4 in his previous email.

[179] We give no weight to this evidence. The inconsistency in the investors’ responses to the set questions of Commission staff highlight the unreliability of this type of evidence. We agree with the panel in *Re Barker*. While putting a set list of questions to investors may be a useful tool to help Commission staff to determine which investors may have evidence relevant to an investigation, they have little probative value.

Notes of telephone interview with investor

[180] The executive director introduced into evidence staff notes of a telephone call between two Commission staff and investor WP. These notes are a summary of the call, not a verbatim transcript. In these notes, investor WP is reported to have said that the Pegasus vice-president of finance told him that Pegasus had a hospital development in Georgia and that she showed him a document similar to an information memorandum about the product. The notes then say “Total

investment needed for the project in Georgia is approximately USD\$ 40 million”. It is not clear from the notes whether this statement was a description by investor WP of what he was told by the Pegasus vice-president of finance or a statement by investor WP regarding information he gleaned from the information memorandum.

[181] We agree with the panel in *Re Barker* that no weight should be attributed to this type of evidence. The ambiguity noted above regarding the investor WP’s statements in the staff notes highlights the concerns regarding this type of evidence. In any event, the statements attributed to investor WP in the staff notes do not support the executive director’s allegations regarding the Georgia Bond Representation.

Transcript of an interview with investors

[182] The executive director introduced into evidence a transcript of a translated interview conducted under oath primarily in Chinese with two Pegasus investors by a translator engaged by the Commission with a Commission investigator and the investors’ legal counsel present.

[183] The executive director highlighted the following excerpts of the interview as establishing, among other things, that the investor YL was told that Pegasus would use the investment funds to construct a cancer hospital in Georgia:

Translator: Oh, uh, sorry, before you made the investment, did you read any information?

Investor YL: Uh, before I made the investment, I read the information. Like I mentioned earlier, um. [LCC], uh, provided a product information produced by Pegasus, the product information include the background of a ... in Pegasus, and Pegasus would use the funds in a cancer centre in Georgia ... So [LCC] provided a lot of information on Pegasus through, um, [Pegasus representatives].

...

Translator: -almost all the information was provided to you by LCC, right?

Investor YL: Uh, yes, because I, I invested Pegasus through LCC. Well, uh, I basically have received the information related to Canada, basically, I received all of it from LCC, it was sent by email. Well, the information he received on these emails was from people including [Pegasus representatives].

...

Translator: Mm-hm. Uh, do you know what the money you invested would be used for?

Investor YL: Uh, at the time it mentioned that this investment, like, they wanted to construct a cancer hospital in, uh, Georgia. Then, so, uh, I know this. This is basically the information I heard.

Translator: Mm-hm. Who told you that?

Investor YL: And... Uh, this was through an email group and LCC also explained it verbally.

[184] It appears from the transcript that LCC was a business contact investor YL met while LCC was working at an international financial services company. After LCC left this company, he approached investor YL with various investment products, one of which was Pegasus Bonds.

[185] It is not clear how the interview excerpts support the executive director's allegations regarding the Georgia Bond Representation. It appears that investor YL read the "product information" of Pegasus which stated that Pegasus would use the funds for a cancer centre in Georgia. She said that all of the information was provided to her by LCC and that he received it by email from Pegasus representatives. There is no evidence as to what documents or statements were provided to her. To the extent they included the Pegasus Investment Materials, we have found that none of these documents include the Georgia Bond Representation.

[186] Investor YL said "it" mentioned the investment funds would be used to construct a cancer hospital in Georgia and that this was the information "she heard". The document she referred to as "it" is not identified. The emails sent by the "email group" were not introduced into evidence. There is also no evidence that LCC had the authority to make statements that were binding on Pegasus.

Dalian Bond Representation

[187] The executive director submitted that the Dalian Bond Representation was made in the Pegasus Investment Materials set out below.

Dalian Bond investment certificates

[188] The only submission made by the executive director in connection with the Dalian Bonds investment certificate was that it contained a representation that the investment was guaranteed by Pegasus BioPark (Dalian) Co. Ltd.". The executive director did not allege in the amended notice of hearing that there was anything improper about this guarantee and we do not consider the guarantee relevant to our analysis of fraud. Additionally, the fact that the name of the guarantor of the note contains a reference to the Dalian Project is not a representation as to how the proceeds of the Dalian Bond offering will be used.

Certificate of undivided land right

[189] The executive director submitted that the background photograph on the certificates of undivided land right issued in connection with the Dalian Bonds, which the executive director identified as a photograph of a portion of land in Dalian, China, constituted the Dalian Bond Representation.

[190] The executive director also highlighted that the certificates of undivided land right contained statements that the investor was the beneficiary of a portion of land in Dalian and that the certificate would be redeemed by Pegasus on maturity. The executive director did not explain how either of these statements was relevant to his allegations.

[191] As noted above, the certificates of undivided land right were issued by Pegasus after the investors had made their investment decision and paid the purchase price for their Dalian Bonds. Accordingly, they are not relevant to our analysis of the fraud allegations in this case.

[192] In any event, even if we were able to conclude that the photograph was of land in Dalian, China, we would simply consider it to be an illustrative photograph and not as a representation as to the use of proceeds of the Dalian Bond offerings.

Dalian Bond promissory notes

[193] The executive director made similar submissions with respect to the names of the bond series set out in the Dalian Bond promissory notes as he made with respect to the Georgia Bond promissory notes.

[194] As with the Georgia Bond promissory notes, the promissory notes for the Dalian Bonds introduced into evidence were in Chinese except for the words “Promissory Note”. An uncertified translation of the name of the PGO2 promissory note stated the name as “Corporate Bond Trust Bond Promissory Note of PPG CIMG Georgian GMP Pharmaceutical Manufacturing Centre Construction Bond”.

[195] Our analysis with respect to these submissions is the same as our analysis of similar submissions made with respect to the Georgia Bond promissory notes. We find that the names of the bond series included in the Dalian Bond promissory notes do not constitute the Dalian Bond Representation.

[196] The executive director also highlighted the statement included in the Dalian Bond promissory notes that the organization providing the guarantee was Pegasus Pharmaceuticals Industrial Park (Dalian) Company Limited. This is simply a statement identifying the guarantor of the note and the fact that the name of guarantor includes a reference to the Dalian Industrial Park is not a representation as to how the proceeds of the Dalian Bond offering will be used.

Dalian Bond subscription application

[197] The executive director made similar submissions regarding the check-box and investor acknowledgement included in the Dalian Bond subscription application as he did with the Georgian Bond subscription application.

[198] Our analysis with respect to these submissions is the same as our analysis of similar submissions made with respect to the Georgia Bond subscription application. We find that neither the check-box nor the investor acknowledgement constitutes the Dalian Bond Representation.

Dalian Bond plan disclaimer

[199] The executive director highlighted the acknowledgements included in the Dalian Bond plan disclaimers that the investor had received a copy of the “plan brochure” outlining its key features and the investor understood the details of the bond series.

[200] A copy of the “plan brochure” was not introduced into evidence nor was any evidence adduced as to the contents of this document which makes reference to the brochure meaningless in the context of our fraud analysis.

[201] The acknowledgement by the investor that they understood the details of the bond series contains no reference to the use of proceeds of the bond offering.

[202] We find that the acknowledgements included in Dalian Bond plan disclaimers do not constitute the Dalian Bond Representation.

Pegasus websites

[203] The executive director identified various statements on the PPGInco website relating to the Dalian Project including an overview of the Pegasus BioPark development plan, a statement regarding municipal approval for the project and its provision of land for the project as well as a reference to the production zone producing and supplying pharmaceuticals.

[204] None of these statements makes any reference to the proceeds of the Dalian Bond offerings or how they will be used. We find they do not constitute the Dalian Bond Representation.

[205] The executive director made similar submissions with respect to the identification of the Dalian Bonds in the section of the Pegasus Bonds website listing the bonds offered by Pegasus and to the posting of the Dalian Bond business plan and a two-page summary on this site as he made with respect to similar information posted on the Pegasus Bonds website with respect to the Georgia Bonds.

[206] Our analysis and findings with respect to these submissions is the same as our analysis of similar submissions made regarding similar statements related to the Georgia Bonds posted on the Pegasus Bonds website.

C. Georgia Bond and Dalian Bond fraud allegation finding

[207] In the circumstances, we find that the executive director has failed to prove the Georgia Bond Representation and the Dalian Bond Representation were made by Pegasus to the investors. Accordingly, the executive director has failed to establish the prohibited act required for the *actus reus* of fraud. We dismiss the allegations of fraud pursuant to section 57(b) of the Act against the respondents in connection with the Georgia Bonds and the Dalian Bonds and the related allegations under section 168.2 of the Act against Huang.

Careseng Guaranteed Bonds

[208] The executive director has alleged both that the Careseng Guarantees were “false” and that the provision of the Careseng Guarantees was deceitful because, in either case, Careseng did not have the financial resources at the time of issuance of the Careseng Guaranteed Bonds to fulfill its obligations under the Careseng Guarantees.

[209] These allegations are based on a misunderstanding of the nature of a guarantee.

[210] *Barron’s Canadian Law Dictionary*, 6th ed, defines “guarantee” as:

... 2. To agree or promise to be responsible for the debt, default, or miscarriage of another...

[211] There is a difference between a contractual covenant or promise and a representation. A guarantee is a promise or contractual covenant to perform certain obligations, not, as the

executive director suggests, a representation that, when and if called upon to perform those obligations, the guarantor will have the financial resources to do so.

[212] We agree with the respondents that some guarantees are worth more than others and that is why it is not unusual for a lender to perform due diligence on a prospective guarantor to assess their financial resources.

[213] If, in addition to the Careseng Guarantee, Careseng or Pegasus had provided a representation to investors that Careseng had financial resources sufficient to meet its obligations under the Careseng Guarantee at the time of issuance of the Careseng Guaranteed Bonds, that representation would be false and could form the basis for an allegation against the respondents of contravention of section 57(b) of the Act. However, there was no evidence as to any representation made by the respondents to the investors regarding the financial resources of Careseng other than the following statement on the PPGInco website:

“Careseng Cancer Institute Inc.” was registered by Pegasus in 2003 to promote Careseng Therapies. The company is planning to establish 1500 “Careseng Health Clubs” worldwide in the next 10 years.

Website: www.careseng.ca

[214] This statement is prospective and was substantiated by evidence at the hearing that Pegasus planned to use Careseng to promote and generate revenue from the Careseng Therapy franchise. It was established that Careseng had entered into agreements with 20 clinics to sell Careseng branded products and planned, once agreements had been entered into with a sufficient number of clinics, to charge a franchise fee. In addition, a several thousand foot property had been acquired in Richmond to be developed into a health clinic for medical tourism to be operated by Careseng.

[215] In the circumstances, we find that the executive director has failed to prove the allegations of fraud pursuant to section 57(b) against the respondents with respect to the Careseng Guarantees. We dismiss those allegations and the related allegations under section 168.2 of the Act against Huang.

VII. Summary of Findings

[216] We have found that:

- (a) with respect to allegations against the respondents of contraventions of section 61 of the Act in connection with distributions of the Pegasus Bonds:
 - (i) Pegasus contravened section 61 of the Act by distributing 1,433 Pegasus Bonds totaling approximately USD \$45 million between January 28, 2010 and August 24, 2012 without a prospectus and for which no exemptions from the prospectus requirements of the Act applied,
 - (ii) Careseng contravened section 61 by engaging in acts in furtherance of trades in Careseng Guaranteed Bonds between January 28, 2010 and July 13, 2012 by

providing guarantees in connection with the distribution of 447 Careseng Guaranteed Bonds totaling approximately USD \$12.8 million without a prospectus and for which no exemptions from the prospectus requirements applied, and

- (iii) under section 168.2 of the Act, Huang contravened section 61 of the Act by authorizing these contraventions by Pegasus and Careseng of section 61; and
- (b) with respect to the allegations against the respondents of contraventions of section 57(b) of the Act in connection with the Georgia Bonds, the Dalian Bonds and the Careseng Guaranteed Bonds,
 - (i) the executive director has failed to prove these allegations against the respondents and the allegations are dismissed, and
 - (ii) the related allegations under section 168.2 against Huang are also dismissed.

VIII. Submissions on sanctions

[217] We direct the executive director and the respondents to make their submissions on sanction as follows:

By October 14, 2021 The executive director delivers submissions to the respondents and to the Commission Hearing Office.

By October 28, 2021 The respondents deliver response submissions to the executive director and the Commission Hearing Office.

Any party seeking an oral hearing of the issue of sanctions so advises the Commission Hearing Office. The hearing officer will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

November 4, 2021 The executive director delivers reply submissions (if any) to the respondents and to the Commission Hearing Office.

September 22, 2021

For the Commission

Judith Downes
Commissioner

Deborah Armour, QC
Commissioner