

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

Citation: Re Deyrmenjian, 2018 BCSECCOM 125

Date: 20180425

**Garo Aram Deyrmenjian, Raffi Khorchidian,
David Craven, and EuroHelvetia TrustCo. S.A. now known as
EHT Corporate Services S.A.**

Panel	Judith Downes Gordon L. Holloway Suzanne K. Wiltshire	Commissioner Commissioner Commissioner
Hearing Dates	June 21, 22 and 23, 2017 January 9, 2018	
Submissions Completed	January 9, 2018	
Date of Findings	April 25, 2018	
Appearing		
Derek Chapman David Hainey	For the Executive Director	
Stephen B. Jackson	For Garo Aram Deyrmenjian	
Lisa Ridgedale Leah Shepherd Nolan Hurlburt	For Raffi Khorchidian	
Ronald N. Pelletier	For David Craven	
Carey D. Veinotte Andrew Crabtree	For EuroHelvetia TrustCo. S.A. now known as EHT Corporate Services S.A.	

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.
- [2] On October 4, 2016, the executive director issued a notice of hearing against certain of the respondents (2016 BCSECCOM 336).

[3] On March 8, 2017, the executive director amended the original notice of hearing to delete one of the parties and to add David Craven as a respondent. In the amended notice of hearing (2017 BCSECCOM 91), the executive director alleged that between December 27, 2010 and April 27, 2011(the relevant period):

- a) the respondents, directly or indirectly, engaged or participated in conduct relating to the shares of Kunekt Corporation that they knew, or reasonably should have known, resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Kunekt's shares, contrary to section 57(a) of the Act; and
 - b) David Craven authorized, permitted or acquiesced in the conduct of EuroHelvetia TrustCo. S.A. (EHT) relating to Kunekt's shares that resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, Kunekt's shares. Under section 168.2 of the Act, Craven also contravened section 57(a) of the Act.
- [4] During the hearing, the executive director called one witness (a Commission investigator), tendered documentary evidence and provided written and oral submissions. Counsel for Garo Aram Deyrmenjian, Raffi Khorchidian, EHT and Craven attended the hearing, tendered documentary evidence on behalf of their clients and provided written and oral submissions.

[5] All references in these findings to dollars are to US dollars.

II. Background

The respondents

- [6] Deyrmenjian is a resident of Vancouver, British Columbia. Deyrmenjian had experience as a director, officer, promoter and insider of public companies prior to the relevant period. He also was a jeweler during this time.
- [7] Khorchidian was a resident of Vancouver, British Columbia during the relevant period. He had experience as a director and officer of public companies prior to this time.
- [8] Deyrmenjian and Khorchidian had been friends for many years and business associates prior to the relevant period.
- [9] EHT was a Swiss wealth management firm. Craven and SD were managing directors of EHT during the relevant period. AR was EHT's chief accountant during this time.
- [10] Deyrmenjian and Khorchidian were both EHT clients during the relevant period. Craven was a jewelry client of Deyrmenjian.

Other relevant individuals and entities

Kunekt

- [11] Kunekt is a Nevada company. It was incorporated in 2007 to enter into the financial account card market with a patent-pending product called the “Kunekt Card”. In early 2008, the US Patent and Trademark Office rejected all claims in Kunekt’s patent application. After unsuccessfully pursuing an appeal, Kunekt announced, in September 2010, that it had abandoned its patent application. Kunekt had no other business at this time.
- [12] Kunekt’s shares were quoted on the Over the Counter Bulletin Board market in the United States under the symbol KNKT. It was a reporting issuer in British Columbia during the relevant period.

MB

- [13] MB was a resident of Vancouver, British Columbia during the relevant period. He was the founder, president, CEO and sole director of Kunekt. He was a jewelry client of Deyrmenjian.

SB

- [14] SB is the brother of MB. He was also a jewelry client of Deyrmenjian.

BS/CFM

- [15] BS was the principal of a US entity we will refer to as CFM. CFM is a direct marketer and tout sheet publisher for small public companies.

CBH

- [16] CBH is a bank in Geneva, Switzerland.

Virtigo S.A.

- [17] Virtigo S.A. was incorporated in the British Virgin Islands. CMS Inc. was its sole director. The directors and officers of CMS Inc. were directors, officers and/or employees of EHT. The beneficial owner of Virtigo S.A. was the Virtigo Trust.
- [18] In November 2007, EHT opened an account at CBH in the name of Virtigo S.A. (the Virtigo S.A. account). The signing authorities on the account were directors, officers and/or employees of EHT. All correspondence relating to the account was to be sent to EHT. The Swiss Financial Market Supervisory Authority (FINMA) told Commission investigators that CBH advised the account was not under a discretionary management mandate.
- [19] The Virtigo Trust was named as the beneficial owner of assets in the Virtigo S.A. account. The purpose of the account was stated to be facilitation of ongoing investor relations operations by means of payments to suppliers for analytical reports and lists of confirmed investors. The destination of outgoing payments from the account was stated to include promotion payments.

Virtigo Trust

[20] The Virtigo Trust was a trust based in Nevis. The beneficial owner of the Virtigo Trust was Khorchidian.

Eden Ventures Inc.

[21] Eden Ventures Inc. was a company incorporated in the British Virgin Islands. CMS Inc. was its sole director. The beneficial owner of Eden Ventures was the Eden Trust.

[22] In June 2008, EHT opened an account at CBH in the name of Eden Ventures (the Eden Ventures account). The signing authorities on the account were directors, officers and/or employees of EHT. The account opening documents specified that the account was an investment advisory, as opposed to a managed, account. All correspondence relating to the account was to be sent to EHT. The Eden Trust was named as the beneficial owner of assets in the account. The statements as to the purpose of the account and the destination of outgoing payments were the same as the Virtigo S.A. account. Khorchidian was named in the account opening documents as having introduced Deyrmenjian to EHT.

The Eden Trust

[23] The Eden Trust was a trust based in Nevis. The beneficial owner of the Eden Trust was Deyrmenjian. The settlor of the Eden Trust was Khorchidian.

Next Generation Technology International Ltd.

[24] Next Generation Technology International Ltd. was incorporated in the Marshall Islands. CMS Inc. was its sole director. The sole shareholder of Next Generation was the Virtigo Trust.

[25] In February 2011, EHT opened an account at CBH in the name of Next Generation (the Next Generation account). The signing authorities on the account were directors, officers and/or employees of EHT. All correspondence relating to the account was to be sent to EHT. The Virtigo Trust was named as the beneficial owner of assets in the account. The statements as to the purpose of the account and the destination of outgoing payments were the same as the Virtigo S.A. account.

Dryster Investments Inc.

[26] Dryster Investments Inc. was incorporated in Panama. The beneficial owner of Dryster was Khorchidian.

[27] In February 2008, Dryster opened an account at R&B, a Swiss bank (the Dryster account). Khorchidian was named as the beneficial owner of the assets in the account. Neither EHT nor any of its directors, officers or employees were referenced in the account documents.

Sandano Business Corp.

[28] Sandano Business Corp. was incorporated in Panama. The beneficial owner of Sandano was Deyrmenjian.

[29] In August 2010, Sandano opened an account at BG, a Swiss bank (the Sandano account). Deyrmenjian was named as the beneficial owner of the assets in the account. Neither EHT nor any of its directors, officers or employees were referenced in the account documents.

Paramount Trading Company Inc.

[30] Paramount Trading Company Inc. was incorporated in Nevis. The beneficial owner of Paramount was DE, a director of EHT.

[31] In 1995, an account was opened with MP, a bank based in the Channel Islands, for Paramount (the Paramount account). The signing authorities on the account were directors, officers and/or employees of EHT. All correspondence relating to the account was to be sent to EHT. The nature of business to be conducted in the account was stated as share trading/custody and investment. The reason for establishing the account was stated as the purchase and sale of shares and the receipt of fees. AR was a signing authority on the account during the relevant period.

Acquisition of Kunekt shares

[32] In 2010, Deyrmenjian and Khorchidian learned of a pending change in the business of Kunekt from discussions with SB and/or MB. Deyrmenjian said he also discussed Kunekt with Khorchidian.

[33] In November 2010:

- 3 million Kunekt shares were deposited into the Virtigo S.A. account
- 2.8 million Kunekt shares were deposited into the Dryster account
- 2.6 million Kunekt shares were deposited into the Sandano account
- 2.4 million Kunekt shares were deposited into the Eden Ventures account, and
- 3 million Kunekt shares were deposited into the Paramount account.

These 13.8 million Kunekt shares represented 46% of Kunekt's free trading shares.

Change of business and funding of Kunekt promotional campaign

[34] On December 2, 2010, Kunekt announced that it was shifting the primary focus of its business to designing, building and marketing mobile phones, smart phones and tablets.

[35] On December 8, 2010, Kunekt filed notice of a material event with US securities regulatory authorities disclosing that it had signed a non-binding letter of intent to acquire AMS-INT Asia Limited.

[36] On January 9, 2011, CFM issued an invoice in the amount of \$600,000 for "IR Email Marketing Services for 'Kunekt'." The invoice references a marketing program consisting of approximately 6.5 million emails a week and included all copywriting, list selection and execution.

[37] On January 20, 2011, Craven and SD authorized a wire transfer of \$600,000 to CFM from an account in EHT's name at CBH (the EHT account) for investor relations and advertising expenses for "KNKT Marketing".

- [38] On January 24, 2011, Kunekt announced that it had entered into a definitive agreement to acquire AMS-INT as a major step in its plans to design, build and market mobile devices initially in China and India.
- [39] On February 2, 2011:
- an email from a gmail account in the name of AR was sent to BS: “As per our discussion, please continue the marketing KNKT. I am wiring in \$836,000 that will cover the next 2 weeks. I will be in touch further regarding a possible direct mail program and a continued email effort.”
 - a Safe Message communication from “BrianS1” to “David” and “Elvis” attached an invoice from CFM for the Kunekt promotion in the amount of \$836,000 and stated: “Attached is the invoice2 for KNKT. It represents 2 weeks of email at a budget of \$400,000 per week. The additional \$36,000 is for the additional emails I have scheduled for the end of this week. Jack, please approve so wire can be sent out asap.” Safe Message was a confidential message system used by EHT.
- [40] On February 8, 2011, Craven and SD authorized a wire transfer to CFM from the EHT account of \$836,000 for investor relations and advertising expenses for KNKT marketing.
- [41] On the same day that EHT paid CFM’s \$836,000 invoice, a wire transfer of \$840,000 was sent from the Virtigo S.A. account to the EHT account.
- [42] On February 15, 2011:
- an email was sent from AR’s gmail account to BS: “I would like to continue the electronic marketing of KNKT for the following 2 weeks. I have initiated a wire for \$800,000.”
 - a Safe Message communication from “BrianS1” to “David” and “Elvis” attached an invoice from CFM for “IR Email Marketing Services for ‘Kunect’” in the amount of \$800,000.
 - a Safe Message communication from “Elvis” to “David” stated: “Please move \$800k to Brian from V.”
 - Craven and SD authorized a wire transfer to CFM from the EHT account of \$800,000 for investor relations and advertising expenses for the “KNKT campaign”.
- [43] On the same day that EHT paid CFM’s \$800,000 invoice, a wire transfer of \$810,000 was sent from the Virtigo S.A. account to the EHT account.
- [44] On February 18, 2011, \$1 million was transferred from the Paramount account to the Virtigo S.A. account.
- [45] On March 2, 2011:
- an email was sent from AR’s email account to BS: “I would like to scale back our marketing efforts for “Kunnect”. I am initiating a wire to Capital Financial

Media for \$800,000. Please allocate these funds equally over the next 6 weeks for email and marketing for “Kunnect”.”

- CFM issued an \$800,000 invoice for “IR Email Marketing Services for “Kunect” for six weeks starting March 7, 2011.

[46] On March 4, 2011, a wire transfer of \$800,000 was sent from the Next Generation account to CFM.

[47] On that same day, a wire transfer of \$850,000 was sent from the Eden Ventures account to the Next Generation account. FINMA advised Commission investigators that EHT informed them, through its lawyer, that EHT did not wire \$850,000 to Next Generation without having first received instructions from Deyrmenjian. In an interview under oath with Commission investigators, Deyrmenjian said that, prior to the interview, he had never heard of Next Generation nor was he aware that Eden Ventures had transferred \$850,000 to Next Generation.

[48] On March 11, 2011, \$3 million was transferred from the Paramount account to the Eden Ventures account. The Paramount account statement identified this transfer as “KNKT”. At his Commission interview, Deyrmenjian said that he had no knowledge of the \$3 million transfer.

[49] All of the CFM invoices were addressed to Next Generation to the attention of AR.

The promotional campaign

[50] After Kunekt announced its move into the smart phone business on December 2, 2010, there was little market reaction. Trading volumes were low and the share closing price was \$0.55 or less. Even after Kunekt disclosed on December 8, 2010 that it had entered into a non-binding letter of intent to acquire AMS-INT there was little market reaction. Few shares were traded and the closing share price remained below \$0.60.

[51] Kunekt’s share price and trading volume began to increase on December 27, 2010 and continued into January. There were no news releases to account for this change in price and volume. The executive director submits that the most likely explanation for this increase was a trade of 25,000 Kunekt shares on December 27, 2010 carried out through the Sandano account. In early January 2011, this trade was noted by the www.prepromotionstocks.com website and flagged as evidence that a promotional campaign was likely in the works.

[52] On January 24, 2011, Kunekt issued the news release announcing that it had entered into definitive agreements to acquire AMS-INT. The forward-looking statement section of the news release made it clear that Kunekt’s plans to enter into the mobile device business were in the very early stages. Factors noted which could affect Kunekt’s plans included: a failure to close the definitive agreements, the ability of Kunekt to design, manufacture and market mobile devices at all and at a price less than industry leaders and its ability to engage reliable companies to manufacture its products.

[53] The mass email blasts in the Kunekt promotional campaign began on January 25, 2011. The tout sheets were also leaked on the evening of January 23, 2011 in advance of the campaign.

[54] The tout sheets contained grossly promotional statements:

"I've just discovered the next *Apple* (AAPL)! And just like the electronics giant before it, this company is offering you a chance at 5,192% profits before Summer 2011!"

You see, Kunekt is offering this "new world middle-class" comparable Smartphones and tablets for half of the price of their closest competitor - Apple.

By doing so, this forward thinking company is giving us more than an all-but-guaranteed chance to garner 5,192% gains...

What we're looking at the closest thing we've seen to sure bet as we've seen in a while.

Kunekt is the proverbial "Holy Grail" stock that is a legitimate game changer.

KUNEKT

Ticker: (KNKT)

Price: \$1

Target: \$52.92

**Recommendation:
Strong Buy**

By grabbing shares now, you're virtually locking in profits that could be worth Millions!

What do you think of when you hear the name of Bill Gates?

What about Steve Jobs?

While some may think about terms such as "The World's Richest Man" or "The Hippie CEO", many others think about what brought these two men to global prominence – computers.

Who knows, someday, another name might be mentioned among them, Mark Bruk, the mind behind Kunekt, especially as this undiscovered company could soon be known as the global leader in wireless technology.

- [55] To put the statements in the tout sheets in context, the Form 10-Q that Kunekt filed with US securities regulatory authorities for the quarter ended January 31, 2011 disclosed that Kunekt had approximately \$360,000 in assets and no proprietary technology. Also noted were accumulated significant losses, a negative working capital and a deficit in shareholders' equity. A going concern note was included in the financial statements (i.e. that the company's working capital would be insufficient to meet its anticipated liabilities in the next 12 months).

- [56] Kunekt's share price and trading volume spiked during the week of January 24, 2011. On January 21, the last trading day before January 24, Kunekt shares closed at \$0.99 on a volume of 439,544 shares. By the end of the week of January 24, the share price had climbed to \$1.43 on a volume of over 3.6 million shares.
- [57] On both February 24 and 25, 2011, Kunekt's trading volume broke the 8 million mark and its share price exceeded \$2.00 for the first time during the relevant period.
- [58] Kunekt's share price reached a high of \$2.89 on February 28, 2011 on a volume of 16.4 million shares. The share price dropped more than one dollar the next day, closing at \$1.83, on a trading volume of 17.2 million shares – the highest volume during the relevant period.
- [59] At a share price of \$2.89, Kunekt's 62 million issued and outstanding shares gave the company a market capitalization of almost \$180 million.
- [60] At the end of the relevant period on April 27, 2011, Kunekt's share price closed at 77 cents on a volume of 266,904 shares.
- [61] Kunekt's share price dropped:
- to 16 cents by June 30, 2011
 - to 3 cents by the end of 2011.

Trading in Kunekt shares

- [62] During the relevant period, net proceeds in the following amounts were generated from trades in Kunekt shares:
- \$3.36 million in the Virtigo S.A. account
 - \$3.97 million in the Dryster account
 - \$3.42 million in the Sandano account
 - \$3.89 million in the Eden Ventures account
 - \$5.08 million in the Paramount account.
- [63] About \$18.1 million of these net trading proceeds were generated on or after January 25, 2011 when the promotional campaign began.
- [64] During and after the trading activity in Kunekt shares in the Eden Ventures account, several transfers of large sums were made from the account to third parties including the \$850,000 transferred to Next Generation referenced in paragraph 47 above. By April 2012, a total of \$6.841 million had been transferred out of the account.
- [65] During and after the trading activity in Kunekt shares in the Virtigo S.A. account, a total of approximately \$4.6 million was transferred out of the account to third parties, including the \$1.65 million transferred to EHT referenced in paragraphs 41 and 43 above.

- [66] There is no evidence that Deyrmenjian or Khorchidian directly or indirectly benefited from the transfers of funds to third parties.
- [67] FINMA advised Commission investigators CBH informed them that transactions for the purchase and sale of Kunekt shares in the Virtigo S.A. account were given by CMS through its authorized representatives.
- [68] FINMA also advised that EHT's lawyer informed them that EHT never executed trades in Kunekt shares in the Eden Ventures account without specific instructions from Deyrmenjian or his representative.

III. Circumstantial evidence and inferences

Applicable law

- [69] The executive director acknowledged that, as with most market manipulation cases, this case is largely dependent on circumstantial evidence.
- [70] This Commission recently considered the issue of inferences in *Re Lim*, 2017 BCSECCOM 196. The panel cited its decision *Re Weicker*, 2015 BCSECCOM 19 (at para. 80):

Insider trading cases often require panels to consider inferences. We may make inferences, we cannot speculate. In drawing inferences, we must ensure that we do not assume a fact that has not been proven and that any inference that we make is reasonable based on the facts that have been proven.

- [71] In *Re Lim*, the panel also cited the Ontario Securities Commission (OSC) decision in *Re Suman*, 2012 LNONOSC 176, which stated that facts cannot be assumed which have not been proven and that any inference made must be reasonably and logically drawn from facts established by clear, convincing and cogent evidence.
- [72] Also in *Re Suman*, the OSC said that staff is not required to prove that the inferences they invite the panel to draw are the only inferences that can be drawn from the evidence, nor must the inferences be the most obvious or the most easily drawn. However, as held in *Amos v. Yukon Tire Centre*, 2005 YKSC 41, in a circumstantial evidence case, if the inference of non-fault is as consistent with fault, the standard of proof has not been met and the case cannot succeed.
- [73] In *Re Agueci*, 2015 ONSEC 2, the OSC held that whether it is more likely than not that a respondent has knowledge (in that case of a material fact) can be based on inferences reasonably and logically drawn from the entire factual matrix. The panel cited (at para. 67) the Alberta Securities Commission's decision in *Re Holtby* that "pieces of evidence, each by itself insufficient, may...when combined, justify the inference that the facts exist."

Inferences to be made in this case

- [74] The executive director submitted that it was reasonable and logical for the panel to make the following inferences:
- the respondents worked together to manipulate Kunekt’s share price
 - Craven concealed his role in the manipulation by using AR’s name
 - Craven determined the nature, timing and length of CFM’s promotional campaign
 - the respondents concealed their role in the manipulation
 - the transactions in the offshore accounts beneficially owned by Deyrmenjian were carried out on his instructions
 - the transactions in the offshore accounts beneficially owned by Khorchidian were carried out on his instructions
 - Khorchidian funded the payment of two CFM invoices through the Virtigo S.A. account
 - Deyrmenjian funded the payment of one CFM invoice through the Eden Ventures account
 - Paramount’s Kunekt trading was carried out on behalf of Deyrmenjian and Khorchidian as EHT clients.

[75] Without listing each of the respondents’ positions regarding each of the above inferences, it is sufficient for these purposes to note that, in most cases, one or more of the respondents submitted that it would be mere speculation for the panel to make the inference in question.

[76] We assessed each of the inferences that the executive director has asked us to make.

The respondents worked together to manipulate Kunekt’s share price

- [77] Some of the key facts cited by the executive director to support this inference are:
- Deyrmenjian and Khorchidian were friends and former business associates and were both EHT clients during the relevant period
 - EHT opened the Eden Ventures account after Khorchidian introduced Deyrmenjian to EHT and Khorchidian was the settlor of the Eden Trust
 - Khorchidian and Deyrmenjian both had advance knowledge of the pending change in Kunekt’s business
 - transfers were made from each of the Virtigo S.A. account and the Eden Ventures account to fund payments of CFM invoices for the Kunekt promotional campaign
 - trading in Kunekt shares in the respondents’ offshore accounts during the relevant period generated \$19.7 million of which \$18.1 million was generated after the commencement of the Kunekt promotional campaign.

[78] To make an inference that the respondents “worked together” to manipulate the Kunekt share price, we need circumstantial or other evidence, such as communications between the parties, demonstrating some type of joint effort.

[79] While the parties may have worked together, we do not have sufficient evidence to make that particular inference. However, this inference is not necessary to our findings.

[80] We deal with the issue of whether Deyrmenjian and Khorchidian were directly or indirectly responsible for the funding of the tout sheet promotional campaign below.

Craven concealed his role by using AR's name

[81] Some of the key facts cited by the executive director to support this inference are:

- AR denied having any gmail account, including the AR gmail account that was used to email BS with particulars of the Kunekt promotional campaign. He also denied any knowledge of Next Generation
- the CFM invoices were all addressed to Next Generation to AR's attention. However, Craven, not AR, authorized payment of these invoices
- an online virtual office agreement to which Next Generation was a party listed AR's name as contact person but provided Craven's EHT email address as the contact email address. AR denied any knowledge of the agreement.

[82] In his sworn interview with the Commission, AR said that the AR email account was not his. However, there is no clear and cogent evidence that the gmail account belonged to Craven.

[83] The fact that Craven's email address was the contact email address for Next Generation on a commercial agreement and that he was one of two signatories who authorized payment of CFM invoices on Next Generation's behalf is not a basis on which we can make an inference that Craven concealed his role in the Kunekt promotion by using AR's name. The contact email address set out in the commercial agreement is clearly Craven's and cannot be said to be an effort at concealment. As Craven was one of the authorized signatories on the Next Generation account, his approval of the CFM payments is in keeping with that authority.

[84] There is not sufficient evidence for us to make a reasonable and logical inference that Craven concealed his role in the Kunekt market manipulation. However, this inference is not necessary to our findings.

The respondents concealed their role in the manipulation

[85] The executive director says that, in addition to the above, an inference can be made that the respondents tried to conceal their roles in the manipulation in other ways. Some of the other facts cited by the executive director to support this inference include:

- the use of Safe Message by "Brian S1" and "David" for communications relating to the delivery and payment of CFM invoices relating to the Kunekt promotion
- the use of an Indian address and AR's name as contact person for Next Generation on the CFM invoices for the Kunekt promotion
- the payment by EHT of the February 2, 2011 and February 15, 2011 CFM invoices followed by same day transfers of funds from the Virtigo S.A. account
- the payment by Next Generation of the last CFM invoice after receiving funds transferred from the Eden Ventures account.

[86] It is reasonable and logical to infer from these facts that efforts were made to conceal the identity of the participants in, and sources of funding for, the Kunekt tout sheet marketing campaign. The use of multiple offshore accounts to both funnel funding for the campaign and distribute the proceeds realized, as well as the use of a confidential message system for instructions regarding payment of invoices relating to the promotion, are devices which obscure the identity of the persons behind the campaign. EHT and Craven set up the accounts and authorized many of the payments and transfers of funds.

Craven determined the nature, timing and length of CFM's promotional campaign

[87] Some of the key facts cited by the executive director to support this inference are:

- Craven authorized wire transfers to CFM to pay the various invoices issued by CFM for its services relating to the Kunekt promotion
- various emails were sent from the AR gmail account to BS with instructions regarding the Kunekt marketing campaign
- various Safe Messages were sent from “BrianS1” to “David” attaching CFM’s invoices for the Kunekt promotion.

[88] As noted above, there is no clear and cogent evidence that the AR gmail account was Craven’s. The facts that Craven authorized wire transfer payments of CFM’s invoices and was a recipient by Safe Message of those invoices is not a basis on which we can make an inference that Craven determined the particulars of the CFM promotional campaign. It is equally plausible that Craven undertook these activities on the instructions of one of the other respondents.

[89] There is not sufficient evidence for us to make a reasonable and logical inference that Craven determined the particulars of CFM’s promotional campaign. However, this inference is not necessary to our findings.

Transactions in the offshore accounts owned by Deyrmenjian and Khorchidian were carried out on their instructions

[90] Some of the key facts cited by the executive director to support this inference are:

- Deyrmenjian and Khorchidian stood to benefit from the Kunekt promotion as the beneficial owners of the assets in their respective offshore accounts
- they each traded Kunekt shares in their non-CHB accounts at the same time
- EHT advised FINMA that all trades in the Eden Ventures account were carried out on Deyrmenjian’s instructions
- CBH advised FINMA that the Virtigo S.A. account was not a managed account.

[91] Although the inference in question refers to “transactions” in the offshore accounts, the executive director’s submissions are limited to trades made in the accounts. We have limited our analysis accordingly. The issue of transfers of funds made from the accounts is dealt with separately below.

[92] We give little weight to the FINMA letter regarding the Eden Ventures account. EHT is a respondent in these proceedings and the hearsay statements in the letter are not supported by any other evidence.

- [93] With respect to the FINMA letter regarding the Virtigo S.A. account, CBH advised FINMA that trades in Kunekt shares in the account were carried out at the direction of CMS. There is no evidence as to who gave instructions to CMS respecting the Virtigo S.A. account.
- [94] There is no evidence as to who gave instructions with regard to the trades in the Sandano and Dryster accounts.
- [95] There is not sufficient evidence for us to make a reasonable and logical inference that trades in the offshore accounts were carried out on the instructions of Deyrmenjian and Khorchidian. However, for the purposes of our findings, the identity of the party who gave instructions with respect to specific trades made in the offshore accounts beneficially owned by Deyrmenjian and Khorchidian is not relevant.
- Khorchidian funded the payment of two CFM invoices through the Virtigo S.A. account*
- [96] Some of the facts cited by the executive director to support this inference are:
- on the same day EHT paid CFM's \$836,000 invoice, \$840,000 was transferred from the Virtigo S.A account to the EHT account
 - on the same day EHT paid CFM's \$800,000 invoice, \$810,000 was transferred from the Virtigo S.A. account to the EHT account.
- [97] There is no direct evidence that Khorchidian gave instructions regarding the payment of the two CFM invoices noted above. EHT is purportedly the "mind and management" of the Virtigo S.A. account as CMS was the sole director of Virtigo S.A. EHT's directors, officers and/or employees were the signing authorities on the account.
- [98] However, the coincidence that all payments of the CFM invoices were funneled through one of two accounts beneficially owned by Khorchidian, being Virtigo S.A. and Next Generation, is a relevant fact.
- [99] The size of the amounts transferred from these accounts is also relevant. As noted above, \$840,000 and \$810,000 were transferred from the Virtigo S.A. account to the EHT account. \$800,000 was also transferred from the Next Generation account to CFM to pay its final invoice. It is not credible that such significant sums could be transferred out of an account without, at a minimum, the acquiescence of the beneficial holder of the account.
- [100] There may be an issue as to the benefits retained by Virtigo S.A. from trading in Kunekt shares as substantially all trading proceeds were transferred to third parties. However, there is no question that Dryster profited from trading in Kunekt shares. Khorchidian was the beneficial owner of the Dryster account. It is relevant that \$3.97 million in net proceeds were realized in the Dryster account from trading in Kunekt shares at the same time that Virtigo S.A. and Next Generation were funding the Kunekt tout sheet marketing campaign.

- [101] While it is not essential to establish that a respondent benefitted from a market manipulation to prove a contravention of section 57(a), it is part of the factual matrix to be considered.
- [102] In the circumstances, it is reasonable and logical to infer that Khorchidian, as the beneficial owner of the assets in the Virtigo S.A. and Next Generation accounts, at a minimum, permitted transfers of a total of \$2.45 million of funds that were beneficially owned by him from those accounts to fund payment of three CFM invoices for the Kunekt tout sheet marketing campaign.
- Deyrmenjian funded the payment of one CFM invoice through the Eden Ventures account*
- [103] Some of the facts cited by executive director to support this inference are:
- there were no funds in the Next Generation account to pay CFM's \$800,000 invoice on March 4, 2011 before a transfer from the Eden Ventures account of \$850,000 on the same day
 - EHT advised FINMA that Deyrmenjian gave instructions regarding the \$850,000 transfer.
- [104] The transfer of funds from the Eden Ventures account to the Next Generation account coincided with payment by Next Generation of the CFM invoice. It is relevant that there were no funds in the Next Generation account before the transfer,
- [105] The only direct evidence that such payment was made on the instructions of Deyrmenjian are the hearsay statements made by EHT in the FINMA letter. There is conflicting evidence from Deyrmenjian who, in his sworn interview, said he had not heard of Next Generation before the interview and that he was not previously aware of the \$850,000 funds transfer.
- [106] We give little weight to these self-serving statements.
- [107] The size of the amount transferred from the Eden Ventures account to the Next Generation account is relevant. It is not credible that \$850,000 could be transferred out of an account without, at a minimum, the acquiescence of the beneficial holder of the account.
- [108] It is relevant that Deyrmenjian was a longtime friend and business associate of Khorchidian and that he discussed the pending change in Kunekt's business with Khorchidian.
- [109] There may be an issue as to the benefits retained by Eden Ventures account from trading in Kunekt shares as substantially all trading proceeds were transferred to third parties. However, there is no question that Sandano profited from trades in Kunekt shares. Deyrmenjian was the beneficial owner of the Sandano account. It is relevant that \$3.42 million in net proceeds were realized in the Sandano account from trading in Kunekt shares during the Kunekt promotional campaign and that Eden Ventures provided monies which were used to fund the campaign.

[110] As noted above, while it is not essential to establish that a respondent benefitted from a market manipulation to prove a contravention of section 57(a), it is part of the factual matrix to be considered.

[111] In the circumstances, it is reasonable and logical to infer that Deyrmenjian, at a minimum, permitted funds that were beneficially owned by him to be transferred from the Eden Ventures account to fund payment by Next Generation to CFM of its final invoice for the Kunekt tout sheet marketing campaign.

Paramount's Kunekt trading was carried out on behalf of Deyrmenjian and Khorchidian as EHT clients

[112] The executive director says that this inference can be made based on the following facts:

- Deyrmenjian and Khorchidian were both EHT clients at the time of the trades
- AR testified that EHT used the Paramount account for clients' assets
- Paramount transferred \$1 million to the Virtigo S.A. account after it had sold more than that amount of Kunekt shares
- Paramount transferred \$3 million to the Eden Ventures account after it had sold more than that amount of Kunekt shares.

[113] It is clear from AR's testimony during his interview with Commission investigators and EHT's submissions that the Paramount account was used to hold client funds and to hold and trade shares for a number of EHT's clients.

[114] In the Paramount account statement, there is a notation "KNKT" in the entry relating to the wire transfer of the \$3 million to the Eden Ventures account. There is no similar notation in the entry for the wire transfer of the \$1 million to the Virtigo S.A. account.

[115] After the Paramount wire transfers to the Virtigo S.A. and Eden Ventures accounts, there were several large transfers from both accounts to third parties. The effect of the transfers was that no net benefit was realized by either entity from trading in Kunekt shares.

[116] While the realization of a benefit from the Kunekt trading is not essential to the inference in question, it is part of the factual context to be considered.

[117] While we can infer that the proceeds transferred into the Eden Ventures account were related to trading in Kunekt shares, there is not sufficient evidence for us to make a reasonable and logical inference that Paramount's Kunekt trading was carried out on behalf of Deyrmenjian and Khorchidian. However, this inference is not necessary to our findings.

IV. Positions of the Parties

Executive director's position

- [118] The executive director's position is that the respondents, directly or indirectly, organized and funded a mass email campaign that distributed grossly promotional tout sheets about Kunekt to create an artificial price for its shares contrary to section 57(a) of the Act. The executive director also says that Craven authorized, permitted or acquiesced in EHT's misconduct and, as a result, under s. 168.2 of the Act, he contravened section 57(a).
- [119] The executive director says that the conduct of each of the respondents that can be said to contravene section 57(a) is as follows:

Craven

1. He was the mastermind of the Kunekt promotion in that he likely sent the emails to BS using the AR gmail account with instructions regarding the length and scope of the Kunekt promotion and he also communicated with BS by Safe Message to receive CFM invoices and to discuss details of the promotion and payment of the invoices.
2. He processed payments for the promotion by signing off, with SD, on payment by EHT of the first three CFM invoices.
3. He wrote to CBH, on behalf of EHT, to open the Next Generation account from which the last CFM invoice was paid. He also signed the account opening documents.

EHT

1. EHT, by letter signed by SD, deposited the Kunekt shares into the Virtigo S.A. and the Eden Venture accounts and EHT staff facilitated the deposits of these shares by providing signature guarantees for the share transfer documents.
2. EHT paid the first three CFM invoices from its CBH account. Transfers from the Virtigo S.A. account funded payment of the second and third invoices but there is no evidence that any other party contributed to EHT's payment of the first CFM invoice.
3. EHT opened the Next Generation account from which the fourth CFM invoice was paid.

Deyrmenjian

1. Deyrmenjian funded Next Generation's payment of the fourth CFM invoice by an \$850,000 transfer from the Eden Ventures account.
2. He realized over \$7 million in net proceeds from trading in Kunekt shares in his offshore accounts during the relevant period.
3. He received \$3 million of Paramount's Kunekt trading proceeds.

Khorchidian

1. Khorchidian funded payment by EHT of the second and third CFM invoices by transfers of a total of \$1.65 million to the EHT account.

2. He was the beneficiary of the Virtigo Trust which was the beneficial owner of the assets in the Next Generation account from which the fourth CFM invoice was paid.
3. He realized over \$7 million in net proceeds from trading in Kunekt shares in his offshore accounts during the relevant period.
4. He received \$1 million of Paramount's Kunekt trading proceeds.

EHT's position

[120] EHT's position is that:

- the executive director did not prove that there was an artificial price for the securities of Kunekt or that EHT's conduct indirectly resulted in or contributed to that artificial price
- the Commission lacks jurisdiction to sanction EHT or Craven for their alleged conduct as all such conduct took place outside British Columbia and Canada.

Craven's position

[121] Craven's position is that the executive director has failed to prove that he breached section 57(a) of the Act.

[122] In particular, he says that there is no evidence that he had any knowledge of the specifics of the Kunekt promotion, that he ever saw the tout sheets or that he received any personal benefit from trading in Kunekt shares. He says that while it is true he signed off on the wire transfers to CFM, his actions were in the ordinary course of business for EHT such as setting up accounts, facilitating money transfers, etc., all upon the instructions of EHT clients and that this conduct is too tangential to the core trading and promotional efforts related to the Kunekt promotion for it to constitute a breach of section 57(a).

Khorchidian's position

[123] Khorchidian's position is that the executive director has failed to prove that he breached section 57(a) of the Act.

[124] In particular, there is no evidence that he:

- caused the trades or other transactions in the Virtigo S.A., Next Generation, Paramount or other accounts or instructed any person regarding the same
- had specific knowledge of the shares, trades or transactions in these accounts, and
- had specific knowledge of the CFM promotional campaign or payments relating to the same.

Deyrmenjian's position

[125] Deyrmenjian's position is that the executive director has failed to prove that he breached section 57(a) of the Act. In particular, he says that the executive director has failed to prove that he:

- executed, or instructed any person to execute, or had knowledge of, the trades or transactions in the Eden Ventures or Next Generation accounts
- had knowledge of the CFM campaign or payments regarding the same, and

- received any proceeds from the sale of Kunekt shares in the Eden Ventures account.

V. Analysis and Findings

A. Applicable Law

Standard of Proof

- [126] 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 (at para. 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.

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

- [128] 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.

Definition of a security

- [129] Section 1(1) of the Act 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” and “(d) a bond, debenture, note or other evidence of indebtedness, share, stock...”.

Section 57(a)

- [130] Section 57(a) of the Act states that a person “must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security or exchange contract.”

Section 168.2

- [131] 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 company also contravenes the same provision of the Act, if the individual “authorizes, permits, or acquiesces in the contravention”.

- [132] 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 contraventions and have the ability to influence the actions of the corporate entity (through action or inaction).

B. Analysis

[133] In *Re Lim*, this Commission found that section 57(a) requires the executive director to establish four elements in order to prove a contravention of that section (at para. 100):

- did the conduct of the respondent relate to securities or exchange contracts?
- was there either (or both) a misleading appearance of trading activity in, or an artificial price for, that security or exchange contract (what we will refer to as the form of the manipulation)?
- was there the requisite causal connection between the respondent's conduct and the form of the manipulation (i.e. did the respondent, directly or indirectly, engage in conduct that results in or contributes to the form of the manipulation?) and
- did the respondent have the requisite mental state for the contravention (i.e. did the respondent know, or should they have reasonably known, that their conduct had the requisite causal connection to the form of manipulation?)

[134] The first two elements can be considered collectively in respect of all of the respondents. The last two elements require a separate analysis with respect to specific conduct of each respondent.

Conduct relating to securities

[135] There was no dispute during the hearing that the alleged misconduct related to the shares of Kunekt and that those shares were securities under the Act.

Misleading appearance of trading activity or artificial price

[136] The notice of hearing contains an allegation that the respondents' conduct resulted in or contributed to a misleading appearance of trading activity in or an artificial price for the Kunekt shares. However, in his submissions, the executive director made it clear that he is alleging only that the respondents' conduct resulted in or contributed to an artificial price for the Kunekt shares.

[137] The Commission in *Re Lim* cited (at para. 106) the analysis of the Alberta Securities Commission in *Re Coastal Pacific Mining Corp.*, 2016 ABASC 301 as instructive for our interpretation of section 57(a) (which is the equivalent of section 93(a)(ii) in Alberta):

[48] This provision targets artificiality of price, however derived. Such artificiality may originate in, or be coupled with, a distorted appearance of trading activity (as in *De Gouveia*), but such a combination is neither inevitable nor required to establish a breach of section 93(a)(ii).

[49] The evidence here persuades us that the capital market generally, and specific investors who bought Coastal shares in the period of the promotional campaign, were misinformed and misled about the merits of Coastal as a business enterprise, and therefore about the inherent value of a Coastal share. The news release campaign described above communicated supposed good news – extremely good news – about Coastal's supposed mining business when that business was not, in reality, being pursued in a serious way. The sudden burst of

near-daily (or more-than-daily) news releases from Coastal in the relevant period, and the highly optimistic (at best) content of at least the 1 November 2010 news release (the only one in evidence), conveyed a sense that good things were happening to Coastal, and happening quickly. A similar impression was communicated even more frenetically by the concurrent email campaign, which (as evident from the quoted email of 1 November 2010) also touted an anticipated, vastly higher, share price.

[50] It is clear that this vigorous (but misleading) promotional campaign artificially stimulated investor interest in, and demand for, Coastal shares. Investors bought Coastal shares at higher prices and in higher volumes. That actual trading activity, reported to the market, undoubtedly reinforced the impressions communicated by the promotional campaign. As seen from the table above, trading prices and volumes reached remarkable levels.

...

[52] We find that the prices at which Coastal shares traded from 20 October into November 2010 were artificial, and that this artificiality was directly attributable to the promotional campaign undertaken during that period. As we concluded above, Coastal itself was among the participants in that campaign.

[138] The Commission in *Re Lim* found that the tout sheet materials used in the manipulation in that case were grossly promotional.

[139] The Commission also found that the misleading nature of the tout sheet materials and the irrational nature of the price of the shares of Urban Barns Food Inc. was, in and of itself, sufficient to find that there was an artificial price for the Urban Barns shares during the period in issue (at paras. 120-121).

[120] On November 4, 2009 when the Urban Barns shares commenced trading they did so at US\$.85 per share. The shares then significantly increased in price. On November 12, 2009, when the shares of Urban Barns reached their high closing price of US\$1.27, the company had a market capitalization of US\$55 million. There was no rational basis for the shares of Urban Barns to be worth that much or to have increased in price in the manner that they did. Similar to this Commission's decision in *Re Poonian*, 2013 BCSECCOM 131, we note that this behavior in the price of the Urban Barns shares, without any corresponding news releases by the issuer that could account for such a price increase, is supportive of a finding of there being an artificial price for these securities.

[121] Frankly, the above conclusions (i.e. the misleading nature of the tout sheet materials and the irrational nature of the price of the Urban Barns shares), in and of itself, would be sufficient for us to find that there was an artificial price for the Urban Barns shares commencing on November 4, 2009 and lasting throughout the relevant period.

- [140] There was little dispute that the Kunekt shares traded at an artificial price as a result of the Kunekt tout sheet campaign. The only respondent who contested the issue was EHT who said the evidence does not support a finding of an artificial price.
- [141] EHT submitted that the Commission's decision in *Re Carnes*, 2015 BCSECCOM 187 suggests that commentators have considerable latitude in expressing opinions about an issuer and that the CFM promotional materials should be looked at from the perspective of the *Carnes* decision.
- [142] There is a substantial difference between the material that was published by the respondent in *Carnes* and the tout sheet materials that were published by CFM with respect to Kunekt. In *Carnes*, the issue was whether the report published by the respondent could be considered a fair representation of all of the facts that the respondent knew about the issuer's technical reports as it failed to contain certain information that the respondent learned in his due diligence investigations.
- [143] In this case, the tout sheet materials were grossly promotional. There was no basis for the tout sheet materials to claim that Kunekt, a development company which had not closed the transaction necessary to launch its mobile device business, and had about \$360,000 in assets and no proprietary technology, was the "next Apple", that its shares would soon be worth \$52.92 or that there was an "all-but-guaranteed" chance to garner 5,192% profits before the summer of 2011.
- [144] As the panel noted in *Re Lim*, there will be a "grey area" where certain, reasonably held opinions will create a legitimate basis for third parties to make promotional statements. It is clear, however, that this is not such a case. The Kunekt tout sheet materials were fabrications designed to lead the reader to conclude that the Kunekt shares were worth far more than they really were. To use the words from the *Coastal Pacific* decision adopted in *Re Lim*, it is clear that readers of this material would be misinformed and misled about the merits of Kunekt as a business enterprise, and therefore about the inherent value of a Kunekt share.
- [145] As noted above, after Kunekt announced that it had entered into a letter of intent to acquire control of AMS-INT, there was little market reaction. Few shares were traded and the closing share price remained below \$0.60.
- [146] Kunekt's share price and trading volume spiked during the first week of mass email blasts of the tout sheets, closing on January 28, 2011 at \$1.43 on a volume of 3.6 million shares.
- [147] Kunekt's share price reached \$2.89 on February 28, 2011 on a volume of 16.4 million shares giving it a market capitalization of almost \$180 million. There was no rational basis for this exponential rise in trading price or volume. Other than the tout sheets, there were no news releases or other disclosure that could account for the increase. Kunekt issued the news release on January 24, 2011 announcing the signing of a definitive

agreement to acquire AMS-INT. However, as noted above, the forward-looking statement section of the news release made it clear that this plan was at a very early stage.

- [148] Based on our conclusions regarding the misleading nature of the Kunekt tout sheets and the irrational nature of the price of the Kunekt shares, we find that there was an artificial price for Kunekt shares commencing on January 25, 2011 and continuing at least until April 19, 2011, being two trading days after the completion of the tout sheet promotional campaign. The artificial price was created by the tout sheet marketing campaign conducted by CFM which commenced on January 25, 2011 and continued until April 15, 2011.

Causal connection

- [149] Having found that there was an artificial price for the Kunekt shares starting on January 25, 2011 and continuing through until at least April 19, 2011, the next question is whether the respondents, directly or indirectly, engaged in conduct that resulted in or contributed to that artificial price.
- [150] The causal connection that a respondent must have to the misleading appearance of trading activity or artificial price for the purposes of section 57(a) was recently considered by this Commission in *Re Cerisse*, 2017 BCSECCOM 27.
- [151] In that case, the respondents were alleged to have contravened section 57(a) of the Act by, in essence, aiding and abetting others in misconduct that was alleged to have manipulated the securities of a listed issuer. That decision had this to say about the issue of causal connection (at paras. 140 to 142):

[140] The executive director’s allegations under section 57(a) of the Act against all three of the respondents require us to consider when a person might “... **indirectly**, engage in or participate in conduct relating to securities ...” where that conduct “... results in or **contributes to** a misleading appearance of trading activity in, or an artificial price for a security...” We have emphasized the concepts of indirect participation in and contributions to a market manipulation as, at most, that is what the respondents are alleged to have done with respect to the Solanex shares. It is clear from the wording of the section that someone could be found to have contravened the section without having been directly involved in improper trading or improper promotional activity. The question is how broadly to interpret the concepts of “indirectly” and “contributed to”.

[141] The concept of “indirect” participation clearly would cover circumstances where a respondent was conducting improper trading activity through the use of nominee accounts or some other indirect manner of executing trades. It is less clear that this concept of indirect participation should apply where the alleged misconduct is tangential to the improper trading activity and/or improper promotional efforts.

[142] There is a spectrum of conduct that is tangential to the core trading and promotional efforts associated with a market manipulation. Where various conduct fits within this spectrum will be highly factual and context specific. Generally, where the conduct is further removed from the actual improper trading or specific improper promotional activities, it will be more difficult to establish that that conduct “results in” or “contributes to” a misleading appearance of trading activity or an artificial price for a security. Examples of conduct on this end of the spectrum would include efforts to establish a general business website for an issuer, maintenance of an issuer’s securities regulatory filings, instructing escrow agents or transfer agents and the mere assisting in the opening of brokerage accounts on behalf of others.

[152] We must analyze the conduct of each respondent and its causal connection to the artificial price for Kunekt shares created by the tout sheet marketing campaign.

Khorchidian

[153] We have found that Khorchidian, at a minimum, permitted the transfers from the Virtigo S.A. and Next Generation accounts which funded payments of three CFM invoices for services relating to the Kunekt tout sheet marketing campaign. We have found that the artificial price for Kunekt shares was created by the tout sheet marketing campaign.

[154] As stated in *Re Cerisse*, it is clear from the wording of section 57(a) that someone can be found to have contravened the section without having been directly involved in the improper promotional activity. By permitting the transfers from the Virtigo S.A. and Next Generation accounts of \$2.45 million, Khorchidian enabled the funding of the Kunekt tout sheet marketing campaign which was instrumental in creating the artificial price for Kunekt shares. Such conduct is not tangential to the promotional activity that created the artificial price for the Kunekt shares. It is directly connected, even fundamental, to the promotional activity.

[155] We find that by permitting the transfers from the Virtigo S.A. and Next Generation accounts which funded payments of three invoices for CFM’s services relating to the tout sheet marketing campaign, Khorchidian engaged in conduct that resulted in or contributed to the artificial price for Kunekt shares.

Deyrmenjian

[156] We have found that Deyrmenjian, at a minimum, permitted the transfer from the Eden Ventures account which funded payment by Next Generation to CFM of its final invoice for the Kunekt tout sheet marketing campaign. We have found that the artificial price for Kunekt shares was created by the tout sheet marketing campaign.

[157] By permitting the transfer of \$850,000 from the Eden Ventures account, Deyrmenjian enabled the funding of the Kunekt tout sheet marketing campaign. Such conduct is not tangential to the promotional activity which created the artificial price for the Kunekt shares. As with Khorchidian’s similar conduct, it is directly connected, even fundamental, to that activity.

[158] We find that by permitting the transfer from the Eden Ventures account which funded the payment of CFM's final invoice for services relating to the tout sheet marketing campaign, Deyrmenjian engaged in conduct that resulted in or contributed to the artificial price for Kunekt shares.

EHT

[159] EHT submits that its conduct in this matter consisted of administrative actions undertaken in the normal course of acting as agent and taking instructions from its clients. It says that such actions are too tangential to impose liability under section 57(a) of the Act.

[160] However, EHT's actions were not tangential to the misconduct in issue. EHT paid CFM's January 9, 2011 invoice for its services relating to the Kunekt tout sheet marketing campaign with funds from the EHT account. This was not an account that it managed on behalf of its clients, it was EHT's own CBH account. The payment was authorized by EHT's managing directors, Craven and SD.

[161] We have found that the artificial price for Kunekt shares was created by the CFM tout sheet marketing campaign. In paying the invoice for CFM's services relating to the campaign with funds from the EHT account, EHT funded the campaign. This conduct directly resulted in or contributed to the artificial price for the Kunekt shares.

[162] EHT says that the executive director wants the panel to infer that EHT paid the January 9 invoice with its own funds from its account at CBH. EHT says a more reasonable and plausible inference is that the payment of this invoice and the source of funds is not any different from payment of the other three CFM invoices which were funded by Virtigo S.A and Eden Ventures.

[163] The evidence regarding payment of the January 9 invoice is not circumstantial. There is direct evidence the invoice was paid by EHT from its own account. There is no evidence that any third party funded the payment.

[164] EHT says that the Commission investigator could have requested EHT account records showing the source of funds used to pay the January 9 invoice but failed to do so, and seeks to blame the executive director for this lack of evidence. We disagree. The executive director introduced direct evidence demonstrating that payments were made from the EHT account. As this account was EHT's own CBH account, any transactions within the account must have been carried out with the knowledge of EHT and Craven, a managing director and signatory to the account. If there existed further records identifying the source of those funds, they would be in the possession and control of EHT or its trustee in bankruptcy. EHT chose not to enter any further records, and it is not for them, at this point, to ask us to speculate as to reimbursement.

[165] We find that by paying CFM's January 9, 2011 invoice for services relating to the Kunekt tout sheet marketing campaign with funds from its own CBH account, EHT engaged in conduct that resulted in or contributed to the artificial price for the Kunekt shares during the period in issue.

Craven

[166] Craven was a managing director of EHT during the relevant period. As one of the parties who authorized the wire transfer payment of the January 9, 2011 CFM invoice on behalf of EHT, he authorized, permitted or acquiesced in EHT's conduct which resulted in or contributed to the artificial price of the Kunekt shares.

Mental State

[167] The remaining element of establishing that a respondent has contravened section 57(a) of the Act is that of the respondent having the requisite mental state.

[168] In this case, the executive director must establish that Khorchidian, Deyrmenjian and EHT knew, or ought reasonably to have known, that their conduct would result in or contribute to an artificial price for the shares of Kunekt.

Deyrmenjian and Khorchidian

[169] Khorchidian and Deyrmenjian both deny having knowledge of the alleged misconduct relating to the artificial price of Kunekt shares.

[170] Kunekt was a company that had limited assets, a going concern note on its financial statements and, during the course of the promotional campaign, had yet to close agreements to acquire its new business. Prior to the campaign, large positions in Kunekt shares were accumulated in accounts beneficially owned by Deyrmenjian and Khorchidian.

[171] It is not credible that Khorchidian and Deyrmenjian would permit transfers which funded payments to CFM of hundreds of thousands of dollars (several times more than the assets held by Kunekt) to promote such a company unless they were aware of the true nature of the promotional campaign. Nor is it coincidental that their accounts traded significantly into the rising share price during the tout sheet promotional campaign, resulting in substantial trading gains.

[172] We find that Khorchidian and Deyrmenjian knew or ought reasonably to have known that their conduct in permitting transfers of funds to pay for the Kunekt tout sheet marketing campaign would result in or contribute to an artificial price for the Kunekt shares.

EHT

[173] EHT says that there is no evidence that EHT had any facts before it from which it reasonably ought to have known that it was being used by the other respondents to manipulate the market for Kunekt shares.

- [174] EHT funded the initial phase of the Kunekt tout sheet marketing campaign by paying CFM's first invoice for \$600,000.
- [175] It is not credible that EHT would spend almost twice as much as Kunekt had in assets to market a company which at the time of payment of the first invoice had only a non-binding letter of intent regarding the launch of its new business, limited assets and a going concern note in its financial statements if EHT was not aware of the true nature of the Kunekt promotional campaign.
- [176] EHT's mental state can also be inferred from other actions it took, and through the knowledge and actions of its officers and directors. While an activity may not seem manipulative when viewed in isolation, it can clearly be so when considered with other conduct.
- [177] In this case, EHT also paid the second and third CFM invoices from its own EHT account with funds received, after the fact, in same day transfers from the Virtigo S.A. account. By doing so, EHT assisted in the concealment of the true source of funding for the promotional campaign.
- [178] When considered with its action in funding the first phase of the Kunekt promotional campaign, this subterfuge is further evidence that EHT was aware of the true nature of the promotional campaign.
- [179] We find that EHT knew or ought reasonably to have known that funding the initial phase of the Kunekt tout sheet marketing campaign by paying CFM's invoice for \$600,000 would result in an artificial price for the Kunekt shares during the period in issue, contrary to section 57(a) of the Act.
- Craven
- [180] For the purposes of section 168.2 of the Act, the executive director must also establish that Craven had knowledge of EHT's contravention of section 57(a) of the Act and the ability to influence the actions of EHT in that regard.
- [181] As EHT is a corporation, knowledge imputed to it is necessarily that of its directors and officers.
- [182] Craven was a managing director of EHT throughout the relevant period.
- [183] Craven was directly involved in EHT's misconduct. He was one of two EHT signatories who authorized funding of the initial phase of the Kunekt promotional campaign.
- [184] Craven was also one of the two EHT signatories who authorized payment of the second and third CFM invoices by EHT.

[185] The findings outlined above regarding EHT’s mental state with respect to this misconduct are equally attributable to Craven given his authority as managing director and his direct involvement in the misconduct.

[186] We find that, for the purposes of section 168.2 of the Act, Craven had knowledge of EHT’s contraventions of section 57(a) of the Act and, as a managing director of EHT, the ability to influence EHT’s actions in connection with the same.

C. Jurisdiction

[187] EHT and Craven submit that the executive director has failed to put sufficient evidence before us to establish that there is a “real and substantial” connection between the acts and omissions of EHT and Craven on the one hand and British Columbia on the other. As a result, EHT and Craven argue that the Commission does not have jurisdiction to sanction them.

[188] In particular, EHT argues:

- Craven is not a resident of British Columbia
- EHT is a company subject to the laws of Switzerland with no legal presence in British Columbia
- EHT is regulated in Switzerland
- the tout sheets at issue were not authored or disseminated in British Columbia
- invoices related to the promotion were produced in Florida and sent to India, and paid by way of wire transfer from Switzerland.

[189] EHT cites the British Columbia Court of Appeal in *Torudag v. British Columbia (Securities Commission)* 2011 BCCA 458, where Mr. Justice Hall states (at paras. 24 to 26):

[24] The respondent [executive director] also submits that it is highly relevant that this trading concerned securities of a British Columbia reporting company and a large proportion of the shares purchased by the appellant were sold by British Columbia residents. This latter, perhaps somewhat adventitious circumstance, appears to bear some analogy to the circumstances that were present in the case of *R. v. W. McKenzie Securities Limited, West and Dubros*. In that case the Manitoba Court of Appeal upheld the conviction of an Ontario stockbroker for unlawful securities trading in Manitoba. A person in Manitoba had been solicited by the Ontario broker, who was not registered to trade in Manitoba, and had purchased shares. In upholding the conviction of the broker, Freedman J.A. said this at para. 23:

23 ... It was in this province that McCaffrey was solicited by the accused to purchase the shares in question, and it was in this province that McCaffrey responded favourably to such solicitation. I would agree with the learned magistrate and the learned county court judge that what took place in the present case constituted an act of trading in securities within the definition of *The Securities Act* of Manitoba.

[25] The linkage to British Columbia under this head may be of less salience in the present situation than in the above case because of the absence of solicitation, but this factor provides at least some connection to this Province.

[26] In my opinion, the more significant circumstances that constitute a real and substantial connection to this jurisdiction and which permitted the Commission to properly take jurisdiction over the appellant are the regulatory functions of the Commission concerning the Exchange and the fact that Icon was a reporting issuer in British Columbia.

[190] The *Torudag* decision was an appeal from the Commission decision *Re Torudag*, 2009 BCSECCOM 9. The Commission panel considered an application by the two respondents from Quebec who argued the Commission did not have jurisdiction to hear insider trading allegations against them relating to a British Columbia reporting issuer listed on the TSX Venture Exchange. In applying the “real and substantial connection” test, the Commission cautioned (at paras. 29 and 30):

[29] The test is "not meant to be a rigid test" and "the assumption of and the discretion not to exercise jurisdiction must ultimately be guided by the requirements of order and fairness, not a mechanical counting of contacts or connections": *Hunt v. T&N plc*. [1993] 4 SCR 289 at 43 (cited in *Muscutt*). The test requires "only a real and substantial connection, not the most real and substantial connection" (*Muscutt*, para. 44).

[30] Although we accept that the real and substantial connection test is appropriate, the exercise of a securities commission's public interest jurisdiction was not at issue in any of the cases cited in support of the test. Some caution is therefore appropriate in applying those cases in the context of public interest jurisdiction.

[191] When the respondents in *Torudag* argued that the TSX Venture Exchange was hosted on servers located in Toronto, thereby diminishing the connection to British Columbia, the Commission panel had this to say (at para. 40):

That the Exchange chooses to process trades on a server located in Toronto does not diminish the real and substantial connection to British Columbia. The replacement of physical trading marketplaces with electronic trading platforms has not altered the jurisdiction of the regulator over the market; it has merely made the physical location of the trade less useful as a factor in determining jurisdiction.

[192] The Commission has long been concerned about abusive trading schemes in US over-the-counter markets that are contemporaneous with suspicious spam campaigns (see, for example, *Re Hypo Alpe-Adria-Bank (Liechtenstein) AG* 2008 BCSECCOM 257). The reputation of the British Columbia capital markets is negatively impacted by market participants who engage in questionable activities using shell companies with strong connections in British Columbia. To address these issues, the Commission implemented BC Instrument 51-509, *Issuers quoted in the US Over-the-Counter Markets*, and more

recently, Multilateral Instrument 51-105, *Issuers Quoted in the U.S. Over-the-Counter Markets*.

[193] The matter before us involves a significant, and sophisticated, market manipulation. The payments for the tout sheet campaign were disguised through multiple levels of corporate and trust accounts at EHT, and invoices were produced and routed through multiple jurisdictions. EHT and Craven argue that these facts prevent the Commission from having jurisdiction over their conduct.

[194] The payments for this market manipulation were structured through a complex web of layered accounts and multiple jurisdictions, but the conduct of the respondents as a whole demonstrates that EHT and Craven, as well as two British Columbia residents, Khorchidian and Deyrmenjian, were fundamental to implementing a grossly promotional tout sheet campaign to artificially inflate the price of Kunekt shares, a reporting issuer in British Columbia. Manipulations of this nature have significant and adverse impacts on the reputation of British Columbia's capital markets. We find that the conduct of EHT and Craven had a real and substantial connection to British Columbia, and that we have jurisdiction to make orders in the public interest under sections 161 and 162 of the Act.

VI. Conclusions

[195] We find that Khorchidian contravened section 57(a) of the Act.

[196] We find that Deyrmenjian contravened section 57(a) of the Act.

[197] We find that EHT contravened section 57(a) of the Act.

[198] We also find that Craven authorized, permitted or acquiesced in EHT's conduct that contravened section 57(a) and that under section 168.2 of the Act, Craven also contravened section 57(a).

[199] Having found that Craven contravened section 57(a) of the Act under section 168.2, it is not necessary to consider whether he contravened section 57(a) directly.

VII. Submissions on Sanctions

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

By May 18, 2018	The executive director delivers submissions to the respondents and to the secretary to the Commission.
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By June 1, 2018	The respondents deliver response submissions to the executive director and to the secretary to the Commission.
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Either 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 June 8, 2018

The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

April 25, 2018

For the Commission

Judith Downes
Commissioner

Gordon L. Holloway
Commissioner

Suzanne K. Wiltshire
Commissioner